



# EMPLOYMENT TRIBUNALS

**Claimant:** A Pardo

**Respondent:** Mobivape Ltd

**Heard at:** London South (by CVP)

**On:** 2 September 2025

**Before:** EJ Rice-Birchall

## Representation

**Claimant:** Mrs Pardo (mother)

**Respondent:** Mr Tramboo, solicitor

**JUDGMENT** having been sent to the parties and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

# REASONS

## Background

1. Following Early Conciliation, the claimant presented a claim form on 14 March 2025 claiming £860 in respect of holiday pay outstanding on termination of employment based on 824.4 hours of work between 1 October 2024 and 3 February 2025 when his employment terminated.
2. The response was submitted out of time.
3. The claimant made an application to include holiday pay for September 2024 in his claim, bringing the total hours worked to 908.4 hours. The claimant sought to amend the claim in relation to September 2024 at a later date because he did not receive a pay slip for his work in September, which was carried out partly in Leatherhead and partly in Worcester. This increased the claimant's claim to pay in respect of 110 hours at £8.60 totaling £946.00.
4. On 7 June 2025, EJ Fowell refused the respondent an extension of time to file its defence, stating that the claimant's entitlement to holiday pay should be a matter of record. However, he stated that the amendment application meant the claimant's entitlement was unclear and so there would be a hearing to consider compensation due.
5. The respondent instructed Mr Tramboo the day before the hearing.

## **Respondent's participation**

6. At the hearing, I considered the extent to which the respondent should be permitted to participate in the proceedings. For reasons given orally at the hearing, I considered that the respondent should be allowed to cross examine the claimant and to make submissions, but did not permit the witness evidence on which the respondent sought to rely, because those statements were part of the response submitted (late) by the respondent and the claimant was not expecting to have to cross examine witnesses as part of the listed two hour hearing and so would have been prejudiced if they had been permitted to give evidence. I permitted the respondent's bundle to be used, as the claimant confirmed that he was familiar with all of the documents contained within it, but explained that the respondent would need to make an application if they sought to rely on any new evidence not previously disclosed.
7. My considerations included that EJ Fowell had said that this was a hearing "to consider compensation due" rather than to establish liability and that, in any event, the respondent was free to cross examine the claimant on any points of contention.
8. Full written reasons of this decision can be requested.

## **Amendment application**

9. For reasons given orally at the hearing, I allowed the claimant's amendment application as I believed that the application was made in a timely way and the balance of prejudice would weigh more heavily against the claimant if he were not permitted to claim the additional holiday pay. In any event, a holiday pay claim was already being dealt with by the Tribunal and the respondent.
10. It is worthy of note that the respondent sought to argue that the work the claimant carried out in Worcester in September was carried out for a separate entity not named in these proceedings. My reasons for allowing the application was that the respondent's submissions in that regard would be considered and, of course, the respondent was at liberty to cross examine the claimant on that point.
11. Full written reasons of this decision can be requested.

## **Issues**

12. Was the claimant owed holiday pay by the respondent on termination of his employment and, if so, how much?

## **Evidence**

### **Bundle**

13. I referred mainly to a bundle of documents prepared by the respondent, but there was, in addition, a record of the claimant's alleged time off prepared by the respondent after proceedings had begun,. As the

respondent's bundle was submitted late the night before the hearing, the claimant was also permitted to refer to his bundle for documents where it was easier for him to do so.

14. The respondent had provided a position statement which set out the basis of its defence

#### Witness evidence

15. The claimant gave oral evidence under affirmation. His claim form and particulars of claim were used as his evidence in chief. I found that the claimant's evidence was credible, and more credible than the various positions put forward by the respondent, who had no official record of holiday they allege was taken or approved and whose pay slips did not indicate whether the claimant had been paid holiday pay. In short, there was no contemporaneous documentary evidence whatsoever from the respondent for the arguments they sought to put forward, for example that the claimant had taken some holiday and/or that in any event holiday for 2024 did not carry over due to their communicated "use it or lose it" policy. That is despite the fact that holiday should be a matter of record including holiday being requested and approved.

#### **Facts**

##### The respondent

16. The respondent is based in Leatherhead and has a sole director, Mr Jasbir Singh. Mr Singh is also the sole director of a second company, Mobivape Worcester Ltd.

##### The claimant

17. The claimant commenced employment with the respondent or Mobivape Worcester Limited on 17 September 2024. He was paid £8.60 per hour and generally worked 10 hour days according to a rota which covered seven days per week. He was classified as a full time employee and generally had a couple of days off per week on different days
18. From 17 September 2024, the claimant worked initially from Worcester but then, from 23 September 2024, from Leatherhead. From 23 September 2024, the claimant worked from the Leatherhead Store permanently which is confirmed by text messages the claimant was sent to confirm where he would be working and by the rotas of which the Tribunal had sight.
19. The claimant was paid £722.40 on 1 October 2024 for his work in September 2024 by bank transfer. He never received a pay slip in respect of this period. The bank transfer was from Mobivape Worcester. The respondent seeks to argue that Mobivape Worcester Limited was his employer for September, after which he transferred to Mobivape Limited, but as this is a point of dispute, it is dealt with in my conclusions below.
20. The pay slips for the hours worked from October 2024 to January 2024 are accurate in so far as they give an accurate picture of the hours the claimant was paid for which were respectively:

- a. 200 hours in October 2024;
  - b. 201 hours in November 2024;
  - c. 212.5 hours in December 2024; and
  - d. 187.5 hours in January 2025.
21. Only the October 2024 pay slip mentions holiday at all. That pay slip simply states: "annual leave remaining 0 days". The Tribunal finds that nothing turns on this as it is probably an error that it was included at all given that not one of the other pay slips refer to holiday pay, not even when the respondent also alleges that the claimant took holiday, in November and December 2024.
22. The respondent says that these pay slips include holiday pay in October, November and December and that any remaining holiday entitlement expired at the end of 2024 in accordance with its use it or lose it policy. The claimant disputes that any holiday was taken by him during his employment. Again, as there is a dispute of fact on this issue, I will deal with it in my conclusions.
23. In February 2025, the claimant worked on 1 February 2025 and resigned on 2 February 2025. He worked again on 3 February 2025, on which day he was asked to attend Worcester for an exit interview. The claimant alleges that Mr Singh told him he would be paid for that day, which is denied by the respondent. Again, this will be dealt with in my conclusions below.
24. The claimant was not required to work his notice following 3 February 2025.
25. The claimant's pay slip for February 2025 refers to "final pay" with no breakdown of how the sum has been calculated. The claimant alleges that he was owed pay for 20 hours of work (having told he would be paid for his last day) and the respondent alleges that the monies equate to the claimant's holiday pay outstanding on termination of employment for 2025. Again, this is dealt with in my conclusions below.
26. Following the termination of his employment, and after bringing his claim to the Tribunal, the claimant was sent a document entitled "Holiday policy" by the respondent.

## **Law**

### Holiday pay

#### *Entitlement on termination of employment*

27. On termination of employment, a worker is entitled to pay in lieu of unused statutory holiday to which they were entitled to under regulations 13 and 13A of the Working Time regulations 1998, which provide for 5.6 weeks' holiday each leave year.
28. The amount paid will be: "Such sum as may be provided for ... in a relevant agreement" (regulation 14(3)(a) WTR), or "Where there is no

relevant agreement, a sum equal to the amount that would be due to the worker under regulation 16 in respect of a period of leave determined in accordance with the formula  $(A \times B) - C$ .

29. In applying that formula:

- A is the period of statutory leave to which the worker would have been entitled for the whole of the leave year in which employment ends, calculated in accordance with regulations 13 and 13A;
- B is the proportion of the worker's leave year which expired before the termination date, expressed as a fraction; and
- C is the period of leave taken by the worker between the start of the leave year and the termination date. (Regulation 14(3)(b).)

30. Under regulation 16 WTR, workers must be paid at the rate of a week's pay for each week's leave.

*Carry over*

31. In **Smith v Pimlico Plumbers Ltd** [2022]EWCA Civ 70 it was established that workers can carry over their full entitlement to regulation 13 leave from year to year, until termination, if the employer has not afforded them reasonable opportunity to take it. Although the court acknowledged that it had "no power to draft regulations" it suggested a form of words that would best reflect EU law, as an appendix to its earlier judgment. It includes the following additional wording to be read into the WTR at regulation 13(16): "Where in any leave year an employer (i) fails to recognise a worker's right to paid annual leave and (ii) cannot show that it provides a facility for the taking of such leave, the worker shall be entitled to carry forward any leave which is taken but unpaid, and/or which is not taken, into subsequent leave years."

### Section 1 statements

32. An employee or worker may make a complaint to an employment tribunal where an employer fails to provide a section 1 statement.

33. Where an employee or worker also has a successful substantive claim (as listed in Schedule 5 to the Employment Act 2002 (EA 2002)), and, at the time the claim was brought, the employer was still in breach of its duties under section 1(1) ERA 1996, the employee or worker may be eligible for an award in respect of the failure to provide particulars.

34. Schedule 5 includes deductions from wages, working time and breach of contract claims.

35. Section 38 of the EA 2002 provides that in such circumstances the tribunal **must** make an award of the minimum amount (two weeks' pay) unless there are "exceptional circumstances" which would make such an award "unjust or inequitable". The tribunal **may** award the higher amount (four weeks' pay) if it considers it just and equitable in all the circumstances. A week's pay will be calculated in accordance with the rules in the ERA 1996 and the statutory cap on a week's pay applies.

### Pay statements

36. The ERA section 8(1) also provides that an employer must provide a written accurate pay statement to their employee which must be provided at or before the time when any payment of wages or salary is made.

## **Conclusions**

### Disputed facts

#### *Mobivape Worcester Ltd was the claimant's employer in September*

37. The respondent sought to argue that the claimant was employed by a different respondent during September, hence his payment details stating Mobivape Worcester Limited.
38. The Tribunal does not accept the respondent's submission in this regard for the following reasons.
39. First, the claimant only worked in Worcester for one week prior to moving to Leatherhead. There would have had to have been an effective dismissal after one week of employment with a new employment contract (even if it was an oral contract) from 23 September 2024 when he moved to Leatherhead. That is so unlikely as to be incredible and no evidence was advanced to support such a contention.
40. Second, there was no evidence of any change of employer following the claimant's first few days at work.
41. The Tribunal finds that the claimant was employed throughout by Mobivape Limited whether he worked in Worcester or Leatherhead. The interchangeability of the two makes sense if it is considered that Mr Singh is a director of both companies, and it is exemplified by the fact of the claimant having been asked to attend the Worcester store for his exit interview.
42. The way a payment is labelled in a bank account isn't really evidence of very much at all. Just because Mobivape Worcester Ltd paid the claimant's salary does not mean the claimant was employed by that company.

#### *The contract of employment and holiday policy*

43. In submissions, the respondent sought to argue that there had been a contract but that the respondent couldn't find it. The respondent also sought to argue that the claimant had been well aware of the respondent's "use it or lose it" holiday policy as that had been communicated to him by his managers. It was the claimant's position that he had never received a contract of employment or the holiday policy, and nor had the holiday policy been discussed with him.
44. It was admitted by the respondent that there was no updated contract after the alleged change of employer, nor was there any documentary evidence of that alleged change.

45. The Tribunal finds that the claimant was never provided with an employment contract. No contract was available before the Tribunal despite evidence that the claimant requested a contract by text message, but was simply told that he was “full-time”. The Tribunal accepts the claimant’s evidence in this regard.
46. The Tribunal further accepted the claimant’s evidence that he had never been informed or had sight of a holiday policy which explained that holiday entitlement must be used in the holiday year in which it accrued or be lost.
47. The Tribunal also accepts the claimant’s evidence that holiday was not discussed with him at all and that he did not know that holiday should be taken in the holiday year in which it was accrued, nor was he ever told that he should take holiday or request it. Indeed, there was no evidence of any process by which the claimant should request holiday or for it to be approved.

*Holiday taken in October/November/December by the claimant*

48. The respondent alleged that the claimant had taken holiday in October, November and December 2024 and
- 49.
50. produced a report of holiday it alleged he had taken in support of its claims. The claimant denied that he had taken any holiday.
51. The Tribunal accepts the claimant’s evidence that he did not take any holiday whilst employed by the respondent. He gave a credible explanation for why, when the respondent alleged he had left early, he had not done so, in that he was usually responsible for opening up and locking up.
52. The respondent could provide no holiday record. The report it provided was made with the litigation in mind and it was not accepted by the Tribunal as an accurate record of holiday taken, not least because the respondent indicated that the claimant had had 23 hours’ holiday in February and had only worked 0.4 hours, even though he had worked on 1 February 2025 and again on 3 February 2025 (though that is subject to dispute – see below). There was no official record of employee holiday nor was there any documentary evidence that the claimant had requested or been approved holiday.

*The exit interview*

53. The claimant alleges that Mr Singh told him he would be paid for 3 February, being his final day of employment when he was asked to attend an exit interview, which is denied by the respondent who submits that any additional monies in the claimant’s final pay was in respect of the claimant’s holiday pay due for 2025.
54. The Tribunal accepts the claimant’s evidence that Mr Singh told him he would be paid for his final day including to travel to Worcester for his exit interview.

55. There was no evidence from the respondent to support its position. The final pay slip did not include any reference to holiday pay. However, the claimant's pay did include an overpayment of £29.24.

### The claim

56. The claimant is entitled to holiday pay in respect of holiday accrued during the entirety of his employment with the respondent which commenced on 17 September 2024 and ended on 3 February 2025 because he did not take any holiday during his employment with the respondent nor was he afforded a reasonable opportunity to take it, and therefore his holiday entitlement from 2024 carried over into 2025 and to the termination of his employment.
57. The respondent was in breach of section 1 of the ERA and the requirement to provide an employee with a section 1 statement from the commencement of employment. That position was not rectified throughout the claimant's employment.
58. The respondent did not provide the claimant with an itemized pay slip in September 2024.

### **Remedy**

59. The following calculations and the basis for them was agreed by the parties and the Tribunal.
60. A week's pay was agreed as £397.58 by taking the number of hours worked by the claimant in November, December and January multiplied by £8.60 (the claimant's hourly rate) and dividing that figure by 13 (the number of weeks worked).
61. It was agreed that the claimant was entitled to 2.15 weeks' holiday during his 20 week period of employment with the respondent calculated by dividing 20 by 52 and then multiplying the total by 5.6 being the annual statutory holiday entitlement.
62. The additional pay from the claimant's final pay slip was subtracted from the total by agreement.
63. The Tribunal concluded that the claimant should be awarded two weeks' pay for the respondent's failure to provide a written statement in accordance with section 1 of the ERA 1996 as there were no exceptional circumstances which rendered it unjust or inequitable to make such an award. However the Tribunal was not satisfied that it was just and equitable in all the circumstances of the case to award four weeks' pay.

Approved by:

**Employment Judge Rice-Birchall**  
**4 September 2025**