



EMPLOYMENT TRIBUNALS

Claimant: Mr E Kapllani
Respondent: BFS Group Limited
Heard at: Reading ET
On: 01 March 2023
Before: Employment Judge Gumbiti-Zimuto (sitting alone)

Appearances

For the claimant: In person (assisted by Ms Koci, an Albanian Interpreter)
For the respondent: Mr J Fireman, counsel

REASONS

1. Reasons for Judgment sent to the parties on 25 March 2023.
2. In the claim form presented on 22 September 2021 the claimant made a claim alleging he was owed money by the respondent, ticking the box in section 8.1 of the claim form, "other payments". He also ticked the box "I am making another type of claim which the Employment Tribunal can deal with" in which he stated:

"my employer failed to pay company sick pay for 3 days".

3. The claimant's claim form reads as follows in section 8.2:

"From 22nd July 2021 I started having problems with my back due to company not allowing me to use electronic pump truck (which I have been using for the last 9 years). I had to use normal pump truck, however, floors covered with rubbish which kept getting stuck in the wheels. I had to pull rapidly causing harm to my back. I phoned in sick on 25th July 2021 I called sick line, which is automated and manager supposed to call me, however, nobody contacted me. I called sick line in the first week every day, but nobody called me back. It is managers responsibility to call me back. For the first week (01 to 06) August 2021 they missed 2 days sick pay, second week (08 to 13) August 2021 they missed 1 day. They refuse to pay after me contacting them. I emailed Micky Yeatman, Senior Warehouse Manager and HR department but nobody responded to my emails. They did respond to ACAS and it is how I know that they are not going to pay me any money. I spoke on the phone to Jim Culliford, told me I was paid 2 days."

4. The respondent filed a defence to the claim and in amended response denied the claimant's claims.
5. The claimant was permitted to file an amended claim including a complaint for non-payment of sick pay between 01 October and 26 November 2021.
6. The respondent's response to the original claim was that the claimant had been paid all the sums that he was lawfully due. In respect to his amended claim, relating to company sick pay for the period from 01 October to 26 November 2021, the respondent's response is that the claimant was paid the sum of £914.44. The respondent states that the claimant has misunderstood the way that the entitlement to company sick pay is calculated. The claimant has failed to take into account his absences in the preceding 12 months which had the effect of reducing his entitlement to company sick pay. The respondent contends that there is no money owed to the claimant either by way of company sick pay or SSP.
7. The claimant gave evidence in support of his own case. The respondent relied on the evidence of Mr Jim Culliford.
8. The claimant claims he is owed unpaid contractual sick pay. His claim comes in two parts.
 - 8.1 The first part relates to £300 which he says he was owed but not paid. In respect of this claim the claimant's complaint must fail. It is clear from the payslip that the claimant was paid the £300 in December 2021 (p160). The claimant accepts that the payment was made. The evidence that the claimant gave makes clear that the reason for the continuing dispute is because the respondent made deductions. Those deductions are in respect of tax and national insurance.
 - 8.2 Section 13(1)(a) provides that an employer shall not make a deduction from wages of a worker employed by him unless the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract. This covers deductions made in respect of tax and national insurance contributions. The evidence in this case does not allow for a challenge to that deduction which was made in respect of tax and national insurance.
 - 8.3 The second part of the claim arises from the claimant's sickness absence in the period 25 July to November 2021. The claimant says the employers record of his absence is wrong and it is from 07 June 2021. The dispute in the dates makes no difference to the outcome in this case. In the preceding 12 months (whichever date) the claimant had 97 days of sickness absence. The claimants contract provides

“After three months employment with the company subject to the rules outlined below, you shall be entitled to receive your normal salary during

any period of absence from work due to sickness or injury which will include any statutory sick pay to which you may be entitled and which will be reduced by an amount of any social security benefits recoverable by you in respect of your illness or injury. Your entitlement to company sick pay will be reduced by the number of days sickness absence in the preceding 12 months on the first day of any sickness absence and is as follows:

Length of service, sick pay

0 – 3 months, none

3 – 6 months, 1 week

6 – 12 months, 2 weeks

1 year but less than 2 years, 5 weeks

2 years but less than 3 years, 7 weeks

3 years but less than 4 years, 10 weeks

4 years but less than 8 years, 15 weeks

Over 8 years, 26 weeks”

9. The respondent contends that the appropriate ways of interpreting the claimant's contractual entitlement to company sick pay is the following:
 1. The claimant has entitlement of up to 26 weeks of company sick pay on each occasion he is on sick leave which works out as an entitlement to company sick pay for 130 days.
 2. However, that entitlement is reduced by the number of days paid sick was received in the preceding 12 months prior to the first day of the current period of sickness. The 12-month period is to be determined by identifying the first day of sickness absence, and the relevant period by working backwards exactly 12 months to determine whether or not the entitlement to sick pay has been exhausted and, if not, how much is left.
 3. For example, were an employee to go off on sick leave on 01 July 2022 then the 12-month period goes back to 01 July 2021 inclusive, and the allowance to company sick pay is reduced by the number of sick days pay received within that period.

10. The respondent's case is that the claimant had exhausted his entitlement to company sick pay and was thus only entitled to statutory sick pay. The respondent submits that the claimant's first day of absence in the relevant period began on 25 July 2021 and the preceding 12 months is therefore the period from 25 July 2022 to 24 July 2021. During the relevant period, the claimant received 110 days of company sick pay and from the first day of absence the claimant therefore had an entitlement to a further 20 days of company sick pay within this period of absence. The claimant began to receive company sick pay on 02 August 2021 and was paid this until 19 September 2021. The claimant's last day of company sick pay should have been 28 August 2021 and in fact the claimant was incorrectly overpaid and received company sick pay for a further 15 days. As such, the claimant's entitlement to company sick pay had expired by 01 October 2021.

11. I am satisfied that on considering the evidence and looking at the paperwork that has been provided to me, that the respondents analysis is correct. Whether it is 07 June or 25 July 2021, the claimant was entitled to 20 days of sickness absence pay, he in fact was paid for 35. On that basis, he was overpaid by 15 days.
12. The claimants claim for unpaid holiday pay based on the contractual pay is not made out for the period claimed.
13. The claimant's complaints are therefore dismissed. The claims are not well founded.

Employment Judge Gumbiti-Zimuto

Date: 2 May 2023

Sent to the parties on: 11th May 2023

GDJ
For the Tribunal Office