



# THE EMPLOYMENT TRIBUNALS

**Claimant** Ms J Zalewska

**Respondent** Galicja London Limited

**Heard at  
On** Reading Hearing Centre (via CVP video link)  
28 March 2023

**Before** Employment Judge Langridge

**Representation:**

**Claimant** Mr D Zalewska, claimant's son

**Respondent** Mr S Shostak, director

## JUDGMENT

- (1) The claimant is entitled to be paid the sum of £587.60 by the respondent for holiday pay accrued during her employment.
- (2) The respondent shall pay the claimant the sum of £400 representing two weeks' pay, pursuant to section 38 Employment Act 2002.

## REASONS

1. The claimant was employed by the respondent from 18 May 2021 until 28 November 2021 when she was dismissed. Her claims for unfair dismissal and for a redundancy payment were dismissed by the Tribunal due to her short length of service. This left only her claim for unpaid holiday pay to be dealt with at today's hearing. In its Response to this part of the claim, the respondent did not provide a legally valid defence which took into account the statutory right to paid annual leave under the Working Time Regulations 1998. Instead, the respondent initially defended the claim by saying that the claimant was not entitled to annual leave as she had not passed her trial period. The Tribunal previously struck out this part of the Response and directed that the respondent could participate in this hearing only to the extent permitted by me.

2. The hearing took place by CVP video platform, and the claimant was assisted by her son and by a Polish interpreter. The claimant was in Poland at the time of the hearing whereas her son was in the UK. Only her son had access to the witness statements and documents, though in the event it was possible to hear the case despite these (and other technical) difficulties. I allowed the respondent to take part in the hearing in order to obtain the best evidence about the issues. It was represented through Mr Shostak, director, who also gave evidence on the company's behalf.
3. Both parties had been directed to provide evidence for today's hearing, but unfortunately this was not done fully by either side. In her witness statement the claimant provided no relevant evidence about her entitlement to holiday, nor even about her typical working hours and pay. The respondent, who could be expected to have all the relevant records, provided only a single payslip, a P45 and a handwritten note of weeks worked and time off. Both parties tried to include other evidence critical of each other, but this was excluded as being irrelevant.
4. There was no dispute that the respondent did not comply with its obligation to provide the claimant with written particulars of employment in accordance with section 1 Employment Rights Act 1996. Although there was a difference between the parties as to when the claimant's employment began, she conceded that the correct date was 18 May 2021, and not 28 April 2021 as stated by the respondent.
5. By the time of today's hearing the respondent had changed its defence by asserting that the claimant had in fact been paid all the holiday pay due to her. This contradicted its earlier position, that the claimant had no such entitlement.
6. The issues of fact I had to decide today were:
  - a. The claimant's typical working hours each week (the claimant saying 22 hours compared to the respondent's 15 hours);
  - b. When the claimant's initial hourly rate of £9 increased to £10;
  - c. What, if any, payment the claimant received during or on the termination of her employment in respect of annual leave.
7. Neither the claimant nor the respondent provided satisfactory or reliable evidence about these issues. Both were vague and unclear about the typical working pattern and the total hours worked each week, which were variable. The respondent's note of weeks worked was of limited value because it did not show any pay data, nor did it distinguish between time off for holiday and time off for other reasons such as sickness. It did show that over the 28 weeks of her employment the claimant worked 23 weeks and was absent for 5 weeks. The parties agreed that the terms and conditions of employment were agreed orally at the outset, and that the intention was to increase the claimant's pay to £10 an hour after one month. The respondent provided one payslip, dated 30 June 2021, showing that the claimant was paid £650. It said there were other payslips, which were held by its accountants, but the claimant disputed that she had ever received these.

8. It took some time to elicit oral evidence from the parties on the above points, in order to make findings of fact and from there to do the calculations of holiday pay due. The one clear piece of evidence was the P45 issued to the claimant on termination of her employment. This showed that her total earnings between 18 May 2021 and 28 November 2021 amounted to £4,550. Over the 23 weeks actually worked, this meant the claimant's average weekly earnings were £197.80. Based on an hourly rate of £10 for most of that time, this meant the claimant's average weekly hours were approximately 20 hours per week.
9. On this basis, the claimant's accrued holiday entitlement was 59.9 hours over the period of her employment. Of this, 4 weeks' accrued holiday was payable at £9 per hour (£93.60) and the remainder at £10 per hour (£494.00). Accordingly, I calculated the total holiday accrued to be £587.60.
10. The claimant having succeeded with her claim, I determined that the respondent should pay her two weeks' pay for failure to provide written particulars of employment.
11. I declined to make any order for costs in the claimant's favour based on preparation time, given that costs are awarded only exceptionally, and the preparation of the case was not particularly helpful on either side.

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**Employment Judge Langridge**

**JUDGMENT SIGNED BY EMPLOYMENT  
JUDGE ON 10 May 2023**

**JUDGMENT SENT TO THE PARTIES ON  
12/5/2023**

**AND ENTERED IN THE REGISTER  
FOR THE TRIBUNAL**

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