



# EMPLOYMENT TRIBUNALS

## Claimant

Miss A Miller

## Respondent

MyLibrary Limited

AND

**HEARD AT:** London Central **ON:** 21 February 2019

**BEFORE:** Employment Judge Hemmings

## Representation

**For Claimant:** In person

**For Respondent:** Not present

## JUDGMENT

The Judgment of the Employment Tribunal is to order the Respondent to pay the sum of £638.98 unpaid wages and holiday pay to the Claimant, the Respondent to comply with the Judgment for payment of that amount within seven days of the date of this Judgment

## REASONS

1. The background to the Claimant's claim in respect of unpaid wages and outstanding holiday pay is comprehensively set out in Employment Judge Mason's record of the Preliminary Hearing–Case Management conducted in private at the Tribunal on 9 January 2019.
2. Today is the Final Hearing listed at that Preliminary Hearing.
3. The Claimant, a litigant in person, has attended this hearing, as she did on 9 January 2019, and no-one from the Respondent or appointed to represent the Respondent is present today and there being no explanation for the absence. That was also the position on 9 January 2019.
4. The Claimant applies for her claims to proceed today in the Respondent's absence.
5. The Respondent entered a Response but otherwise has not participated, it appears, in any other respect with these proceedings. In particular the Respondent has not complied with any of the Case Management Orders made on 9 January 2019 and there has been no direct contact about these proceedings from the Respondent to the Claimant.

6. The Claimant has complied with the Case Management Orders and had available for the Tribunal tracked records from the Royal Mail of all the documents she has posted by recorded delivery to the Respondent.
7. I note that the Tribunal received an email on 29 January 2019 from an HR Consultancy which stated that it advised the Respondent on its HR affairs. The email requested a copy of the Claim Form notwithstanding that the Respondent had entered a Response. The Tribunal emailed the requested copy to the HR Consultancy on 31 January 2019. There are no further communications from that HR Consultancy or the Respondent on the Tribunal file.
8. The Claimant was contacted by ACAS this morning at 11.30 am in their conciliation role, apparently at the Respondent's initiative. The Tribunal respects the confidentiality of the ACAS role in these circumstances and restricted its enquiry to establishing that a last minute settlement was not reached. The Tribunal views the ACAS intervention in completely neutral terms, evidentially, because ACAS has a statutory conciliation role in all live Tribunal matters and the Tribunal is therefore unsurprised at its involvement this morning.
9. The objective of the Employment Tribunal, expressed in general terms, is to conduct fair proceedings resulting in just outcomes. Accordingly, dealing with cases in the absence of either party is problematical. Nevertheless, in a case where a Respondent is aware of the proceedings and ignores them there is little alternative but to proceed with the Hearing in their absence, requiring the Claimant nevertheless to prove the merits of her claims and the remedies she seeks.
10. I have considered adjourning the proceedings to provide the Respondent with a final, apparently undeserved, opportunity to engage with these proceedings but any prognosis for such engagement is pessimistic, and a postponement both unfair to the Claimant in the context of her responsible conduct of these proceedings and a probable waste of scarce judicial resources. Accordingly, this Final Hearing proceeded in the absence of the Respondent.
11. The Tribunal had before it a Claim Form and a Response, the Claimant's statement and a set of documents assembled by the Claimant, marked C1. The Claimant testified to the grounds of claim set out in the Claim Form, the truth of her statement, and to the authenticity of the documents in C1.

### THE ISSUES

12. The issues are whether the Respondent owes the Claimant holiday pay in respect of outstanding holiday entitlement at the date of termination of employment and unpaid wages calculated as at the date of the expiry of the Claimant's notice of resignation.

### THE FACTS

13. In the absence of any contrary evidence, and in the context of the Tribunal testing the Claimant's evidence, and requiring her to satisfy the Tribunal of its integrity the Tribunal reached the following findings of fact, having been satisfied as to the truth and reliability of the account given by the Claimant to the Tribunal.
14. The Claimant was employed by the Respondent between 22 February 2018 and 20 July 2018 as its Sales and Events Manager. Her gross salary was £26,000 per annum. Her contract provided for 28 days holiday each year including 8 public holidays.

15. The Claimant expected her final payslip for July 2018 to show a nett sum after PAYE due to her of £600 salary and outstanding holiday pay of £899.96, totalling £1,297.76. By happy coincidence those figures are precisely the figures set out on the payslip generated by, or on behalf of, the Respondent and sent to the Claimant.
16. However, the Respondent only paid half that amount, on 20 August 2018, i.e £638.98 into the Claimant's bank account.
17. No satisfactory explanation was provided to the Claimant in spite of enquiries by her, mandatory ACAS Early Conciliation did not resolve the dispute, and ultimately the Claimant presented these claims to the Employment Tribunal in a procedurally valid manner.
18. The Respondent entered a Response in terms which are far from clear. The Grounds of Resistance appear to assert that in spite of the Respondent's payslip they withheld payment because she had taken unauthorised time off work and had accrued only six days annual leave but had taken nine days.
19. The Claimant has satisfied me today from her testimony and documents that her claims are well-founded. I am open to being persuaded otherwise if there are convincing propositions from the Respondent to counter the evidence and testimony the Claimant has placed before me. However, no officer of the Respondent is present nor has the Respondent sent witnesses or a representative to present their counter-case to the Claimant's case.
20. The Claimant confirmed at the Preliminary Hearing on 9 January 2019 that she was no longer pursuing a claim for the purchase of a laptop.

21. SUBMISSIONS

The Claimant did not wish to make any closing submission, preferring to rely on her Claim Form, her testimony, and the documents at C1.

22. THE LAW

The Employment Tribunal's function is to procure and conduct fair hearings resulting in just outcomes. It does so by applying the relevant principles of employment law to its findings of fact in respect of workplace related claims within its jurisdiction. In doing so the Tribunal seeks to fulfil the Overriding Objective set out in Rule 2.

The applicable principles of law, concisely identified as required by Rule 62(5) of Schedule I of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, are as follows, acknowledging that it is the statutory text which must be applied in reaching a judgment whilst having regard to the clarification and guidance on that text available to the Tribunal through the reported Decisions of the Higher Courts.

The law applied in the Employment Tribunal is to be found in the Common Law in relation to contract disputes but otherwise primarily in Acts of Parliament and Regulations made under the authority of Parliament, and found within authoritative Appeal Court Decisions explaining the operation and effect of those Parliamentary sources of law and reported in various hard-copy and on-line libraries of Law Reports and, finally, found within the body of recorded case-law constituting the Common Law of the land.

Unlawful Deduction from Wages

It is unlawful for an employer, by virtue of Part II of the Employment Rights Act 1996 to withhold wages which have been earned in the absence of any lawful excuse for withholding them. In law the non-payment is referred to as a "deduction".

Breach Of Contract

The starting point for the Tribunal is to identify the intention of the parties to the contract and to require the parties to honour the enforceable obligations they intended to create in the event of a dispute which comes before a Court of Law.

The burden of proof in a contract claim is on the Claimant i.e to succeed the Claimant must establish the merits of their claim and meet the standard of proof. That standard in a contract claim is to establish the facts underpinning the merits of the claim on the balance of probabilities.

Holiday Pay

The Working Time Regulations 1998 provide that, in the absence of a contractual entitlement to a higher amount, an employee is entitled to 28 days paid annual leave accruing pro-rata on a monthly basis.

23. CONCLUSIONS

Upon my findings of fact, I am satisfied that the Respondent failed to pay the full amount due to the Claimant in respect of outstanding wages and holiday entitlement and did so without any legitimate legal justification. The non-payment of wages was a breach of Part II of the Employment Rights Act 1996. The non-payment of holiday pay was a breach of the Working Time Regulations. Both non-payments also constituted breaches of contract, there being no lawful justification for not honouring the Claimant's entitlement to both payments.

24. REMEDY

- (1) The Judgment of the Employment Tribunal is to order the Respondent to pay the sum of £638.98 unpaid wages and holiday pay to the Claimant.
- (2) The Respondent is to comply with the Judgment for the payment of that amount within seven days of the date below of this Judgment.

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**Employment Judge Hemmings**

Date 21 February 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON

25 February 2019

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FOR THE TRIBUNAL OFFICE