



EMPLOYMENT TRIBUNALS

Claimant: Mr A Ghumman

Respondent: (1) The Royal Borough of Windsor and Maidenhead
(2) The Governing Body of Newlands Girls' school

Heard at: Reading **On:** 29 August 2017

Before: Employment Judge Gumbiti-Zimuto
Members: Mr A Mancey and Mr C Morley

Representation:

Claimant: In Person

Respondent: Miss J Lee (counsel)

UPON Reconsideration on the initiative of the Tribunal pursuant to rule 73 of the Employment Tribunals Rules of Procedure 2013

JUDGMENT

The Judgment of the Tribunal sent to the parties on the 2 November 2016 is varied as follows:

“5. The Tribunal declares that the respondent has made an unlawful deduction from the claimant’s wages in that the respondent has failed to pay to the claimant holiday pay. The respondent is ordered to pay to the claimant the sum of £10,827.62.”

REASONS

1. In a judgment with reasons sent to the parties on the 2 November 2016 the Employment Tribunal stated at paragraph 5 of the Judgment that: “The Tribunal declares that the respondent has made an unlawful deduction from the claimant’s wages in that the respondent has failed to pay to the claimant holiday pay. The respondent is ordered to pay to the claimant the sum of £6790.”
2. In paragraph 68 of the reasons the Tribunal stated: “The limitation imposed by section 23(4A) relates to claims presented on or after 1 July 2015. The Tribunal considered that the provisions applied to this case and did not consider the calculation of holiday pay beyond two years. It became apparent after the decision was announced and reasons given to the parties in the terms set out above that the Employment Tribunal was in error in applying the provisions of

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section 23(4A) as imposing a limitation on the claimant's claim for holiday pay in respect of the claim presented on the 27 May 2015. It is therefore the intention of the tribunal to list this part of the claim for a reconsideration hearing to consider the calculation of the amount of the award for holiday pay. The parties are at liberty having regard to the decision we have made on liability to pay holiday pay to agree the amount. Unless the parties notify the Tribunal that they have agreed amount of the award for holiday pay the reconsideration hearing to deal with this matter will take place on the 12 December 2016."

3. The hearing did not take place on the 12 December 2016 and was eventually listed to take place on the 29 August 2017.
4. The respondent has not provided any further evidence to the Tribunal.
5. The claimant has made submissions as to the calculation of his holiday pay. The claimant has taken the figure from his P60 and has then divided that figure by the number of days that he has worked in the relevant pay year and arrived at a daily rate of pay. This daily rate of pay differs from year to year depending on the number of days that the claimant has worked. The claimant has then multiplied the daily rate by 28 to get the amount of holiday pay that he claims to be entitled to recover. In respect of the year 2015/2016 the claimant has adopted a different approach he has taken the amount of pay in his P60 and divided that by one twelfth to arrive at a figure for holiday pay for that year. He claims £14,242.29 was due of which he has been paid £6790.
6. The claimant says that he should have been paid holiday pay as follows:

2012/2013	£4,369.40
2013/2014	£4,976.72
2014/2015	£4,112.64
2015/2016	£783.53
7. The respondent argued that the claimant should not have any such award. The respondent's position is that the claimant is not entitled to recover any further sums from the respondent in respect of holiday pay. The respondent states that the claimant's claim does not form a series of deductions, in short it is said that there is more than three months between each alleged payment due and therefore the claims are out of time. The respondent points out that the claimant has in any event been paid £6790 pursuant to the Judgment. Nothing more is due.
8. The respondent's arguments were made at the previous hearing and the Tribunal came to the conclusions set out in the judgment. Those matters are not here under reconsideration.

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9. The respondent further states that in any event that the Tribunal has made a determination about the rate of holiday pay. If a further sum is to be ordered to be paid to the claimant it should be based on the amount already found by the Tribunal.
10. The parties have not exchanged any evidence on the issue of the rate of the holiday pay. The respondent does not accept the claimant's methods of calculation. The rate of the holiday pay is not a matter which is specifically under consideration in this reconsideration hearing. What we are concerned with is to quantify an award to the claimant for the period going back to 2012/2013. As the parties have not engaged on the question of the rate of holiday pay the Tribunal is going to apply the rate that was agreed at the previous hearing.
11. Applying the rate agreed at the previous hearing of £121.25 per day the Tribunal has conclude that the claimant is entitled to an award in the sum of £10,827.62 in respect of holiday pay. This is arrived at by the following calculation:
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|-----------|-------------------------|
| 2012/2013 | 28 x £121.25 = £3395 |
| 2013/2014 | 28 x £121.25 = £3395 |
| 2014/2015 | 28 x £121.25 = £3395 |
| 2015/2016 | 5.3 x £121.25 = £642.62 |
12. The judgment of the Tribunal sent to the parties on the 2 November 2016 is therefore varied as follows:
- “5. The Tribunal declares that the respondent has made an unlawful deduction from the claimant's wages in that the respondent has failed to pay to the claimant holiday pay. The respondent is ordered to pay to the claimant the sum of £10,827.62.”

Employment Judge Gumbiti-Zimuto
13 September 2017
JUDGMENT SENT TO THE PARTIES ON

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS