



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms A Aftyka & others

**Respondents:** (1) Kesslers International Limited (in administration)  
(2) The Secretary of State for Business, Energy and Industrial Strategy

**Heard at:** East London Hearing Centre (by video)

**On:** 6 July 2023

**Before:** Tribunal Judge R Overton acting as an Employment Judge

## Representation

For the Claimant: Ms N Toner, Solicitor

For the Respondents: No appearance

# JUDGMENT

1. Following an oral hearing at which the claimants were represented and neither respondent appeared and based on the oral and documentary evidence before it on the day of the hearing, the Tribunal gave oral judgment including findings of fact and calculations.
2. The Tribunal invited comment from the parties on proposed changes to the calculations as applied to Ms Mattushek due to the application of the statutory cap on a week's wages. Having considered the second Respondent's helpful comments on the statutory cap's effect on the calculations, the judgment is as follows.
3. Ms Mattushek's claim for holiday pay succeeds and is well-founded.
4. At the date of dismissal Ms Mattushek had accrued 7.79 days of untaken annual leave. Her gross weekly wage was £769.23.
5. Ms Mattushek has received payment from the Redundancy Payments Office of £496.02 net (£674.03 gross) for accrued untaken annual leave, based on an incorrect weekly wage and an incorrect number of accrued days.

6. Using the same overall percentage deduction for national insurance and tax as used in the Redundancy Payments Office's calculation dated 10 January 2022, Ms Mattushek is entitled to:

£544.00 gross per week (following the application of s. 182, 185 and 186 Employment Rights Act 1996 which limits the amount payable) /5 x 7.79 days = £847.55 gross,

less an overall 6.4% national insurance (£54.24) and 20% tax (£169.51)  
= £623.80 net

less £496.02 already paid by RPO = £127.78 net.

7. The second Respondent is to pay **Ms Mattushek** the net sum of **£127.78 in respect of accrued untaken holiday pay.**
8. Ms Burlacu's claims for payment of a protective award and redundancy payment succeed and are well-founded.
9. Ms Burlacu has received payment of a protective award and redundancy payment from the Redundancy Payments Office based on an incorrect weekly sum.
10. Ms Burlacu's weekly wage at the time of dismissal was £538.46 gross. The 2<sup>nd</sup> Respondent has made payment of a protective award and a redundancy payment based on an erroneous weekly wage of £384.50.
11. Ms Burlacu was previously awarded a protective award of 90 days. As the 1<sup>st</sup> Respondent was in administration this was limited to 8 weeks' pay. The gross value of 8 weeks' protective award (£538.46 x 8) = £4,307.68. Using the same overall percentage deduction for national insurance of 4.9%, as used in the RPO's calculation dated 18 October 2022, Ms Burlacu is entitled to a protective award of:

£4,307.68 - £211.08 (national insurance) = £4,096.60

less £2,924.96 already paid by Redundancy Payments Office  
= £1,171.64.

12. The second Respondent is to pay **Ms Burlacu** the sum of **£1,171.64 in payment of the protective award.**
13. Ms Burlacu received a redundancy payment of £1,153.50 based on the erroneous weekly rate of £384.50 x 3 weeks. Ms Burlacu is entitled to a redundancy payment of:

£538.46 x 3 weeks = £1,615.38

less the £1,153.50 already paid by the Redundancy Payments Office  
= £461.88.

14. The second Respondent is to pay **Ms Burlacu** the sum of **£461.88 in respect of her redundancy payment.**

15. All other claimants having withdrawn their claims, the above claimants and claims were the last remaining claims to be decided under case number. 3205818/2022.

**Tribunal Judge R Overton acting  
as an Employment Judge**

**9 January 2024**

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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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>