



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr. T. Adebisi

**Respondents:** Force 10 Security Ltd (in administration)

**Heard at:** London Central  
**Before:** Employment Judge Goodman

**On:** 9 October 2018

## **Representation**

**Claimant:** Mr. J. Wallace, counsel

**Respondent:** no appearance

## **JUDGMENT**

1. The respondent is ordered to pay the claimant:
  - 1.1 unpaid wages in the gross sum of £855
  - 1.2 holiday pay in the gross sum of £1,312.50
2. No order on the claim for notice.

## **REASONS**

1. On June 2018 the claimant presented claims to the tribunal for unpaid wages, holiday pay and pay in lieu of notice.
2. The respondent was served at the address given by the claimant, 1 Canada Square, Level 37, Canary Wharf, London E14 5AA, but has not responded to the claim. Documents in the bundle today show an administrator was appointed in the High Court on 23 March 2018. Emails handed in at the hearing between the claimant's solicitor and the administrators, Simon Franklin Plant, show the administrator was told of the claim and the hearing date on 20 September 2018.
3. I discussed with counsel whether, as the facts suggested a possible transfer of undertaking when the contract passed from the respondent to Nationwide, and the respondent may not be able to satisfy judgment, Nationwide should be joined a second respondent and the hearing adjourned. I was informed those were not his instructions.

### **Evidence**

4. On 13 September the claimant's solicitors were asked to file a schedule of loss with a view to entering a rule 21 judgment and vacating the hearing, but they did not reply. Today the claimant attended with counsel, and a witness statement and a bundle of documents, but no schedule.
5. In lieu of schedule, counsel stated the claims were 2 days unpaid wages for February, 24 days holiday pay, and 7 days unpaid for 3 to 9 March 2018, and a

week's notice pay.

6. The claimant gave evidence and showed me a series of text messages between him and the company's former director (resigned 3 February 2017, according to Companies House) John O'Shea.

### **Factual Findings**

7. The claimant was employed by the respondent, then called Alpine Security, as a security guard on 24 May 2016. He worked at Chelsea island, and from 10 January 2018 at Paddington Basin.
8. The bundle does not have a contract of employment. There are some pay slips showing variable earnings, and a specimen rota which shows guards working 4 shifts a week, each shift 12 hours (days) or 13 hours (nights). The claimant said there was no break. The hourly rate was £7.50 per hour. Sometimes guards were asked to work additional shifts at short notice. They were paid for the previous month by bank transfer on the 10<sup>th</sup> day of the month. The bank statement shows payment on 10 February 2018 for January. The payslips show 200 hours worked in January 2018 and 244 in December 2018. If a guard worked 4 nights one week then 4 days another that would be 100 hours, so pay for the month on this pattern will be in the order of 200 hours. The pay after tax and national insurance for those two months was £1,639.96 and £1,357.75 respectively.
9. He was entitled to 28 days holiday a year. The company's holiday year ran from April to March. Holiday had to be requested three weeks in advance. In mid December the claimant requested holiday from 2 to 28 February, stated on the form to be 24 days. The form in the bundle is the claimant's copy which he says was posted to the area manager, Nicholas. He says he received an email approving the holiday, which he had sent to his solicitor, but it is not in the bundle. I was not told what holiday the claimant had already taken in 2017-18. In security it could not be assumed that staff will not work on public holidays so he may have had this amount remaining to him; his payslips for January and December show payment for 3 bank holidays as well as shifts worked, a bank holiday being paid at 12 hours. I accept his evidence, despite the concerning lack of the document.
10. On return from holiday he phoned on 1 March to get his rota and was told the HR manager was off sick and the director, Mr O'Shea, was busy. He attended site anyway on 2 March, and there was told a new company, Nationwide Security, had taken over, there was no work for him, and he should call his own boss. He messaged Mr O'Shea on 3 and then 5 March and got no reply. On 10 March, payday, he found he had not been paid for February. He sent another message about this. He asked to discuss it. Mr O'Shea replied variously that he was busy or in a meeting. The last message is on 15 March.
11. The claimant had decided to look for other work and started with Bridge Security on 11 March, on similar hours and sometimes a higher hourly rate.

### **Relevant Law**

12. The Employment Rights Act at sections 13-27 permits claims by workers for unpaid wages, being the difference between what is "properly payable" and what was received.
13. Section 30 of the Working Time Regulations provides for 28 days holiday a year (including bank holidays).
14. The Employment Rights Act at section 86 provides minimum terms of notice of termination. The claimant was entitled to one week. There is a common law duty to mitigate loss.

### **Discussion and Conclusion**

15. Unpaid Wages. The rota shows the claimant working from 18:00 to 07:00 (13 hour shifts) on 2,3,4 February so he is owed £292.50; deductions would have been made - 20% tax and 12 % national insurance, but as the award if paid will be taxed in the year of receipt, and payable by the claimant, I award the gross

sum.

16. For the holiday from 5-28 February, that is 3.5 weeks at 50 hours (average) per week, so 175 hours, or £1,312.50 before deductions.
17. For the period thereafter, he was available to work but none was provided, until he treated the contract as having been repudiated by the employer's lack of response and failure to pay, so a further 1.5 weeks at 50 hours per week, £562.50 gross.
18. Thereafter he was entitled to one week's notice which he did not receive. Prudently anticipating the position from his employer's silence he had already found other work and so mitigated his loss. There is therefore no award.

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Employment Judge

Date 10 October 2018

JUDGMENT SENT TO THE PARTIES ON

11 October 2018

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FOR THE TRIBUNAL OFFICE