



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr A Grodna

-v-

Phoenix Gas Services Limited

FINAL MERITS HEARING CONDUCTED BY THE CLOUD VIDEO PLATFORM

Heard at: **Centre City Tower, Birmingham**

On: 5 September 2023

Before: **Employment Judge Perry** (sitting alone)

Appearances

For the Claimant:

In person

For the Respondent:

Ms Brazier (HR director)

JUDGMENT

1. The respondent has failed to compensate the claimant in relation to the claimant's entitlement to holiday leave that had accrued as at the termination of the claimant's employment. The respondent is ordered to pay £216.00 (gross) to the claimant in respect of the accrued leave entitlement.
2. The claimant's remaining claims are dismissed on withdrawal.

REASONS

1. The respondent did not lodge a response in time and was informed it would only be permitted to participate in the hearing to the extent permitted by me. The tribunal hearing had to be moved on the day before the hearing and at the outset Ms Brazier notified me she would have to leave shortly after the hearing was due to start to collect her child from school. I thus sought to ensure she had an opportunity to make representations prior to departing. When doing so she told me the respondent had not responded on the basis it had not received the claim. I explained the papers were sent to the correct address and had not been returned. Further on the basis the respondent had lodged a response it would have been open for her to seek that the response be accepted late. That aside I heard from her on the substantive issues. In addition, I also heard from the claimant.
2. Having clarified how the claimant's claims were pursued apart from one claim the claimant's other complaints were withdrawn. The sole remaining complaint on which I was required to make a determination was the claimant's claim for 2 bank holidays on which he worked and for which he claimed he was entitled to a day in lieu.
3. The respondent in its response argues that he was not entitled to days in lieu. The claimant's contract at clause 14 provides that "*Public holidays may be substituted by or with the agreement of the Employer.*"



4. I was referred to correspondence culminating in an email of 22 September 2022 where on my reading the respondent accepted
 - a. as a matter of principle that where the claimant was on a call out rota on (two) bank holidays and was called out he was entitled to day(s) in lieu of the bank holiday(s) and
 - b. that he was entitled to 2 days in lieu.
5. I find there was thus an agreement as required by clause 14. Even if were wrong on that as the claimant had not taken the 2 days as a holiday having been on an on call rota and having worked, he should have been permitted to take 2 alternative days in lieu as rest.
6. Having calculated the days due and taken the claimant does not appear to have been permitted to take those addition 2 days as leave (and thus rest). He shall thus be compensated for those two days. His hourly rate of pay was £13.50 per hour and he worked 8 hours per day. He shall be compensated in the sum of £216.00.

Employment Judge Perry
5 September 2023