



EMPLOYMENT TRIBUNALS

Claimant: Mrs Maxine Surman

Respondents: (1) The Crescent (Yorkshire) Ltd
(2) The Crescent & Company (Yorkshire) CIC

Heard at: Leeds **On:** 28 April 2023

Before: Employment Judge R S Drake

Representation:

Claimant: Mr T Parsons-Munn (of Counsel)
Respondent: Ms P Chamberlain (Shareholder/Director)

JUDGMENT

1. The Second Respondent is dismissed from these proceedings by consent upon withdrawal of the claim against it. The First Respondent remains.
2. The Claimant has established that she was entitled to holiday pay pursuant to Regulation 15 of the Working Time Regulations 1998 and thus a total of 114.91 hours accrued but unpaid at a rate of £9.60 per hour and therefore a total of £1,091.65 which the First Respondent shall pay to the Claimant.
3. The First Respondent had failed as at the start of these proceedings to provide to the Claimant a written Statement of Particulars of Employment as required by Section 1 of the Employment Rights Act 1996 ("ERA"). Under Section 38 of the Employment Act 2002 ("EA"), she is awarded and shall be paid by the First Respondent a further sum of 2 weeks gross pay calculated at a rate of £372.41 per week and thus a total of £744.82.

REASONS

4. Ms Chamberlain for the First Respondent did not dispute the fact that in evidence before me there had been disclosed to the Claimant her last pay slip dated up to 26 June 2022. It discloses a balance figure of 114.91 hours holiday accrued but not used and as yet unpaid. This was the First Respondent's own evidence.

- 5 No evidence was put before me by the First Respondent to displace or rebut this evidence which I therefore found established the Claimant's claim for unpaid holiday pay. Ms Chamberlain sought to argue that she had attempted to provide evidence in March 2023 to show that the First Respondent's holiday records did not match pay records but still demonstrate that the Claimant had taken most if not all of her holiday entitlement. However Ms Chamberlain had to accept that she had not disclosed such evidence to the Claimant nor provided it to the Tribunal. Thus I can readily accept that the Claimant has established her pay was at a rate of £9.60 and that she was entitled to be paid for 114.91 hours accrued but unpaid. This entitlement to unpaid holiday pay comes to total a figure of £1091.65.
- 6 Ms Chamberlain readily and candidly accepted that the Claimant had not been provided with a Section 1 ERA written Statement of Particulars of Employment and therefore she could not oppose application for an award under section 38 EA . Accordingly, I award to the Claimant payable by the First Respondent a total of two weeks gross pay evidenced as being at a rate of £372.41 per week. The award is there for £744.82.

Employment Judge R S Drake

Date 28 April 2023

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