



## EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4101051/2023

5

Held in chambers in Glasgow on 18 May 2023

Employment Judge D Hoey

Mr A Avery

Fifth Claimant

10

JH Transport Limited

Respondent

# JUDGMENT

15

## Rule 21 of the Employment Tribunal Rules of Procedure 2013

20

1. The judgment of the Employment Tribunal is that the fifth claimant's complaint of a failure of the respondent to pay wages due to the fifth claimant pursuant to section 13 of the Employment Rights Act 1996 succeeds and it is declared that the respondent made an unlawful deduction from wages due to the fifth claimant and the respondent shall pay to the fifth claimant the gross sum of **SEVEN THOUSAND TWO HUNDRED POUNDS** (£7,200).

25

2. The respondent shall pay to the fifth claimant the gross sum of **TWO THOUSAND EIGHT HUNDRED POUNDS** (£2,800) in respect of holidays accrued but unpaid to the claimant.

30

3. These sums are subject to such deductions as required by law (in respect of which the respondent should pay the sums due to the relevant authorities with the balance being paid to the fifth claimant).

35

# REASONS

1. The fifth claimant had raised a claim for sums due to him from the respondent. The respondent had not defended the claims. While there was a proposal to strike the respondent from the companies house register that process had been paused. There was no suggestion of any ongoing insolvency proceedings.  
5
2. A case management preliminary hearing had been fixed to progress the claims. The respondent chose not to attend or be represented at that hearing and the claims proceeded as undefended.
3. Following the case management preliminary hearing the Tribunal issued a Note to the fifth claimant and respondent setting out in clear terms what sums the fifth claimant sought and why. The Note was served on the respondent to allow any comment, which failing it was possible that a judgment may be issued without the need for a hearing in the absence of any defence to the claims. No response was received from the respondent to that Note.  
10
4. In the absence of any response to the Note that was issued, it is possible to issue a judgment from the information available.  
15

### **Facts**

5. From the material before the Tribunal it is possible to make the following findings.
6. The respondent ceased to pay wages to the fifth claimant in respect of work done and ceased all contact with him.  
20
7. The fifth claimant had not been paid his daily rate of £120 for 60 days (£7,200) which was due to him for work he had done.
8. The fifth claimant had also not been paid his holidays for the year, amounting to 5.6 weeks x £500 a week (£2,800).  
25

### **Law**

#### **Unpaid wages**

1. A worker who receives less than the sum properly due in terms of his contract is entitled to a declaration and award of the sum representing the sum to which he was contractually entitled (section 13, Employment Rights Act 1996).

### **Holiday pay**

- 5 2. A worker is entitled to 5.6 weeks' paid annual leave in each leave year (inclusive of bank holidays). This is the effect of regulations 13 (1) and 13A of the Working Time Regulations 1998 (WTR). The worker's leave year begins on the day in which he commences employment, unless there is an agreement between employer and employee to the contrary.  
10
3. By regulation 14, a worker is entitled on termination of employment to payment for accrued but unused holiday in his final leave year. Where there is no agreement between employer and employee to the contrary, regulation 14 provides a formula for calculation of the entitlement when termination  
15 occurs part way through a leave year.
4. The formula is "(A x B) – C Where: A is the period of statutory leave to which the worker would have been entitled for the whole of the leave year in which employment ends, calculated in accordance with regulations 13 and 13A. B  
20 is the proportion of the worker's leave year which expired before the termination date, expressed as a fraction. C is the period of leave taken by the worker between the start of the leave year and the termination date."
5. Regulation 15A sets out the rules by which a worker accrues holiday in the  
25 first year of employment, but those accrual rules do not affect the calculation using the formula in regulation 14.
6. The way in which statutory holiday pay is calculated is set out in sections 221  
30 to 229 of the Employment Rights Act 1996 and depends on whether or not the worker has 'normal working hours'. Where the worker does not have normal working hours, his holiday pay is calculated as an average of all remuneration earned in the previous 52 weeks, or the number of complete weeks the worker has been employed if less than 52.

**Decision and discussion**

9. The fifth claimant had not been paid sums due to him. The claimant had confirmed that he was seeking the sums in respect of work done. He said he had not been paid his daily rate of £120 for 60 days (£7,200). He also had not  
5 been paid his holidays for the year, amounting to 5.6 weeks x £500 a week (£2,800). He confirmed he was not seeking anything else. There was no dispute that such sums were due to the claimant.
10. The fifth claimant confirmed that he was not seeking any further sums.
11. The fifth claimant is accordingly entitled to the sums sought and judgment is  
10 issued accordingly.

15 **Employment Judge: D Hoey**  
**Date of Judgment: 18 May 2023**  
**Entered in register: 19 May 2023**  
**and copied to parties**