



EMPLOYMENT TRIBUNALS

Claimant: Karen Hall

Respondent: Redwings Lodge Hotel

Heard at: CVP

On: 27 September 2023

Before: Employment Judge Freshwater

Representation

Claimant: in person

Respondent: Stacey Coles (HR Manager)

RESERVED JUDGMENT

1. The claimant's claim for breach of contract on the basis of unpaid holiday pay is not well founded and does not succeed.

REASONS

Introduction

1. The claimant is Karen Hall. The respondent is Redwings Lodge Hotel.
2. Karen Hall was employed by Redwings Lodge from 07/08/2012 until 07/10/2022. During her employment she was a housekeeper. She was promoted to Head Housekeeper in 2020. Mrs Hall resigned from her employment.
3. The case is about whether Mrs Hall was paid for holiday pay accrued but not taken when her employment ended.

Procedure and hearing

4. The hearing took place remotely by CVP.
5. I was referred to a bundle of 37 pages, the claim form (ET1), response form (ET3), and a case management order dated 2 June 2023.
6. I read witness statements on behalf of the respondent from Stacey Coles and Alice Page. Ms Coles submitted two witness statements, the second of which referred

to a holiday pay worksheet setting out the holiday calculations for 2012-2022 for Mrs Hall.

7. There was some discussion about whether or not Mrs Hall had submitted a witness statement to the tribunal. Mrs Hall said that she had emailed it to the tribunal, but it could not be found. Ms Coles had a copy of the witness statement and attempted to assist the tribunal by forwarding her copy to the tribunal clerk which was, in turn, sent to me. In addition, Mrs Hall relied on a short email dated 21 August 2023 as an update to her earlier witness statement (which had been directed by the tribunal previously). Again, this was sent to the tribunal by Ms Coles and forwarded to me.
8. Ms Coles raised concern that what was being said by Mrs Hall to be her witness statement was different to what was in the copy of the statement she had. It was difficult to resolve who had precisely what witness statement. I decided that the difference was not material. I noted that the case had been adjourned twice previously and decided that it would not be in the interests of justice to adjourn again. In my view, both parties (and the tribunal) had enough information to proceed fairly with the case. I was not convinced that an adjournment would achieve any greater fairness than proceeding with the best evidence that was available. In my view, this approach was commensurate with the issues in the case and did not prejudice either party. Both parties would be able to fully air any points they wished to make through oral evidence and submissions.
9. I heard oral evidence from Mrs Hall and Ms Coles.
10. Judgment was reserved.

Claim and issues

11. The only issue in the case was whether or not Mrs Hall had accrued annual leave (or holiday pay) that she had not been paid for when her employment came to an end.
12. Mrs Hall said her payslips proved that she had accrued annual leave during the time she was placed on furlough (and flexi-furlough) and which remained unpaid. Her case was that the total owed to her was 321.27 hours and that she had only been paid 80.14 which left a balance of 241.13 hours.
13. Ms Coles said that the section on the payslip that referred to annual leave accruing was an error. In essence, it was a section of the payslip that the respondent did not use and was filled in automatically by the system in place. The respondent operated a system of holiday hours, not annual leave, and this was also recorded on the payslips.
14. Mrs Hall confirmed that she was not making a claim for any unlawful deductions from her wages.

The law

15. Employees are entitled to be paid in lieu of accrued but untaken holiday on termination of employment.
16. The written statement of terms and conditions issued under S.1 of the Employment Rights Act 1996 (ERA 1996) must give sufficient information to enable the employee's entitlement to holiday pay, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated.

Findings of fact

17. Holiday is accrued from 16 December – 15 December each year. This was agreed between the parties (see page 37 in the bundle).
18. Mrs Hall's contract of employment with the respondent is seen at page 2 in the bundle. It says that Mrs Hall is entitled to 5.6 weeks of annual leave. The leave year in that document is said to be 1 January – 31 December. This is contradictory to the document at page 37 in the bundle which sets out a timeframe for the accrual of holiday. However, there was no dispute that holiday was taken to have accrued between 16 December and 15 December each year.
19. The evidence of Ms Coles was that the respondent paid more than the contractual entitlement because the holiday calculator is based on 33 days. The contract is capped at 28 days. Therefore, the holiday calculator model is more favourable than the contract for employees.
20. The contract of employment says that: "in the event of termination of employment holiday entitlement will be calculated as 1/12th of the annual entitlement for each completed month of service during that holiday year and any holidays accrued but not taken will be paid for."
21. The holiday for Mrs Hall was calculated at hours worked x 12.069%. The running total is noted on the payslip. When an employee takes holiday, hours accrued are taken off the running total.
22. Mrs Hall worked a total of 1202.75 hours within the holiday pay period 16 December 2021 until 15 December 2022. This was calculated on the basis that she, on average, worked 27.97 hours per week. This calculation was not disputed by Mrs Hall.
23. There was outstanding accrued holiday of 80.14 hours which was paid in Mrs Hall's last pay in October 2022. This is seen in the holiday pay worksheet (page 35 in the bundle) and in the payslip from October 2022 (page 34 in the bundle.)
24. Mrs Hall was paid for holiday that accrued in previous years, specifically when she was on furlough and flexi-furlough. None of the evidence before me suggests otherwise. It can be seen from the payslip dated 22 February 2022 (page 4 in the bundle) that 40 hours of holiday pay was made. This supports the position of the respondent that Mrs Hall had been paid holiday pay for the previous year, because she could not otherwise have built up as many hours holiday pay at that point in 2022.
25. Ms Coles gave credible evidence to explain why the part of the pay slip that mentions annual leave is incorrect. I accept her explanation, though understand why the section would mislead Mrs Hall.

Conclusions

26. Mrs Hall has an entitlement to leave under her contract of employment with the respondent. This entitlement is supplemented by the further agreed terms and conditions at page 37 in the bundle, which amends the annual leave year.
27. There is a contractual right to be paid for holidays accrued but not taken.
28. I accept that Mrs Hall believes that she was not paid the holiday pay which she was entitled to. The reference to annual leave on the payslips is confusing. However, the evidence before me is that holiday pay that was owed at the end of her employment was paid. There was no dispute with the calculations before me

in evidence. Instead, the issue Mrs Hall takes is with the information on the payslips which I have accepted is incorrect in respect of the reference to annual leave. The payslips do not present evidence that annual leave had accrued.

- 29. The holiday pay worksheet presents clear and credible evidence about how holiday pay was accrued and paid during the leave year December 2021 – December 2022.
- 30. Mrs Hall was paid for annual leave that accrued when she was furloughed or on flexi-furlough. This is demonstrated by the February 2022 payslip.

Employment Judge **Freshwater**

Date 20 October 2023

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON
23 October 2023

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FOR EMPLOYMENT TRIBUNALS