



EMPLOYMENT TRIBUNALS

Claimant: Mr. D. Malham

Respondent: Dexon Limited

Heard at: Bristol

On: February 8th 2018

Before: Employment Judge R. Harper

Representation

Claimant: Mr. R. John

Respondent: No attendance

JUDGMENT

1. The claim for holiday pay succeeds and the respondent is ordered to pay to the claimant the sum of £1,113.68.
2. The respondent is also ordered to pay the sum of £ 2,620.80 including VAT contribution towards the reasonably incurred claimant's legal costs.

REASONS

1. This is a claim for alleged unpaid holiday pay. It is clear from the ET3 and also from the correspondence from the respondent that it saw many wider issues to be determined. The respondent has clearly used those other reasons as an excuse not to pay what is owed to the claimant. However all those wider issues are completely irrelevant. It is not legally possible for the respondent, within these proceedings, to make a counterclaim or claim set-off. The sole issues in this case are 1. Was the claimant entitled to holiday pay ? 2. If so, what is the relevant period of calculation and how many days holiday is he owed ? 3. How much compensation is he entitled to receive ?
2. I heard evidence on Oath from the claimant. By an email timed 1403 yesterday Mr.Yavin, the director of the respondent, sought a postponement of today's hearing. He produced a copy of a handwritten note which was not on headed notepaper together with a "GP Radiology Request" form from Chelsea and Westminster Hospital NHS Foundation Trust. That form did not refer to any appointment date. Neither document stated that Mr. Yavin was unable to attend the tribunal hearing. I ruled that the case should proceed and the tribunal email telling him that was sent to

Mr. Yavin at 1538 yesterday. Nothing further was heard from him. He did not attend today's hearing which went ahead without him. I read all the written documentation on the file which had been supplied by the respondent which was factored in to my decision making and my decision.

3. Case management orders had been made by the tribunal on 14th December 2017. The claimant had complied. The respondent had not.
4. The claimant worked for the respondent between 13th February 2017 to 31st July 2017. Between 13th February 2018 to 30th June 2018 the claimant worked full time and from 1st July 2018 to 31st July 2018 he worked 3 days a week.
5. The claimant is entitled to 24 days holiday. I am satisfied that the calculations on the Schedule of Loss are correct (save for the daily rate of pay under Part A which is a typo) and adopt them as my findings of fact. I find that the claimant is entitled to $10 \times \text{£} 117.23 = \text{£} 1,117.23$ in respect of his full time working; $2 \times \text{£}117.23 = \text{£} 234.46$ for the part time working period; less $2.5 \text{ days} \times \text{£}117.23 = \text{£}293.08$ for leave taken during employment.
6. The appropriate calculation is therefore $\text{£} 1,172.30 + \text{£}234.46 - \text{£}293.08 = \text{£}1,113.68$.
7. I was shown a letter from DAS Law dated 31/8/17 to the respondent and an extremely clear letter from DAS Law written on 7/12/17 to the respondent threatening costs if the claimant succeeded. The Respondent can have been left in no doubt that if the claimant succeeded a claim for costs would be considered today. Having regard to the latter letter and to Rule 76 I am completely satisfied that the response had no reasonable prospect of success and that the respondent's conduct of their resistance to the claim was unreasonable. It is therefore appropriate to make an Order for Costs. I was shown a Schedule of Costs including Counsel's Brief Fee. I am satisfied that the costs were reasonably and properly incurred and are at a reasonable level. I therefore make an Order for costs as above.

Employment Judge R. Harper

Date: 8th February 2018

JUDGMENT & REASONS SENT TO THE PARTIES ON

22nd February 2018

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FOR THE TRIBUNAL OFFICE