



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4120144/2018**

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**Held in Glasgow on 28 November 2018**

**Employment Judge: J D Young**

10 **Miss S Kennedy**

**Claimant**  
**No appearance and**  
**No representation**

15 **Preeti Arora T/a The Dental Centre**

**Respondent**  
**Represented by:**  
**Mr R Bhatnagar -**  
**Husband**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The Judgment of the Employment Tribunal is that the claims made by the claimant for payment of notice pay and holiday pay are dismissed.

**REASONS**

**Introduction**

- 25 1. In this case, the claimant presented a claim to the Employment Tribunal on  
13 September 2018 complaining that she was due to be paid by the  
respondent sums in respect of notice pay and holiday pay. In the statement  
of claim, she advised that while the respondent claimed that the full amount  
of notice and holiday payments had been made, 'only two payments have  
30 been made and two (totalling £309) is still outstanding. I have bank  
statements and have also spoken directly to the bank to confirm these  
payments have not been received. I have tried to go through early  
conciliation and even allowed Preeti Arora an extension when she is now  
refusing to pay the remaining amount'.

**E.T. Z4 (WR)**

2. The response from the respondent was that the claimant had resigned from her post as dental nurse on the morning of 27 April 2018 and did not return to work after lunch. In her email of that date, she claimed that accrued overtime and remaining holiday entitlement totalled 13.16 days and therefore she had met her contractual obligation of notice. She worked three days a week and her hours of work were eight hours per day. In claiming that she should be paid for 13.16 days at the hourly pay rate of £8.76 per hour the amount claimed came to a gross payment of £922.26.

3. The respondent's records of overtime and remaining holiday entitlement did not square with the claimant's position but the respondent had decided to pay the claimant the accrued overtime and remaining holiday entitlement which she claimed was due. In that respect, the following payments had been made:-

4 May 2018 – pay for 24 hours being £210.24 gross and £199.41 net.

Payment on 8 May 2018 for 29 hours being £254.04 gross and £194.30 net.

Payment on 19 July 2018 for 53 hours being £464.28 gross and net payment of £333.30.

4. Accordingly, it was the respondent's position that those payments were for a total of 106 hours (24 + 29 + 53) equating to 13.2 days (13 days and two hours) and amounting to a gross pay of £928.56 (210.24 + 254.04 + 464.28). Those payments had been confirmed by their bank and so all payments due and as claimed by the claimant had been paid.

5. In light of the response, the Employment Tribunal wrote to the claimant on 17 October 2018 indicating that the date for the Final Hearing was listed for 28 November 2018 and that no later than 14 days before the hearing, the claimant should write to the Tribunal setting out whether she accepted that the respondent had made the payments which they claimed had been made.

If those payments had been made then the claimant was to set out 'the claim for further sums she says are due to her. If the payment had not been made then the claimant should identify which payments have been made (if any) and which have not'. No response was obtained to that letter.

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6. By letter of 16 November 2018, the Tribunal again wrote to the claimant enclosing a copy of the letter of 17 October 2018 and noting that no reply had been received. It was stated that if the 'hearing is to be able to proceed effectively it is important that the claimant reply to the letter of 17 October 2018 by 23 November 2018 at the very latest.' Any reply should be copied to the respondents and the letter concluded 'if the hearing on 28 November 2018 cannot proceed due to absence of this information, there may be cost implications for the claimant'.

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15 7. By email of 19 November 2018, the claimant advised that 'due to my health I am not fit enough to pursue my case. The stress of having to leave a much loved job and the way I was treated had left me on anti-depressants and so unwell some days I cannot leave the house.' That was followed by a letter from the Tribunal of 21 November 2018 which requested 'clarification that you are withdrawing your claim. Please provide your written reply by return.'

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8. No response was obtained to that request. That was followed by an email of 27 November 2018 from the Tribunal wherein the claimant was requested to 'reply to the Tribunal's letter of 21 November 2018 urgently by return to confirm whether she is withdrawing her claim or if she intends to appear at tomorrow's final hearing.'

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### The hearing

30 9. At the hearing the claimant made no appearance. In terms of rule 47 of schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the Tribunal Rules of Procedure"):-

‘If a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider any information which is available to it, after any enquiries that may be practicable, about the reason for the party’s absence.’

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10. At the final hearing, the respondent was represented by her husband. I considered the information available. There had been an indication given by the claimant that she was not proceeding with her case. She had not responded to the Tribunal advising whether she withdrew her claim. It seemed appropriate to proceed with the hearing in the absence of the claimant particularly given the respondent’s position that any sums sought had been paid and the claimant had not responded to the Tribunal with any indication of whether she agreed that position or not.

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11. At the Hearing, Mr Bhatnagar produced an ordered Inventory of documents numbered 1-15 (R1-15) with separate ‘purple tabbed’ supplementary documents. He spoke to those documents in relation to the claim that was raised by the claimant when she left the Dental Practice.

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12. In terms of an email of 27 April 2018, she indicated that she was due by way of extra hours of overtime and holiday entitlement 13.16 days. The respondent disagreed with that calculation in accordance with the records which were available. It was explained that the respondent had taken over the practice as from January 2018 and that the claimant had been employed by the previous owner of the business from 2014. It was considered that the claimant should only be paid for a total of 3 days and 5 hours after deducting holidays taken and ‘days that you were not here but were paid for’ as detailed to the claimant on 4 May 2018 (R 5).

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13. There then ensued further correspondence between the claimant and the respondent. An attempt was made to set up a grievance meeting in accordance with the respondent’s grievance procedure. There was difficulty over arranging a suitable date. No grievance hearing actually took place and

by letter of 14 June 2018 (R10), the respondent indicated that while they did not agree the position they would make a payment to resolve matters. By letter of 14 June 2018 (R10), they asked the claimant to let them know 'by return if this will resolve all your concerns' following which a payment could be made. In terms of the post office receipt, that letter was delivered to the claimant on 15 June 2018. No response was received and a reminder sent on 5 July 2018 which according to the Royal Mail tracking record (R 12) was signed for by the claimant on 7 July 2018.

14. By letter of 10 July 2018, the claimant advised that she did not receive the letter of 14 June 2018 until 'end of June' and that she had been in touch with Acas who had advised her that her best option is 'to go through an early conciliation'. By letter of 18 July 2018, the respondent advised that it was 'disappointing to note that our recorded deliveries have taken so long to reach you' and emphasised there was no written record of any understanding between the claimant and any previous practice manager with respect to days taken but on 19 July 2018, they would make a payment of the claimed hours due to resolve matters. The letter was delivered to the claimant on 20 July 2018 (R13).

15. By letter of 24 July 2018, the claimant advised the respondent that she would be taking the matter to early conciliation as she had 'a strong case' for compensation (R14). The respondent replied on 31 July 2018 (R15) indicating that all correspondence should be dealt with in a timely manner and they considered the matter was at an end via the payments that had been made.

16. The respondent produced copies of the Practice bank statements showing payments to the claimant on 4 May 2018 of £199.41; a payment on 8 May 2018 to the claimant of £194.30 and payment to the claimant on 19 July 2018 of £333.30. They also produced 'details of employee payments' being pay statements in respect of the payments of 4 May 2018, 8 May 2018 and 19 July 2018. The bank information included confirmation that the payments of

4 May, 8 May and 19 July 2018 were made to the same bank account of the claimant which she had operated since January 2018.

5 17. From the information provided, it was established that the claim made by the claimant that she should be paid for 13.16 days had been satisfied by the payments made over 4 May; 8 May and 19 July 2018 as set out in the ET3 response by the respondent. In those circumstances, the claim is dismissed.

10 18. It was indicated by Mr Bhatnagar that he may wish to make application for a 'preparation time order' in terms of rules 75 and 76 of the Tribunal Rules of Procedure. He acknowledged that such an application should be made within 28 days after the date on which this Judgment is sent. At that time, the claimant would have an opportunity to make representation (in writing or at a hearing as the Tribunal may order) in response to any such application in terms of rule 77 of the Tribunal Rules of Procedure.

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25 **Employment Judge: JD Young**  
**Date of Judgment: 05 December 2018**  
**Entered in register : 10 December 2018**  
**and copied to parties**