



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 8001068/2024 Hearing at Edinburgh by Cloud Video Platform on 18 November 2024 and 13 January 2025

Employment Judge: M A Macleod

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Ms I Eluka

**Claimant
In Person**

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Lidl Great Britain Limited

**Respondent
Represented by
Ms A Rumble
Barrister**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that the claimant's claims of unlawful deductions from wages is dismissed.

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REASONS

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1. The claimant presented a claim to the Employment Tribunal on 22 July 2024 in which he complained that he had been unlawfully deprived of holiday pay and notice pay by the respondent.
2. The respondent presented an ET3 response in which they resisted the claimant's claims.

3. A Hearing was listed to take place by CVP at Edinburgh on 18 November 2024 over 3 hours. However, it did not prove possible to conclude the Hearing on that day, notwithstanding that the Tribunal sat beyond the scheduled time, since the respondent's witness, Ms Shona Murray, endured considerable difficulties in making herself heard, due to technical problems. 5 A further day was convened, on 13 January 2025, in which the same difficulties arose again; however, Ms Murray was able to move to a different device and as a result, the Hearing was able to conclude.

4. The claimant gave evidence on his own account, and the respondent called 10 Ms Shona Murray, Head of Payroll and Global Mobility for the respondent, to give evidence for them.

5. A bundle of productions was presented to the Tribunal in electronic form. While some concerns arose during the Hearing as to whether or not the claimant had all the documents available to him, the Employment Judge 15 was able to share his screen so that all were able to see the same document and avoid any further confusion.

6. The issues in this case were set out in the Note issued by Employment Judge O'Dempsey following the adjourned Hearing on 2 October 2024, as follows:

20 7. During the course of the Hearing, the evidence led clarified matters in the minds of the parties, and in his closing submission, the claimant essentially confirmed that the only outstanding matter on which he was seeking to pursue his claim related to 2 days' holiday pay in relation to March 2024. The findings in fact are therefore limited to addressing the outstanding issue 25 in this case, rather than reciting all of the evidence led by parties. However, it is still important for the Tribunal to address the issues set out above to ensure that everything raised has been dealt with by the Tribunal.

8. Based on the evidence led and information provided, the Tribunal was able to find the following facts admitted or proved.

Findings in Fact

9. The claimant, whose date of birth is 14 March 1990, commenced employment with the respondent as a Warehouse Operative on 21 November 2023. He was contracted to work 37.5 hours per week. He left the employment of the respondent on 2 September 2024.
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10. The claimant's contract of employment (77ff) confirmed that his contracted hours per week were 37.5, and his pay was £11.40 per hour. His line manager was Matthew Dorian. In clause 6.2, the contract provided that the claimant's salary would be paid in 12 equal monthly instalments, in arrears, to his bank account.
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11. Clause 6.4 provided that "*Your overtime or undertime in any one month is added to or deducted from your time bank. Any undertime may be deducted from your monthly salary. The Company may require you to work off any undertime during your notice period and/or deduct any undertime from your final salary payment.*"
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12. Clause 7 set out the claimant's entitlement to paid holidays. He was entitled, on full-time hours, to a total annual holiday entitlement of 30 days per holiday year, inclusive of statutory and bank holidays. If the claimant were employed part-time, his holiday entitlement would be reduced pro rata. 7.3 stated that he would only be entitled to take holidays at such times as agreed in writing in advance by his line manager.
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13. The Holiday Year was defined in the definitions section as 1 April to 31 March (89).
14. Pay in respect of annual leave was included in the claimant's standard pay.
25 In other words, if the claimant took annual leave during a month, he would be paid the same amount as a month in which he took no leave. In this way, the respondent ensured that the claimant received pay in respect of his annual leave.
15. The claimant's hours were changed from full-time to part-time, namely 20 hours per week, with effect from 1 April 2024.
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16. As at 1 March 2024, the claimant's pay rate increased to £12 per hour.

17. On 29 April the claimant raised a concern with Mr Dorian that he had not been paid his full entitlement to holiday pay (159), complaining that he had taken 11 days' holiday but not been paid for all of them.

5 18. From the start of his employment to the end of the leave year on 31 March 2024, the claimant was entitled to 11 days' leave. He accepted in evidence that he took all of those days.

10 19. The claimant was paid on 24 January 2024. His payslip (133) confirms that he was paid for 162.5 hours in January 2024, at £11.40 per hour. In addition, he received payment in relation to a night premium applicable to December 2023, in relation to 60.05 hours. His total gross pay for January was therefore £2,032.65, and his net pay was £1,758.99. Attached to his payslip was his timesheet for January 2024 (138). On the timesheet, there were entries for each day from Monday to Sunday each week, denoting either hours worked or "rest day". A rest day is not the same as annual leave, but simply indicates a day upon which the claimant was not rostered to work.

15 20. He took no holidays in January 2024.

21. In February 2024, the claimant was paid on 28 February. His payslip (137) notes that he was paid for 162.5 basic hours at £11.40 per hour, and in addition received a payment in relation to 62.93 hours as a night premium for January 2024. Again, a timesheet attached to the payslip (178) demonstrated that the claimant was either working or on rest days during the month of February, and took no annual leave. In particular, the timesheet recorded that the claimant was on rest days on 17 and 18 February 2024.

20 25 22. In March 2024, the claimant was paid on 27 March. His payslip (147) demonstrates that during that month he was paid for 162.5 hours of basic pay, at £12 per hour. He also received a payment in relation to 62.88 hours

at a night premium for February 2024. His gross pay was £2,053.09, and his net pay £1,773.38.

5 23. The claimant's timesheet for March 2024 (157) confirmed that there were a number of days upon which the claimant worked, a number of rest days and then holidays noted.

24. The dates upon which the claimant was recorded as being on holiday were as follows:

- 10 • 2 March;
- 8, 9, 10, 11 and 12 March;
- 25, 26, 27 and 28 March

25. Accordingly, the timesheet demonstrated that the claimant had 10 days' annual leave in March 2024. It appears that 2 March was incorrectly recorded as holiday and should be removed from the calculation. As a result, he took 9 days' annual leave in March 2024.

15 26. The respondent produced a log entitled Holiday Data (194) in which it was recorded that the claimant was absent on annual leave on 17 and 18 February 2024.

27. The claimant submitted a retrospective holiday request on 7 March 2024 (143) in relation to 17 and 18 February 2024.

20 28. The respondent's payroll manager, who gave evidence, said that her understanding from the records was that the claimant had taken 11 days' annual leave in the leave year between the commencement of his employment and 31 March 2024.

25 29. The evidence in relation to this matter is confusing, but on the basis of the records disclosed to me, it appears that the claimant took 19 days' holiday in that period, including 17 and 18 February and the 10 days in March 2024.

30. However, the claimant was paid his full basic pay in relation to the months of February and March 2024.

31. No reference is made in the claimant's payslips to holiday pay.

Discussion and Decision

5 32. Despite there being a considerable amount of information and evidence presented in this case, it appears to me that this claim is based on a misunderstanding by the claimant of the manner in which he was paid for annual leave.

10 33. The claimant made clear during his evidence and in his submission that he believed that he was entitled to pay additional to his basic pay, attributable to annual leave pay.

15 34. As Ms Murray carefully explained – and the Tribunal found her to be an entirely helpful and convincing witness – the claimant is paid for 52 weeks a year, but for 30 days of his working year, he is entitled to be absent from the business on annual leave, for which he is still paid. Nothing is disclosed by the payslips, which do not, and would not be expected to, demonstrate a separate entry for holiday pay.

20 35. In other words, the claimant was paid his pay throughout the period between his commencement date and 31 March 2024, whether he was at work or not. Given that he was absent from work on 11 days when he would otherwise be expected to attend work, but still received pay, Ms Murray's evidence that that amounted to full pay in respect of holidays was entirely believable.

25 36. That the claimant did not understand that is unfortunate, and perhaps indicates that the matter may have been better communicated to him. However, there is no basis for the claimant to suggest that he was not paid for annual leave which he took in that period, and in particular in March 2024.

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37. The claimant said in his submission that he was now focusing on the 2 days in March on which he believed he was not paid, but there is simply no evidence that the claimant was not paid for any day in March. He received his full basic pay. There were adjustments made to that pay as was normal, in terms of night premium hours, but there was no deduction to his pay in that month. He received what was properly payable to him.

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38. It is entirely unclear which two days in March the claimant now says he was not paid for. He received full pay for the month. It seems, as I have said, that the claimant believes that he is owed his basic pay, plus holiday pay on top; however, holiday pay is paid throughout the year, and when he has a day's leave, the respondent pay him for that day notwithstanding his absence. As a result, he was paid for his absences on holiday.

39. The claimant's argument that he should have received an additional amount is baseless.

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40. Given that the claimant has restricted his claim to the two days he says are outstanding in March, and that the Tribunal has not found that the claimant was in any way deprived of holiday pay to which he was entitled, the claim must fail.

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41. However, it is appropriate to deal with the issues as drafted, in order to provide answers for the parties, in the order in which they appear above:

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- (a) The Tribunal notes this statement of the basic claim.
- (b) The claimant was paid in respect of each day's holiday which he took in the period up to 31 March 2024, at the appropriate rate of pay.
- (c) The claimant did not pursue this claim before me.
- (d) The dates on which the claimant took annual leave in the leave year up to 31 March 2024 were 17 and 18 February, 8 to 12, 16 and 25 to 28 March, a total of 11 days, which amounted to his accrued holiday entitlement for that leave year.

- (e) No, the claimant did not suffer any unauthorised deductions from his wages.
- (f) He is not entitled to a decision that he suffered unauthorised deductions from his wages.

5 (g) The claimant is not entitled to any compensation under section 24(1) or 24(2) of the Employment Rights Act 1996.

(h) The claimant did not pursue this aspect of his claim.

(i) No unauthorised deductions were made from the claimant's pay in the period from 1 August to 2 September 2024 on 27 September 2024.

10 42. Accordingly, the claimant's claim fails, and is dismissed.

Employment Judge M MacLeod

Date sent to parties

13 February 2025