



EMPLOYMENT TRIBUNALS

Claimant: Miss R H Finnerty

Respondent: Census Data Ltd.

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

The Respondent offered no response to the Claimant's ET1 claim in form ET3 within the time limit prescribed by rule 16 of the Employment Tribunal Rules of Procedure 2013 and failed to respond to subsequent communications from the Employment Tribunal, or to attend a Preliminary Hearing on 26 October 2023. The Tribunal having considered the available evidence supplied by the Claimant, and having examined her under Oath has adjudged as follows:

Holiday Pay

1. The complaint in respect of holiday pay is well-founded. The Respondent was in breach of contract by failing to pay the Claimant for holidays accrued, but not taken, by the date the Claimant's employment ended.
2. The Respondent shall pay the Claimant £6,501.99 as damages for breach of contract. This is the net value to the Claimant of the amount due.

Summary Reasons:

Having considered the documentary evidence supplied and questioned the Claimant under oath I made the following findings on the balance of probability:

1. The Claimant had a contractual right to holiday pay. The Respondent had set her holiday pay rate at a level below the statutory minimum, which we have corrected for the period of the claim.
2. The contract terms confirmed that at termination all holiday already 'accrued in the current year' would be payable on a pro-rata basis. It was also established from the material presented that it was the Respondent's business practice to roll over accrued holiday pay from year to year via its automated HR system, and that this was either an

automatic process (in accordance with rules or policies incorporated into the system) or through management authorisation. It was established on the evidence supplied that the initial accrual here was expressly authorised by the Claimant’s manager.

- 3. The Claimant was repeatedly refused permission to take holiday during her tenure, with the exception of 4.5 days which are noted in her June 2021 payslip. The refusal effectively frustrated attempts to use the holiday, causing the claimant to accrue further holiday. She was obliged without consultation to take leave during December 2021, January 2022 which she had not requested.
- 4. The Claimant had repeatedly outlined her outstanding holiday entitlement, and accrual to her superior, Chief Operating Officer Kelly Coombes (aka Kelly Carrel) via WhatsApp messages from March 2021. The Claimant received no response from her employers on the subject of accrued leave over a period of 7 months. The level of holiday accrued was not challenged until the Claimant submitted her resignation in February 2022. The company policy and practice of accruing and rolling over holiday was not challenged at any point by the Chief Operating Officer.
- 5. The Claimant was assured in writing by the senior manager that any outstanding holiday pay due at termination would be paid in her final salary payment. No holiday payment was provided. This was in clear breach of contract and failed to honour even any potentially more restrictive reading of the relevant contractual term.
- 6. The calculation, is based on 5.6 weeks’ (28 days) holiday pay per year, at a daily rate of £96.90 (net of tax, NI), and is applied to the following unpaid accrued holiday:

13 days unpaid and accrued 2018/19,
 28 days unpaid and accrued 2019/20,
 23.5 days unpaid and accrued 2020/21 (4.5 days having been taken, paid).
 2.6 days unpaid and accrued 2021/22.
 (In 2021/22 Claimant accrued 11.6 days, pro rata (October to March)
 but was obliged take, and paid for, 9 days leave during Dec/Jan).

Payment by the Respondent to the Claimant in the amount of £6501.00 is Ordered to occur within 14 days of this date.

Employment Judge **Harley**

Date: **27 October 2023**

JUDGMENT SENT TO THE PARTIES ON

Date: **01 November 2023**

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AND ENTERED IN THE REGISTER

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FOR THE TRIBUNAL OFFICE