



EMPLOYMENT TRIBUNALS

Claimant: Ms Vivienne Osborne

Respondent: Ms Joanne Ralls

Heard at: Exeter Employment Tribunal **On:** 29 September 2017

Before: Employment Judge Housego

Representation

Claimant: In person

Respondent: In person

JUDGMENT

The Respondent is ordered to pay to the Claimant outstanding holiday pay of £1,160

REASONS

- 1) In this case the claimant seeks payment of holiday pay outstanding at the end of her employment, on 19 May 2017.
- 2) The claimant did not have a written contract of employment.
- 3) The respondent accepts that holiday pay is due, but does not agree the claimant's calculation.
- 4) It is agreed that holiday pay is to be calculated at £8 an hour, and the claimant's record of the hours that she worked is agreed by the respondent.
- 5) It is common ground that the holiday year was the financial year.
- 6) The claimant has taken some holiday, and that is been allowed for in the calculation she has made, as the respondent accepts.
- 7) The claimant's calculation was made using the government website. The respondent also made the calculation using this website, but used whole days, rather than hours, and did not include overtime.
- 8) The claimant's method of calculation is the correct one, as she worked variable hours.

9) However her calculation included periods prior to 2 years before the ending of her employment, which was on 19 May 2017. Any holiday pay accrued more than 2 years before the end of her employment is not recoverable.

10) The claimant's calculation is for 153 hours 46 minutes. From that calculation has to be deducted the period from November 2014 to 18 May 2015, as that is more than two years ago. This means excluding the entirety of the 2014/2015 calculation, reducing the claimant's calculation to 149 hours.

11) The period from the start of the holiday year to 18 May is about 10% of that year. The claimant calculated 39 hours holiday paid for 2014/2015. Reducing this by 10%, approximately, gives a figure of 35 hours for that year.

12) Reducing the 149 hours by that further 4 hours gives 145 hours, at £8 an hour, which is £1160, and it is this sum that I order the respondent to pay to the claimant.

13) The claimant did not earn enough to pay tax, and for the most part not enough to pay national insurance. There is no deduction to be made from the holiday pay due to the claimant.

14) The claimant paid fees to get the claim issued, and for this hearing. I do not order the respondent to pay those fees because the Supreme Court has ruled such fees to be unlawful, and in due course the claimant will be reimbursed by the government.

Employment Judge Housego

Date: 10 November 2017_____