



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH

BEFORE: REGIONAL EMPLOYMENT JUDGE HILDEBRAND
(sitting alone)

BETWEEN:

Claimant Miss L Kennedy

AND

Respondent Mr N Oram

ON: Thursday, 23rd of March 2017

APPEARANCES:

For the Claimant: Mr Y Foh, Lay Representative

For the Respondent: In Person
Mrs Oram, Wife

RESERVED JUDGMENT

The judgement of the tribunal is that the Claimant's claim fails and it is dismissed.

REASONS

1. In her claim presented to the tribunal on 15 January 2017 the Claimant claimed that she was entitled to accrued holiday remuneration due to her on termination of employment. She claimed that she had been entitled to 7 days holiday on dates of her choosing in the calendar year 2016 in respect of the proportion of the year she worked up to her resignation. She accepted that she had taken three days of annual leave on dates of her choosing and contended that the other holidays she had taken during the year were on dates selected by the respondent.

2. The respondent resisted the claim on the grounds that the holidays taken by the Claimant during the year were not holidays for which she was solely responsible for the selection of the days. Mrs Oram contended that at the beginning of 2016 she had discussed holidays with the Claimant and agreed that both parties would take holiday at Easter. Mrs Oram did not accept that this was holiday taken at employer's choice.

The Evidence

3. I heard evidence from the Claimant and from Mr and Mrs Oram.
4. The Claimant was employed under a contract of employment signed by both parties and dated 15th of October 2013. The start date of the employment was Monday, 20 January 2014. Clause 7 dealt with holidays and provided that the Claimant would be entitled to 16 days holiday in each holiday year. That number of days was selected because the Claimant's working week was four working days and accordingly four weeks equated to 16 days. Separate provision was made for statutory holidays in respect of the Claimant's additional leave.
5. Clause 7.4 provided as follows "The employer reserves the right to nominate up to 8 days per year on which your holiday entitlement must be used and you will be given at least one month's notice of these dates."
6. Clause 7.6 states that when the Employer takes holiday and the Claimant's services are not required the Employer reserves the right to lay off the Claimant and agrees to pay the Claimant full pay for the duration of the layoff.
7. Clause 7.7 provided that on termination of employment holiday pay would be given for earned and unused days of holiday entitlement in the year.
8. It was accepted by the Claimant that she took 19 days holiday in the period up to the termination of her employment in November 2016. This figure was reached because the employer opted to pay significantly more holiday than the eight days which it was entitled to nominate for the Claimant under the provisions of clause 7.4. The Claimant was not required to work on these days and the employer made payment for them. For example the Respondents took two weeks from 8 August and then extended their holiday expecting the Claimant to attend on 30 August, which it the Claimant overlooked. This is the reason the Claimant conceded she had taken 30 August as holiday.
9. The Claimant gave notice to terminate her employment on 28 September 2016 and her employment came to an end on 18 November 2016.

Submissions and Conclusion

10. The Claimant argues that the contract of employment provided eight days holiday for her to nominate and eight days for the employer to nominate. She claims that the effect of clause 7.7 was that since she had not been able to nominate the pro rata number of seven days she was entitled to be paid for the balance of four days on termination of employment.

11. Unfortunately the Claimant's argument is not borne out by the contractual provisions. It is clear from the contract that although the employer had the right to require the Claimant to take 8 day's holiday there was no description of unused holiday by the Claimant as something for which the employer had to pay on termination. The Claimant had 19 days of paid holiday in the year. There was no designation of any of these days as lay off under the provisions of Clause 7.6. On any reasonable view of the interactions of the parties the Claimant had, as she accepted, 19 days holiday in the year. That exceeded her entitlement and there is accordingly no payment due to her on the termination of her employment.

Regional Employment Judge Hildebrand

Date: 7 April 2017