



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
Mr R V Jacob

AND

Respondent
Liddiard Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**HELD REMOTELY
BY VIDEO (CVP)**

ON

25 September 2023

EMPLOYMENT JUDGE N J Roper

Representation

For the Claimant: In person
For the Respondent: Mr M Liddiard, Director

JUDGMENT

The judgment of the tribunal is that the claimant's claim for accrued but unpaid holiday pay was presented within time, and succeeds, and the respondent is ordered to pay the claimant the gross sum of £730.56.

RESERVED REASONS

1. In this case the claimant Mr Robin Verghis Jacob brings a monetary claim for unlawful deduction from wages in respect of accrued but unpaid holiday pay against his ex-employer Liddiard Limited. The respondent accepts that some accrued holiday pay is due to the claimant, but it asserts that this claim was presented out of time.
2. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was by CVP Video. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The documents that I was referred to are in a bundle provided by the claimant, the contents of which I have recorded. The order made is described at the end of these reasons.
3. I have heard from the claimant. I have heard from Mr Matthew Liddiard for the respondent.
4. There was a degree of conflict on the evidence. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.

5. The Facts:
6. The respondent company has a franchise for Papa John's Pizza in Worthing and the claimant worked as a Store Assistant from 19 March 2022 until January 2023. The claimant was engaged on a zero hours contract and there was a written contract of employment in place. That contract provided that the company's holiday year ran from 1 April annually and that the claimant would be entitled to 5.6 weeks of annual holiday. In the event the claimant did not take any holiday and was not paid in lieu for any accrued but untaken holiday.
7. The claimant asserts that he worked from 19 March 2022 until 23 January 2023 which was a total of 641 hours which were paid at £9.50 per hour. The claimant calculates that his average weekly hours were 16.02. His average week's pay was therefore £152.19.
8. The respondent accepts that accrued holiday pay is due and owing to the claimant, but it asserts that the claim was presented out of time and that this Tribunal does not have jurisdiction to hear it. The respondent asserts that the claimant's last working day was 17 December 2022, and that he failed to respond to offers to work shifts after that date. That is clearly incorrect because an employee shift summary provided by the respondent indicates that the claimant worked one shift on 21 January 2023, valued at £34.68. The respondent confirmed that the claimant did work this shift. The claimant asserts that his last day of employment was on 23 January 2023 rather than the evidence from the shift summary which suggests 21 January 2023. Given the dates below it does not really matter, but I prefer the documentary evidence of the shift summary and I find that the claimant's last working day was 21 January 2023.
9. The parties have not adduced a form P45 which presumably would have indicated the claimant's last working day for tax purposes, and which might otherwise have assisted. However, the claimant has adduced his final payslip which is dated 10 February 2023. This pays him basic pay of £34.67 and the respondent confirmed that it relates to the last shift worked on 21 January 2023. This was the claimant's final payslip and recorded total taxable pay for the tax year to date.
10. I therefore find that the claimant's period of continuous employment was from 19 March 2022 until 21 January 2023, which was a period of 43 weeks. The claimant's accrued holiday entitlement was therefore $(43/52) \times 5.6$, or 4.63 weeks. For a five day week this is 23.15 days which is rounded up to 24 days. Average weekly pay of £152.19 for a five day week averages out at £30.44 per day which for 24 days is accrued holiday entitlement of £730.56.
11. I also find that any accrued holiday pay due to the claimant should have been paid at the time of his final payslip on 10 February 2023.
12. The claimant pursued his outstanding holiday pay from the respondent, and although one week's pay was offered, which the claimant refused, nothing was paid. Eventually the claimant realised that his only recourse was to issue these proceedings. He approached ACAS and commenced the Early Conciliation process on 25 April 2023 (Day A). The Early Conciliation Certificate was issued on 6 June 2023 (Day B). The claimant presented these proceedings on 14 June 2023.
13. Having established the above facts, I now apply the law.
14. The Law:
15. The claimant claims in respect of deductions from wages which he alleges were not authorised and were therefore unlawful deductions from his wages contrary to section 13 of the Employment Rights Act 1996 ("the Act"). This is in respect of holiday pay for accrued but untaken holiday under the Working Time Regulations 1998 ("the Regulations"). Regulation 14 explains the entitlement to leave where a worker's employment is terminated during the course of his leave year, and as at the date of termination of employment the amount of leave which he has taken is different from the amount of leave to which he is entitled in that leave year. Where the proportion of leave taken is less than that which he is entitled, the employer is required to make a payment in lieu of leave in accordance with Regulation 14(3). In the absence of any relevant agreement which provides for payment of accrued leave, then the sum is calculated according to the formula $(A \times B) - C$. For the purposes of this formula A is the period of leave to which the worker is entitled under

- Regulations 13 and 13A; B is the proportion of the worker's leave year which expired before the termination date; and C is the period of leave taken by the worker between the start of the leave year and the termination date.
16. Section 23(2) of the Act provides that an employment tribunal shall not consider a complaint of unlawful deduction from wages unless it is presented before the end of the period of three months beginning with the date of payment of the wages from which the deduction was made, or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.
 17. There are similar time limit provisions in Regulation 30(2), and Regulation 30(2)(a) provides that time does not necessarily start to run from the termination of the relationship, but rather it runs from the date the payment should have been made.
 18. With effect from 6 May 2014 a prospective claimant must obtain an early conciliation certificate from ACAS, or have a valid exemption, before issuing employment tribunal proceedings.
 19. Section 207B of the Act provides: (1) This section applies where this Act provides for it to apply for the purposes of a provision of this Act (a "relevant provision"). But it does not apply to a dispute that is (or so much of a dispute as is) a relevant dispute for the purposes of section 207A. (2) In this section - (a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and (b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section. (3) In working out when a time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted. (4) If a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period. (5) Where an employment tribunal has power under this Act to extend a time limit set by a relevant provision, the power is exercisable in relation to the time limit as extended by this section.
 20. The relevant law relating to Early Conciliation ("EC") and EC certificates, and the jurisdiction of the Employment Tribunal to hear relevant proceedings is as follows. Section 18 of the Employment Tribunals Act 1996 defines "relevant proceedings" for these purposes. This includes in subsection 18(1) the discrimination at work provisions under section 20 of the EqA. Section 140B EqA sets out how the EC process is taken into account. Where the EC process applies, the limitation date should always be extended first by section 140B(3) or its equivalent. However, where this date as extended by section 140B(3) or its equivalent is within one month of the date when the claimant receives (or is deemed to receive) the EC certificate, time to present the claim is further extended under section 140B(4) for a period of one month (applying Luton Borough Council v Hague [2018] ICR 1388 EAT). In other words, it is necessary first to calculate the primary limitation period, and then add the EC period. Having reached that date, it is necessary to ask whether it is before or after one month after Day B (the date of issue of the EC certificate). If it is before then the limitation date is extended to one month after Day B. Otherwise, if it is after one month after Day B, then limitation will be extended to that later date.
 21. Application of the Law:
 22. In this case the claimant approached ACAS and commenced the Early Conciliation process on 25 April 2023 (Day A). The Early Conciliation Certificate was issued on 6 June 2023 (Day B). The claimant presented these proceedings on 14 June 2023. Working backwards from Day A any claim which arose before 26 January 2023 would appear to have been presented out of time.
 23. In this case the claimant's final payslip was dated 10 February 2023. Applying Regulation 30(2)(a) time does not necessarily start to run from the termination of the relationship, and

- I find that in this case the time limit runs from the date the payment should have been made, namely 10 February 2023.
24. The normal time limit of three months therefore expired at midnight on 9 May 2023, which was during the Early Conciliation process. Under the Early Conciliation provisions the claimant has an extension of time of one month from Day B (6 June 2023) and the time limit therefore expired on 6 July 2023. These proceedings were presented on 14 June 2023 and were therefore presented within time.
 25. Judgment:
 26. The respondent failed to pay the claimant his accrued but unpaid holiday entitlement which for the reasons set out above I have calculated to be £730.56. Accordingly, the respondent is ordered to pay the claimant the gross sum of £730.56.

Employment Judge N J Roper
Dated 25 September 2023

Judgment sent to Parties on
17 October 2023 By Mr J McCormick

For the Tribunal Office