



EMPLOYMENT TRIBUNALS

Claimant

Miss E Dewick

v

Respondent

Cambridge Care Company Limited

Heard at: Cambridge (by CVP)

On: 13 January 2021

Before: Employment Judge Bloom

Appearances

For the Claimant: In person.

For the Respondent: Mr H King (Counsel).

COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals.

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was by Cloud Video Platform (V). A face to face hearing was not held because it was not practicable during the current pandemic and all issues could be determined in a remote hearing on the papers.

RESERVED JUDGMENT

The Claimant's Claim for accrued holiday pay fails and is therefore dismissed. The Respondent's Counterclaim for Breach of Contract is dismissed upon withdrawal. The name of the Respondent is amended from Penny Overy to Cambridge Care Company Limited.

REASONS

1. It was accepted by the Claimant at the commencement of the Hearing that she was employed not by Ms Penny Overy, a Director of the Respondent, but by the limited company itself, i.e. Cambridge Care Company Limited. By consent the name of the Respondent was thereby amended to that company.

2. The Claimant appeared in person and represented herself. The Respondent was represented by Mr King. Ms Overy was unable to attend the Hearing due to childcare commitments. However, after some discussion, it was decided the case could proceed without her. There was no need for her to give evidence and the Respondent was represented by Counsel.
3. The facts were agreed. The Claimant was employed by the Respondent between 30th September 2019 and 6th April 2020. The Respondent employs a number of care workers and the Claimant was employed in that capacity.
4. It was agreed that the holiday year used for the purposes of calculating holiday entitlement ran from 1st April to 31st March the following year. The relevant holiday year therefore in respect of these proceedings was the period covering 1st April 2019 until 31st March 2020. It was agreed that the Claimant's employment came to an end on 6th April 2020, i.e. during the course of the following holiday year by reason of the Claimant's resignation.
5. It was agreed that the Claimant was paid the gross sum per hour of £8.27. She worked eight hours a day. She did not take any annual leave between the commencement of her employment and the end of the holiday year on 31st March 2020. The Claimant claims she is owed her statutory entitlement for that period which amounts to one half of the statutory entitlement, i.e. (rounded up) to 14 days.
6. The Respondent denies that the Claimant is owed any sum by way of accrued holiday. It was a contractual term contained within the Respondent's Handbook that any outstanding holiday entitlement could not be carried over to the following year. In other words, the Respondent engaged in a "use it or lose it" practice regarding holidays. The Claimant took no holiday during that period and booked no holiday during that period.
7. In helpful submissions to me Mr King provided a Skeleton Argument. That Skeleton Argument was not available to me during the course of the Hearing because it had only been e-mailed to the Employment Tribunal office approximately one hour before the Hearing commenced. I was conducting this Hearing via CVP and was not in an Employment Tribunal Centre. I decided therefore to reserve judgment to enable me to consider Mr King's Skeleton Argument. I have subsequently received it and I have considered its content.
8. I agree with Mr King's submissions. Although it is harsh insofar as the Claimant is concerned, in my judgment she has lost the right to any accrued holiday pay for the period of her employment ending on 31st March 2020. This is by virtue of the Working Time Regulations 1998.

9. Regulation 13(9) of the 1998 Regulations states that any entitlement to statutory holiday must be taken in the leave year in respect of which it is due and it cannot be replaced by a payment in lieu, except where the worker's employment is terminated. The Claimant's employment was not terminated prior to 31st March 2020. It was terminated six days later on 6th April 2020. Regulation 14 of the 1998 Regulations must then be considered. Regulation 14 enables a worker to be compensated for any accrued holiday "if the employment is terminated during the course of his (her) leave year". The Claimant's employment was terminated on 6th April 2020, i.e. in the next holiday year commencing on 1st April 2020 and ending on 31st March 2021. By virtue of the 1998 Regulations therefore the Claimant is unable to claim accrued holiday pay for the previous holiday year.
10. The Claimant was not prevented from taking her holiday during the relevant period by reason of e.g. sickness or maternity leave. She simply chose not to book and take holidays during that period.
11. There was no contractual entitlement enabling the Claimant to carry forward any outstanding accrued holiday. In fact, the contractual provisions contained within the Respondent's Handbook specifically prevented that.
12. Although it seems harsh therefore that the Claimant has lost any entitlement to accrued holiday, by virtue of the 1998 Regulations she has lost that entitlement. As a consequence the Claimant's Claim must fail and is, as a result, dismissed.

Employment Judge Bloom

Date: 21 January 2021

Sent to the parties on: ...26/01/2021....

.....S.Kent.....

For the Tribunal Office