



EMPLOYMENT TRIBUNALS

Claimant: Miss M Murray

Respondent: CDGH Pub Co Limited

Heard at: Liverpool (by CVP)

On: 28 July 2023

Before: Employment Judge Aspinall

REPRESENTATION:

Claimant: In person

Respondent: Mr S Dobby, Director

JUDGMENT having been sent to the parties on 4 August 2023 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. This was the claimant's claim for holiday pay. The claimant worked for the respondent at its pub, Ship & Mitre, and says that she was not paid accrued but untaken holiday pay when her employment came to an end. Mr Dobby argued that the claimant was not entitled to carry over annual leave and that all monies due to her had been paid.

2. Everyone agreed that the proper identity of the respondent should be CDGH Pub Co Limited. I checked that the payslips that the claimant had sent to the Tribunal recorded that identity as the correct employer. I ordered that the respondent be changed to CDGH Pub Co Limited to stand in place of the title Ship & Mitre in the claimant's claim form and in the respondent's response.

The hearing

3. The claimant represented herself and the respondent was represented by a Director Mr Dobby. The claimant gave oral evidence. She gave her evidence in a straightforward and helpful way. She did not overclaim.

4. Mr Dobby gave evidence. He was evasive in answering questions about when the claimant's employment began and the basis and frequency on which she had been working at the pub during July, August and September 2021. He described this period as "trial shifts". When asked was the claimant working without being paid or without deductions being made in respect of that pay Mr Dobby took offence and said that this was not modern slavery, that he prided himself on paying workers.

5. At this point the claimant said that she had been happy working at the pub, that it was like a family and she confirmed that she was seeking holiday pay only for the period November 2021 to termination of employment on 23 February 2023, it having been made clear to her before November 2021 that no holiday entitlement was accruing. Having agreed that at the time she did not wish to change her position now.

6. Mr Dobby was also evasive in answering questions about a contract of employment saying that staff are given a contract, that one was given to the claimant and signed by her but that he did not have it to hand. He also said that the contract would not set out annual leave entitlement, that was done in a spreadsheet which a colleague called Clare would have maintained but again he did not have it to hand. He had not thought it relevant to have any of those documents ready for this hearing.

Documents

7. There was no bundle. There were no written witness statements of evidence in chief. I saw some payslips that had been provided to the tribunal and the respondent by the claimant to attest to the rates paid. I took evidence in chief from each of them, each of them swearing an oath by affirmation, and telling me the factual background on which I would need to make a decision in this case. They each made submissions.

Findings of Fact

8. The claimant started working at the respondent pub on a period of casual trial shifts between July and September 2021. The status and legality of that period of paid work is not a matter for this tribunal as the claimant does not seek holiday pay for that period.

9. By 1 November 2021 the parties agreed that she would be taken on as an employee and she became a registered member of staff, providing details like her name, date of birth, national insurance number, and receiving payslips for the work she did thereafter. The claimant worked around 16 hours per week on average from November 2021 until April 2022, the end of the holiday year, and accrued a pro rata holiday entitlement. The claimant also worked from April 2022 until February 2023 accruing a pro rata holiday entitlement.

10. During the claimant's employment she raised the issue of her contract terms and their provisions as to holiday pay with her manager, Clare, and Clare did not get back to her. The claimant therefore spoke to her colleagues behind the bar about it

and they said the thing to do was to just put the hours on the rota as holiday and wait and see what happened on her payslip to find out whether she had been paid for them or not, and that is what she did so that between November 2022 and February 2023 she had eight days' annual leave that she took.

11. During the period November 2021 to April 2022 the claimant was employed at an average (and this is an approximated rate) of £8.64 per hour, and from April 2022 through to February 2023 at an approximated rate of £9.50 per hour.

12. The claimant decided to leave the pub and gave notice and made enquiries about outstanding holiday pay at that time, but none was paid to her. The claimant's employment ended on 23 February 2023. The claimant went to ACAS on 3 March 2023, took some advice and gave requisite information to ACAS so that she got a Certificate on 14 April 2023. She brought her Tribunal complaint on 27 April 2023. In that complaint she did her best to set out what she thought were the hours she was entitled to and she did that by looking at the whole annual entitlement for a full-time worker.

13. Mr Dobby in the response he filed on behalf of the respondent set out the pro rata basis of the calculation, but it was his view in closing submission that payment should not be made for the carry forward period from autumn 2021 to spring 2022.

The Relevant Law

14. I now quote the relevant law so that the parties know why I reached the decision.

15. My starting point was to look at the Working Time Regulations 1998. Regulations 13 and 13A make provision for annual holiday leave. For a full-time worker that would be 28 days including Bank Holidays per year. Regulation 16 provides that on termination of employment any accrued but untaken leave for the calendar year in question (that being the date set by the employer, so in this case April to April) should be paid.

16. Ordinarily, leave is not carried forward without consent. However, since the Coronavirus pandemic in 2020 there was a change in the law. The Working Time Coronavirus Amendment Regulations 2020, statutory instrument number 2020/365 regulation 2, provide that during the period of Coronavirus pandemic (that means for our purposes from 2020 onwards) any untaken annual leave may be carried forward for a maximum period of two leave years, so the leave accruing to the claimant between November 2021 and April 2022 could be carried forward, and leave accruing between April 2022 and February 2023 could carry forward two years until the end of 2025. That means that the leave that the claimant had accrued but not taken as at the termination of her employment on 23 February 2023 remained due to her. For that reason, I reach the following decision.

Conclusion

17. On termination of her employment the claimant was due holiday pay November 2021 to April 2022 calculated as follows

22 weeks/ 52 = 0.42

0.42 x 28 days full time entitlement

12 days due to a full time worker for November to April period but the claimant worked 16/40 pro rata which was $12 \times 16/40 = 4.8$ days due, rounded to 5

5 days at 8 hours = 40 hours

40 hours at £9.50 = £380.00

18. That leave carried forward all the way to the termination of the claimant's employment by operation of those Coronavirus Amendment Regulations.

19. In April 2022 to February 2023 the claimant began a new annual leave year in which she accrued new entitlement. The award for that period is made up as follows:

The claimant worked pro rata $16/40 = 40\%$ of full time equivalent

A full time worker was entitled to 28 days holiday, the claimant was entitled to $28 \times 0.4 = 11.2$ days, rounded down.

April – February was 0.92 of the year

$11 \times 0.92 = 10$ days entitlement = 80 hours

The claimant took 64 hours (8 days) as leave

She is due 16 hours paid at £ 9.50 = £152.00

15. The claimant's claim for holiday pay succeeded and the respondent was ordered to pay £ 380 + £ 152 = £532.00

Employment Judge Aspinall

Date: 24 October 2023

REASONS SENT TO THE PARTIES ON

27 October 2023

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