



EMPLOYMENT TRIBUNALS

Claimant

Respondent

v

K Sangwell

Cotswold Housekeepers Limited

Heard at: Reading by CVP

On: 21 February 2023

Before: Employment Judge Anderson

Appearances

For the Claimant: In person

For the Respondent: Did not attend

JUDGMENT

1. The claimant's claim for holiday pay is upheld.
2. The respondent is ordered to pay the claimant £488.88 (being 8.2 days pay at a rate of £59.62 per day gross) within 28 days of the date this order is sent to the parties.

REASONS

Background

1. The claimant, a housekeeper, was employed by the respondent from 4 March 2018 until 28 August 2021. She gave four weeks' notice on 1 August 2021 that she was leaving the respondent's employment. The claimant said that she was not paid her final salary or accrued but untaken holiday when her employment terminated. The respondent denied this in its ET3, stating that all outstanding monies had been paid. The claimant filed a claim on 6 November 2021 following an early conciliation period lasting from 2 to 10 September 2021. The claimant contacted the tribunal on 12 August 2022 stating that outstanding wages had now been paid but payment in lieu of holiday was still owed.

The hearing

2. The hearing was listed for three hours on 21 February 2023. The respondent emailed the tribunal on 19 November 2022 as follows:

“Thank you for your e-mail. Unfortunately we won't be able to attend this tribunal as the date falls in half term and we are away that week.

Also, further to my previous correspondence we have paid what was owed to Ms Sandwell and will not be paying for holiday that she claims we owe her AFTER she left her employment without notice.

Especially when she'd already used her holiday allowance that was due to last until the end of the year, before she decided not to turn up for work again.

This will be our last e-mail regarding this matter as I have given all the facts and have not lied with any of the information unlike Mr Sangwell who has lied about everything that has transpired.

*Many thanks
Tom Hesling, Managing Director”*

3. The respondent did not attend the hearing this morning. The claimant said that the matter had dragged on for some time and she wanted to proceed. I considered whether in view of this email the hearing should be postponed. Mr Hesling does not request that the hearing be postponed in his email of 19 November 2022 and I understand from his final paragraph that he does not intend to take any further part in the tribunal process. I therefore decided, having had regard to Rule 47 of the *Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 Schedule 1*, that a postponement was unlikely to serve any purpose other than drawing out the case unnecessarily and that the hearing should proceed in the absence of the respondent.
4. I noted that the respondent had set out its name as Cotswold Housekeepers Limited on the ET3 and I amend the name of the respondent for this case from Tom Hesling t/a Cotswold Housekeepers to Cotswold Housekeepers Limited.
5. I had before me the ET1 and ET3 forms. In addition I had a document from the claimant setting out a chronology of events and explaining how she had calculated monies owed to her. The document included screenshots of email messages to the respondent confirming her resignation with notice, and an email from Mr Hesling which confirmed that the holiday year commenced in January.
6. I noted that the respondent referred in his ET3 to evidence he had sent to the tribunal before he filed the ET3. I checked with the tribunal administration and no such information could be located. I asked the claimant if she had received or been copied in to such information. She confirmed that she had received nothing other than the ET3 and Mr Hesling's email of 19 November 2022.

7. The claimant gave evidence on oath. She confirmed that she had never had a written contract setting out her terms and conditions. She said that she had received a wage of £15,500 per annum throughout her employment. She had not received a pay rise in that time. She provided a pay slip from February 2020 in which a deduction for a day of unpaid leave is set at £59.62 gross. She used this figure for her calculations and the gov.uk holiday calculator to calculate her accrued holiday at the time of her resignation.
8. The claimant said that she had taken only the 10 days leave specified in her document and that she had no knowledge of why the respondent would think that she had taken more or taken her full entitlement by the time of her resignation. She said that she had never had any dispute with her employer about pay or holidays until the respondent had failed to pay her wages and holiday when she left.
9. The claimant provided evidence that she had carried over five days holiday from 2020 to 2021. She said that her normal holiday allowance was 20 days plus bank holidays. She claimed a sum of £488.88 for 8.2 days untaken leave based on the 20 days plus bank holidays entitlement and a further £298.10 for the five days carry over.

Decision

10. As I received no evidence to contradict the claimant's evidence that she had taken only 10 days of her annual holiday entitlement, and as the claimant did not have a written contract, I find that under the *Working Time Regulations 1988 Regulation 13 and 14 (WTR)* the claimant is entitled to four weeks leave and that she is entitled to payment in compensation for untaken leave at the termination of her employment on 28 August 2021. I find that the holiday leave year began on 1 January on the basis of the email from Mr Hesling dated 31.12.2020.
11. Under Regulation 13(9)(b) (WTR) payment in lieu of holiday carried over is not payable.
12. I uphold the claimant's claim that she is owed holiday pay of £488.88.

Employment Judge Anderson

Date: 21 February 2023

Sent to the parties on:24/3/2023

NG - For the Tribunal Office