



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mr Zuhayb Raja

AND

Respondent

Mon Motors Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD REMOTELY

ON

26 July 2024

By Video Hearing Service (VHS)

EMPLOYMENT JUDGE N J Roper

Representation

For the Claimant: Did Not Attend

For the Respondent: Mrs P Kathrens, Solicitor

JUDGMENT

The judgment of the tribunal is that the claimant's claim for accrued but unpaid holiday pay is not well-founded, and it is hereby dismissed.

RESERVED REASONS

1. In this case the claimant Mr Zuhayb Raja brings a monetary claim for accrued but unpaoid holiday pay against his ex-employer Mon Motors Limited. The respondent denies the claim.
2. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was by VHS Video. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The documents to which I was referred are in a bundle provided by the parties, the contents of which I have recorded. The order made is described at the end of these reasons.
3. The claimant did not attend this hearing. This is consistent with his recent conduct of this claim during which he failed to engage with the respondent to prepare for this hearing. He had not prepared and served a written witness statement as previously ordered by the Tribunal. The respondent did not call any evidence in chief, but Mrs Kathrens was able to make submissions. I also had a bundle the relevant documents before me.
4. I decided to proceed with the hearing in the absence of the claimant in accordance with Rule 47 and I considered such information as was available to me having made such enquiries as were practicable.

5. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.
6. The respondent Mon Motors Limited operates car dealerships in South Wales and South-West England. The claimant was employed as a Parts Sales Executive in the respondent's telesales department in Bristol. He commenced his employment on 28 August 2023 which was subject to a three-month probationary period. Because of the claimant's repeated absences this was extended by a further two months. The claimant then took unauthorised absence between 26 December 2023 and 16 January 2024. He had applied for paid holiday to go to America, but it was at short notice and his previous absences meant that he had not accrued sufficient holiday entitlement, and his request was refused. The claimant took unauthorised absence nonetheless, and following a probation review meeting on 22 January 2024, his employment was terminated on 26 January 2024.
7. The claimant signed a contract of employment on 13 September 2023. Clause 6 and an attached company handbook dealt with his contractual holiday entitlement. This was 22 days per annum which was expressed to be accrued pro rata at 1.83 days per completed month of employment. The holiday year ran from 1 January annually and there was no right to carry forward any accrued but unused holiday.
8. On the termination of his employment the claimant was paid his outstanding salary including his one week's notice pay, his bonus entitlement, and his accrued holiday entitlement. This was calculated to be 1.5 days, the claimant was paid 1.5 days' accrued holiday in his final month's pay.
9. Having established the above facts, I now apply the law.
10. The claimant pursues a claim in respect of holiday pay for accrued but untaken holiday under the Working Time Regulations 1998 ("the Regulations"). Regulation 14 explains the entitlement to leave where a worker's employment is terminated during the course of his leave year, and as at the date of termination of employment the amount of leave which he has taken is different from the amount of leave to which he is entitled in that leave year. Where the proportion of leave taken is less than that which he is entitled, the employer is required to make a payment in lieu of leave in accordance with Regulation 14(3). In the absence of any relevant agreement which provides for payment of accrued leave, then the sum is calculated according to the formula $(A \times B) - C$. For the purposes of this formula A is the period of leave to which the worker is entitled under Regulations 13 and 13A; B is the proportion of the worker's leave year which expired before the termination date; and C is the period of leave taken by the worker between the start of the leave year and the termination date.
11. The claimant had earlier suggested in his claim form that he was entitled to his full year's holiday entitlement having been in employment when the holiday year re-commenced on 1 January 2024. That is not correct, and the claimant is only entitled to pro rata entitlement to holiday between 1 January and 26 January 2024 when his employment ended. Based on 1.83 days per whole month completed, the respondent calculated this entitlement to be 1.5 days, which has already been paid.
12. I find that the claimant's claim for accrued but unpaid holiday pay has already been met. His claim for a further payment is not well-founded and it is hereby dismissed.

Employment Judge N J Roper
Dated 26 July 2024
Judgment sent to Parties on
28 August 2024
Jade Lobb
For the Tribunal Office