



EMPLOYMENT TRIBUNALS

Claimant: Mr Adnan Sheikh
Respondent: Mitie Care and Custody Limited

Heard at: Manchester **On:** 09 December 2023
2022 (on papers on 19
June 2023)

Before: Employment Judge Hill

CORRECTED JUDGMENT

Under the provisions of Rule 69, the judgment dated 19 June 2023 is corrected as set out above in bold type.

JUDGMENT

1. The judgment of the tribunal is that the Respondent is ordered to pay the Claimant £5,499.36 in respect of 11 weeks' notice pay and 248 hours holiday pay.

REASONS

2. Following an Open Preliminary Hearing on 9 December 2023 the Tribunal determined that the Tribunal did not have jurisdiction to hear the claimant's claims for unfair dismissal, disability discrimination, sick pay and accrued holiday pay of 846 hours because the claims had all been presented out of time in accordance with Section 111 (2) Employment rights Act 1996 and Section 123 (1) Equality Act 2010, those claims were dismissed.

3. The Respondent however, conceded that it was liable to pay the claimant 11 weeks' notice pay and 248 hours of accrued but untaken holiday at the date of termination and was ordered to make those payments to the Claimant. At the date of the hearing there was a dispute over the amount of a weeks pay and the parties were asked to agree the amount or supply copies of the Claimant's wage slips or other evidence for the Tribunal to determine the amounts in the absence of agreement.

4. The Respondent has supplied copies of the Claimant's wage slips in order to agree the amount of a week's pay however, the Claimant has continued to dispute that his claim for accrued holiday pay amounting to 846 is still due stating

"I have likewise set out the schedule of loss part 1 document to clearly show what is owed to the claimant in regards to the outstanding holiday pay/pilon along with further evidence to prove that holiday entitlement was carried over each year whilst being on long term sick leave and confirmed by management at the time".

5. The Tribunal has already issued judgement (09 December 2022) in respect of that claim and decided that that claim was out of time and that claim was dismissed. The Claimant sought reconsideration of the Tribunal's judgement, but this was refused on 30 May 2023.

6. The Tribunal is therefore required to make a determination on the amount to be paid to the claimant in respect of the 11 weeks' notice pay and 248 hours holiday which was conceded by the Respondent at the hearing on 9 December 2022. The Respondent has asked that this is determined on the papers without the need for a further hearing in order to save time and costs to the parties. The Tribunal agrees.

7. The Respondent states that the Claimant was paid an annual salary of £12,538 at the time of his dismissal which equates to an hourly rate of £11.48. The Respondent provided evidence that the Claimant's hours reduced to 21 hours per week in 2014 and further evidence in the form of payslips showing that in 2018 just prior to the Claimant going off sick he was receiving salary payments in respect of a 21-hour working week. The Respondent has provided the following details which shows how the Claimant's salary at the date of his dismissal has been calculated taking into account pay increases during his period of sickness.

Attached is the Claimant's change to terms letter, confirming that he reduced his hours to part time in 2014 and was receiving 21 hours per week. The letter also confirms his annual salary at the time was £11,018.28.

Included in the attached bundle are payslips in 2018 showing the last salary payments made to the Claimant before he was correctly processed on sickness absence. These payslips show the Claimant receiving a monthly salary of £984.62 as the Claimant was on a salary of £11,815.44 per annum in 2018.

Following collective bargaining agreements with the unions, the Claimant received the following pay increases each year:

<i>01.05.2018</i>	<i>30.04.2019</i>	<i>£ 12,051.00</i>
<i>01.05.2019</i>	<i>30.04.2020</i>	<i>£ 12,292.00</i>
<i>01.05.2020</i>	<i>27.07.2021</i>	<i>£ 12,538.00</i>

8. The respondent also set out the reasons for the confusion over the calculations at the hearing on 9 December 2022 which the Tribunal accepts.

“The Respondent has confirmed that the figure contained within Mr Sheikh's payslip in September/October 2021 (which we believe the Tribunal was working when collating their figures for these outstanding payments during the Open Preliminary Hearing) is in fact an overpayment amount that the Claimant owes the business, not a salary amount that was paid to him. By way of explanation, when the Claimant TUPE transferred across to Mitie he was on sickness absence, however Mitie mistakenly proceeded to pay the Claimant his full wages for many months. This issue was corrected, as a result of payroll being informed that the Claimant was to be placed on uncertified sickness absence. This resulted in a claim figure being generated on his payslips for the overpaid salary that the Claimant owed Mitie. Therefore any money owed to the Claimant from then onward, continually proceeded to reduce the outstanding overpayment of the Claimant to the business, leaving this at a figure of £2,577.62 at the date of his dismissal. This amount remains outstanding.

Therefore, the figure the Judge was referring to in her calculations during the Open Preliminary Hearing, was the 'claim/overpayment' figure owed by the Claimant, not the monthly salary of the Claimant for the purposes of calculating notice/holiday pay.”

9. The Claimant responded and states in his schedule of loss sent to the Tribunal on 4 May 2023 that he did indeed work 21 hours per week but provides two hourly rates, one for his holiday pay calculation at £13.68ph and one for his notice pay calculation at £13.41ph. The claimant has also made reference to a 'flying allowance' and stated that it is shown on his wage slips. However, the Claimant has not provided any evidence to support his calculations and the wage slips in the bundle do not make reference to a flying allowance or support his calculations.

10. The wages slips provided support the calculations provided by the Respondent and the Tribunal accepts this evidence along with the Respondents written submissions above.

11. Therefore, the Tribunal finds that the Claimant is entitled to 11 notice pay amounting to £12,538 / 52 x 11 = £2652.32 and holiday pay amounting to 248 x £11.48 = £2847.04, totalling £5488.36.

Employment Judge Hill
Date 19 June 2023

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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