



EMPLOYMENT TRIBUNALS

Claimant: Mr A Ghebrehwt
Respondent: Wilson James Limited
Heard at: East London Hearing Centre
On: 3 April 2023
Before: Employment Judge John Crosfill

Representation

Claimant: In person
Respondent: Mr Piers Chadwick a Consultant

RECONSIDERATION JUDGMENT

UPON EJ Wilkinson determining of his own initiative (reflecting an indication from the Employment Appeal Tribunal) to hold a hearing to reconsider the parts of his judgment dated 26 July 2022 concerning any claim for accrued but untaken holiday pay and any claim for sick pay pursuant to rules 70 and 73 of Schedule 1 of the Employment Tribunals Constitution and Rules of Procedure)Regulations 2013.

AND UPON it not being practicable for EJ Wilkinson to conduct the hearing by reason of his retirement as an Employment Judge the matter being heard by EJ Crosfill.

AND UPON the Respondent agreeing that it was in the interests of justice to hear the claim for accrued but untaken holiday pay de novo but resisting the hearing of any claim for sick pay on the basis that no such claim had been brought or pursued.

AND UPON the Tribunal determining that the ET1 did include a claim for 'arrear of pay' that had been loosely identified as payments of sick pay by the time of the hearing and that there had been no sufficient attempt to identify the issues at the outset of the hearing and that that claim had not been dealt with or resolved and that it was in the interests of justice to hear the claim de novo (subject to any binding findings of fact).

1. The Claimant's claim for holiday brought pursuant to regulations 14 and 30 of the Working time Regulations 1998 succeeds; and
2. The Respondent is ordered to pay the Claimant the sum of £195.72.

3. The Claimant's claim for sick pay in respect of time off work in January 2021 (assumed to be brought as a claim for breach of contract under the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994) is not well founded and is dismissed. Any claim for the same sum brought under Section 23 of the Employment Rights Act 1996 would fail for the same reasons and in any event was presented outside the time limit imposed by Section 23.
4. The payment of holiday pay was calculated as follows:
 - a. The Claimant's annual entitlement to holiday was 5.6 weeks.
 - b. The Claimant and Respondent agreed that the Claimant had a contractual right to work an average of 50 hours a week. He was entitled to 5.6 x 50 hours of paid leave= 280.
 - c. The Respondent's leave year ran from 1 April to 31 March. The Claimant was dismissed on 11 March 2021. His holiday entitlement for the period 1 April 2020 to 11 March 2021 (in hours) was $345/365 \times 280 = 264.66$ hours.
 - d. The Claimant took leave amounting to a total of 248 hours of rostered work.
 - e. The Claimant's accrued entitlement to leave was therefore $264.66 - 248 = 16.66$ hours.
 - f. The Respondent accepts that the proper rate of pay for the purposes of calculating holiday pay should be £11.75 (being higher than the normal hourly rate of £11.30).
 - g. The Claimant is entitled to payment of $16.66 \times £11.75 = £195.72$.
5. The Claimant's application for a preparation time order was dismissed.

**Employment Judge Crosfill
Dated: 3 April 2023**