



EMPLOYMENT TRIBUNALS  
London Central Region

Heard by CVP on 30 6 2021  
Further hearing pursuant to EAT remittal 27 3 24

Claimant: Ms V Londono

Respondent: The Sports PR Company Ltd

Before: Employment Judge Mr J S Burns

Representation

Claimant: In person (on 30/6/21); Mr Caio Alves (FRU Volunteer) on 27/3/24

Respondent: Ms C McAteer (Director) on 30/6/21; No attendance on 27/3/24

**Amended<sup>1</sup> JUDGMENT**

1. The Respondent must pay the Claimant ~~£1482.77~~ **£1452.26** (as calculated in the Schedule) by 14/7/21.
2. The sum is gross of tax and NI contributions and the Claimant is responsible for accounting to HMRC for any such liabilities on the sum.

Reasons

1. The hearing was held remotely by video. There were no technical problems. I heard evidence from the Claimant and Ms McAteer. The Claimant had produced a witness statement, and filed various other evidence including emails, payslips, the employment contract, sicknotes and a schedule of loss.
2. The Respondent took a point that the ET1 was out of time. The employment ended on 6/8/2020 and the Claimant applied for ACAS early conciliation on 17/9/2020 and received

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<sup>1</sup> In an appeal decision dated 4/7/23 HHJ Auerbach in the EAT under reference EA-2021-000938-NLD remitted the ET judgment signed on 30/6/21 for amendment to correct the following error (identified in paragraphs 47 and 49 of the EAT judgment), which error is conceded by the Claimant -*"However, there is one other matter that was raised in the course of the respondent's recent communications with the EAT. This is that the tribunal's calculation of the amount of wages that it awarded reflected an element for statutory sick pay in respect of the whole of that part of the notice period during which the claimant was in fact off sick. But, says the respondent, this was an error in respect of the first three days, which are the SSP waiting period, during which the claimant would not have been entitled to SSP. It has therefore submitted that the amount awarded by the tribunal should be recalculated and reduced to take account of that error.... It does appear to me that the point is unanswerable, and there was simply an error by the tribunal when calculating the element of the award relating to the sickness period."*

her certificate against the Respondent on 1/10/20. She presented her claim against "Caroline McAteer" on 16/10/2020. She was notified by Tribunal letter received on 5/12/20 that her claim had been rejected because of a mismatch between the ACAS certificate and Ms McAteer's name on the ET1. The Claimant immediately contacted the Tribunal to correct the error (in effect asking for the name of the Respondent on the ET1 to be changed to The Sports PR Company Ltd) and on reconsideration the Tribunal accepted the claim on this basis on 8/12/20. This is outside the primary period of three months after the employment ended (subject to extension by the ACAS process) but the Tribunal has power to extend time if it finds that it was not reasonably practicable for the claim to be presented in time.

3. I find that the ET1 form at section 2.1 which asks "*Give the name of your employer or the person or organisation you are claiming against*" is somewhat ambiguous and confusing especially for litigants-in-person, as is the Claimant in this case. Furthermore, having made a mistake of the type which many such litigants do make, by citing her boss rather than the employing company as "*the person she was claiming against*" the Claimant was not notified about her mistake by the Tribunal until after the primary limitation period had expired. As soon as she was notified she acted promptly to rectify the mistake. In these circumstances I find that it was not reasonably practicable for the Claimant to claim against the correct Respondent in time and that she claimed within a reasonable time thereafter. Hence her claim is within the Tribunal jurisdiction.
4. After December 2020 there was a long delay until the Respondent was notified on 13/5/21 about the claim, which is due to administrative problems within the Tribunal, and for which I apologise.
5. The Claimant was employed by the Respondent from 30/3/20. On 4/7/2020 she gave one month's notice of termination ending on 6/8/20. She worked until 13/7 and took pre-booked holiday from 13-16/7/20. She was then signed off sick by her GP from 15/7 until the end of her notice period.
6. Under her employment contract she was entitled to be paid her normal salary in full in respect of days worked or on pre-booked holiday, and entitled to statutory sick pay when absent because of sickness. Contrary to the Respondents submission, this absence was not a breach of contract by her.
7. The Respondent submitted that the Claimant had resigned with immediate effect on 1/7/20. That is plainly not the case. She sent an email on that date showing that she was thinking of resigning but did not in fact do so until she sent her letter dated 4/7/2020 giving notice on 6/8/20.
8. The Respondent complained that the Claimant deliberately waited until after her probation expired before giving notice, so as to reap the benefit of a longer paid notice period. That may be so, but it is irrelevant.
9. The Respondent complained that the Claimant did no work, abused the Respondent's web-profile by making political comments, and disobeyed orders. If that was so the Respondent could and should have summarily dismissed her with immediate effect, as it had power to do under paragraph 11 of the employment contract, but it did not do so.
10. The Respondent complaint that the Claimant did no work in the first 2 weeks of July 2020 is not supported by any documentary evidence (albeit that the Respondent retains control over the business email account which the Claimant was operating during that time). The Claimant showed me on her phone Whatsapp work messages during that period to Ms McAteer and others. On the evidence presented I accept that the Claimant was working from her home in Kent during that period.
11. The accepted arrangement until 9/7/20 was that the Claimant would work from home. Ms McAteer on 9/7/20 then sent an email asking the Claimant to come in to the London Office

and followed it up with a Whatsapp message on 10/7/20. By then however the Claimant who had been exposed to the corona virus was waiting for the result of a test and for that reason refused to come in to the office. In the circumstances that was a reasonable behaviour and not a breach of contract.

12. The Claimant took her public holidays and in addition was entitled to 20 days paid holiday per year. Her employment lasted in excess of 4 months so she was entitled to at least the 6.5 days claimed. She took 4 of those days as pre-booked holiday between 13-16/7/20.
13. The Tribunal is unable to go behind the GP sick-notes which covered her absence during the remainder of the notice period after her holiday.
14. The Respondent did not pay the Claimant for any period after 30/6/20 and therefore owes the Claimant the sum shown in the Schedule.

#### Schedule

Unpaid Days: 37

Daily wage: £84.29 (£22,000 pa, 261 working days pa)

1<sup>st</sup> to 12<sup>th</sup> July 2020 (Normal pay) = £674.33 (8 working days)

6.5 Holiday Days (Normal pay) = £547.89 (13<sup>th</sup> to 16<sup>th</sup> July taken as holiday)

17<sup>th</sup> July to 6<sup>th</sup> August 2020 (Statutory Sick Pay) = ~~£287.55~~ **£230.07** (Based on SSP 2020-21 rate of £95.85 a week, 15 working days **less 3 day SSP waiting period = 12 days**)

Total: ~~£1,482.77~~ **£1452.29**

J S Burns Employment Judge  
London Central  
30/6/2021  
**Amended 27/3/24**

For Secretary of the Tribunals

Date sent to parties  
10 April 2024

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