



EMPLOYMENT TRIBUNALS

Claimant: Mr Joshua Wilde
Respondent: SE8 London Limited
Heard at: London South (by CVP)
On: 9 April 2025
Before: Employment Judge Yardley

Representation:

Claimant: Miss N Oljelund, Solicitor Apprentice
Respondent: Mr R England, Director

JUDGMENT having been sent to the parties on 24 April 2025 and written reasons having been requested in accordance with Rule 60(3) of The Employment Tribunal Procedure Rules 2024, the following reasons are provided:

REASONS

Introduction

1. The Claimant brought a claim in respect of unpaid holiday pay and the Respondent's failure to provide a written statement of employment particulars during a period of approximately 12 months, during which the Claimant was employed as a barista.
2. The Respondent accepted that holiday pay was owing, but disputed the amount claimed. The Respondent further admitted that no written statement of employment particulars had been provided.
3. In light of these admissions, the issues before the Tribunal were limited to determining the appropriate remedy.
4. The Tribunal heard submissions from both parties and had the benefit of the Claimant's bundle, which comprised 52 pages.

Findings of Fact

5. The Claimant commenced employment as a barista on 12 December 2021.
6. Throughout the duration of his employment, the Claimant was not provided with a contract of employment or a written statement of particulars.
7. The Claimant was paid £9.50 per hour. He worked variable hours and, on occasion, did not work at all during certain weeks. The Claimant was paid monthly and received payslips intermittently.
8. The Claimant did not take any annual leave during the course of his employment and received no payment in respect of holiday entitlement beyond remuneration for hours actually worked.
9. The Claimant's employment terminated on 8 December 2022
10. During the Claimant's period of employment, he received £5,235.51 from the Respondent and worked for 32 weeks in the 51 week period. His average gross weekly pay was £163.92 per week.
11. Following the termination of his employment, the Claimant received a payment of £149.87 in respect of accrued holiday entitlement.

The Law

Holiday Pay

12. The law relating to holiday pay is contained in the Working Time Regulations 1998. Regulation 13 provides that a worker is entitled to four weeks' annual leave in each leave year. Regulation 13A provides that a worker is entitled to an additional 1.6 weeks' leave (that is 5.6 weeks in total).
13. By reason of regulation 13(9), leave may only be taken in the year in respect of which it is due and may not be replaced by a payment in lieu, except where the worker's employment terminated.
14. Regulation 14 relates to where a worker's employment is terminated during the course of his leave year, and regulation 14(2) states that:

"Where the proportion of the leave taken by the worker is less than the proportion of the leave year which has expired his employer shall make him a payment in lieu in accordance with paragraph (3)"
15. Regulation 14(3)(b) states that where there are no provisions of a relevant agreement which apply the payment due shall be calculated in accordance with the following formula, namely:

$$(A \times B) - C$$

where:

A is the period of leave to which the worker is entitled under regulations 13 and 13 A;

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.

16. Regulation 13(5) states that:

"Where the date on which a worker's employment begins is later than the date on which (by virtue of a relevant agreement) his first leave year begins, "the leave to which he is entitled in that leave year is a proportion of the period applicable under paragraph (1) equal to the proportion of that leave year remaining on the date on which his employment begins".

17. Sections 221-224 of the Employment Rights Act sets out the provisions to calculate a week's pay.

Written statement of particulars

18. A section 1 statement of employment particulars should be provided to an employer "not later than the beginning of the employment" (section 1(2)(b) Employment Rights Act).
19. Section 38 of the Employment Act 2002 states that where an employer has failed to issue an employee with an up to date written statement of particulars the Tribunal must award the employee an additional two weeks' pay, unless there are exceptional circumstances which would make it unjust or inequitable, and may, if it considers it just and equitable in all the circumstances, order the employer to pay an additional four weeks' pay.

Conclusion

20. Prior to the hearing, the Claimant calculated that the total amount of outstanding holiday pay owed to him was £726.20. The basis for this calculation was set out in the Claimant's Schedule of Loss.
21. The Respondent calculated that the amount owing was £207.31, as set out in an email to the Tribunal dated 10 September 2024.
22. With the assistance of the Tribunal, the parties were able to reach agreement on the method of calculation and the amount due. The following was agreed:
- a. Although it was not possible to reconcile the figures in the Claimant's payslips with the HMRC earnings statement, owing to the Claimant not having received all relevant payslips and the Respondent being unable to produce them, the Respondent accepted that the HMRC statement accurately recorded the gross sums paid to the Claimant during his employment.
 - b. The Claimant had worked for a total of 32 weeks during the course of his employment, as evidenced by a spreadsheet produced by the Claimant detailing his weekly hours.

- c. The Claimant's average weekly gross pay was agreed to be £163.92, calculated by dividing his total gross earnings of £5,245.51 by the 32 weeks worked.
 - d. Based on the Claimant having worked 51 out of 52 weeks in his holiday year, it was agreed that he was entitled to 5.49 weeks of paid holiday.
 - e. The total holiday pay accrued on termination was calculated to be £899.93, being 5.49 multiplied by his average weekly gross pay of £163.92.
 - f. The Claimant had already received £149.87 in respect of accrued holiday pay in his final payslip.
 - g. Accordingly, the balance owing to the Claimant was £750.06.
23. The Claimant had therefore not been paid all outstanding sums due on termination and was entitled to a further payment of £750.86 in respect of holiday pay and the claim for holiday pay succeeds.
24. The Respondent conceded that the claimant had not received a written contract of the employment. Therefore the only issue was whether an award in accordance with section 38 of the Employment Act 2002 be made.
25. The Claimant submitted that the Respondent's failure to provide a written statement of employment particulars led to an underpayment of holiday pay. No meaningful steps were taken to remedy the issue, resulting in unnecessary delay. The claimant therefore invited the Tribunal to make an award of four weeks' pay under section 38 of the Employment Act 2002.
26. The Respondent submitted that the lower remedy should apply. He said they are not experts in employment law, no employees were issued with written statements and the café business has since closed in 2022.
27. While the Respondent accepted that no such statement was provided, the Tribunal does not accept that the Claimant's casual status or lack of guaranteed hours justified this omission. The Claimant had a statutory right to receive a statement, which serves an important function in clarifying the terms of the employment relationship, including matters such as holiday pay.
28. However, as the Claimant did not appear to raise this issue until lodging the claim in May 2023, the Tribunal finds that it would not be just and equitable to award the maximum of 4 weeks' pay. The Tribunal therefore makes the minimum award of 2 weeks' pay in respect of the claim for failure to provide a written statement of employment particulars.

Employment Judge Yardley

Date: 9 May 2025

JUDGMENT SENT TO THE PARTIES ON
19 August 2025

.....

.....
FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments (apart from judgments under rule 52) and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.