



## EMPLOYMENT TRIBUNALS

**Claimant**  
**Mr Nasir Kayani**

**Respondent**  
**London Luton Airport**

v

**Heard at: Watford**

**On: 2 November 2018**

**Before: Employment Judge Tuck**

**Appearances:**

**For the Claimant: In person**

**For the Respondent: Ms Hudson, Solicitor.**

## JUDGMENT

1. The claimant's claim of:
  - 1.1 Notice pay fails and is dismissed.
  - 1.2 Holiday pay is upheld and the claimant is awarded the sum of £98.81.
  - 1.3 Unlawful deductions from wages regarding overtime is agreed in the sum of £91.58.

**TOTAL: £190.39**

## REASONS

2. The claimant was employed by the Respondent between 4 July 2016 and 16 January 2018 as an Airport Security Guard.
3. The claimant's contract of employment provided, inter alia, that after the successful completion of a probationary period notice would be 4 weeks, and that he was entitled to certain overtime rates, and that a full time member of staff was entitled to 25 days annual leave in addition to 8 bank holidays per annum – pro rated for part time employees.

4. The claimant was still in his probationary period at the date his employment was terminated. He received one week's pay in lieu of notice.
5. The claimant set out what days he worked overtime for between 26 December 2017 and 11 January 2018, and the respondent provided pay slips showing when payments were made. Whilst I have every sympathy for the claimant being unable to initially understand what payments were in respect of what days, there was no real challenge to the figures and evidence Ms Hudson produced on behalf of the Respondent, and when the difference between the parties appeared only to be £40, the claimant consented to agree the figure proposed by the Respondent. I have therefore ordered that his claim for overtime is successful in the agreed sum of £91.58.
6. As to notice, the contract is silent as to what the entitlement of those still within their probationary period is. I therefore accept that the entitlement ought to be the statutory minimum of 1 week. The claimant had with him a letter sent to another individual, Mr M, who was dismissed from a security position from the respondent within his probationary period and who was awarded 4 weeks' notice. Ms Hudson stated that other security officers were awarded only 1 weeks' notice, which was the normal for the Respondent's industry and that role. In my judgment, if the claimant was to evidence an entitlement to a period in excess of 1 week notice, he would need to show a term was implied into the contract to pay four weeks' notice even to those within their probationary period. He has only one example of this being done, which is clearly insufficient to show an established custom and practice. I also note that the contract expressly provides for 4 weeks only upon completion of a probationary period – the necessary implication being that prior to completing that period, the notice would be less. I do not find that the claimant has made out this aspect of his claim.
7. As to holiday pay, the contract provides for a full time employee to receive 25 days plus 8 bank holidays. The claimant's contract stated that he worked 17.5 hours per week, though in fact he told me he usually did at least 20 hours per week. He was entitled to overtime when he worked in excess of 25 hours per week. Ms Hudson was not aware of what hours a full time equivalent employee worked. The ET3 stated that the claimant was entitled to 13.5 days holiday, inclusive of bank holidays, - presumably per annum. This however is not set out in the contract, contrary to the assertion in the ET3. Ms Hudson provided a skeleton argument premised on the basis of "25 days leave per annum (plus usual Bank Holidays)", but then she calculated the leave entitlement accrued for the holiday year to the EDT on the basis of 25 days, not 33 days. The parties agreed that the claimant had taken 12 days leave. Ms Hudson said that at the EDT it had been understood that the Claimant had taken 8 days and was owed 5.5 days which had been paid in March 2016. However, only the sum of £132.59 had been paid, and when asked how that could equate to 5 days, she said that his annual salary had been divided by 365 and multiplied by 5.5. This was clearly an erroneous basis of calculation.
8. The claimant was entitled to 6.3 weeks annual leave per annum (i.e. 33 days). He had completed 6.5 months of the leave year at the EDT. This means that he had accrued a right to 3.41 weeks of holiday. He had taken 12 days – i.e. 2.2 weeks, leaving a further 1.2 weeks outstanding at his EDT. A week, the claimant

says, is 20 hours. 1.2 weeks equates to 24 hours. The claimant was paid £132.59 for his outstanding holiday pay. This is 13.75 hours. I am satisfied that he is due a further 10.25 hours, which equates to £98.81 on the basis of an hourly rate of £9.64.

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**Employment Judge Tuck**

2 November 2018

Sent to the parties on:

23 November 2018

For the Tribunal:

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