



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss K Healy

**Respondents:** Start People Limited

**Heard:** Remotely (by video link) **On:** 23 April 2021

**Before:** Employment Judge S Shore

## **Appearances:**

For the claimant: In person

For the respondent: Mr D Edwards, Director

## **JUDGMENT**

1. The correct name of the respondent is Start People Limited.
2. The claimant's claim of unauthorised deduction of wages (non-payment of holiday pay accrued but not paid) was well-founded and succeeds.
3. The respondent shall pay the claimant 10 days' accrued holiday pay at £65.00 per day = **£650.00** less any required deductions for tax and National Insurance.

## **REASONS**

### **Introduction**

1. The claimant was employed by the respondent from 25 February 2020 until 31 July 2020. The respondent is an agency providing staff. The claimant worked on a single assignment from her start date until 24 March 2020, when the client for whom she was working asked the respondent to furlough her, which it did. The claimant never attended work again before she resigned on 31 July 2020.
2. The claimant presented a claim of unauthorised deduction of wages in respect of holiday pay accrued but not paid to her at the end of her employment.

### **Issues**

3. The issues in the case (questions that the Tribunal had to find answers to) are as follows:

**Status**

- 1.1 What was the claimant's status (i.e. was she a worker or employee)?
- 1.2 What was her contractual entitlement to holiday pay?

**Holiday Pay (Working Time Regulations 1998)**

- 1.3 What was the claimant's leave year?
- 1.4 How much of the leave year had passed when the claimant's employment ended?
- 1.5 How much leave had accrued for the year by that date?
- 1.6 How much paid leave had the claimant taken in the year?
- 1.7 Were any days carried over from previous holiday years?
- 1.8 How many days remain unpaid?
- 1.9 What is the relevant daily rate of pay?

**Unauthorised deductions**

- 1.10 Were the wages paid to the claimant on 31 July 2020 less than the wages she should have been paid?
- 1.11 Was any deduction required or authorised by statute?
- 1.12 Was any deduction required or authorised by a written term of the contract?
- 1.13 Did the claimant have a copy of the contract or written notice of the contract term before the deduction was made?
- 1.14 Did the claimant agree in writing to the deduction before it was made?
- 1.15 How much is the claimant owed?

**Law**

- 1. The UK Government's website advises that almost all workers, including zero-hour contracted workers and those on irregular hours contracts, are legally entitled to 5.6 weeks' paid holiday per year. The exception is those who are genuinely self-employed.

2. For the purposes of calculating holiday entitlement, the statutory 5.6 weeks entitlement is split into 4 weeks derived from EU law (which is set out in regulation 13 of the Working Time Regulations 1998 (“WTR”), and an additional 1.6 weeks from UK law (which is set out in regulation 13A of the WTR).
3. Section 13 of the Employment Rights Act 1996 (“ERA”) gives an employee or a worker the right not to have unauthorised deductions made from their wages. The meaning of ‘wages’ is set out in section 27 of the ERA and includes holiday pay.
4. Under section 23(3)(a) of the ERA, any underpayments of a claimant’s holiday pay can potentially form part of the same series of deductions, whether the holiday pay be properly payable under Regulation 13 or Regulation 13A of the Working Time Regulations 1998 or the Claimants’ contracts of employment.
5. The UK Government introduced the Coronavirus Job Retention Scheme (“CJRS”) in March 2020. It is not legislation: it is a direction with guidance. It does not amend any existing law. Employees and workers had the same rights as before furlough.
6. There was some debate about whether an employee or worker on furlough should be paid 80% or 100% of their holiday pay for periods on furlough, but it has been decided that the appropriate rate is 100%.

### **Housekeeping**

7. The Tribunal issued a brief set of case management orders when the claimant’s claim was accepted. Mr Edwards and the claimant said that they had both complied with the order. I had a number of documents before me that included:
  - 7.2. A copy of the claimant’s contract dated 19 February 2020;
  - 7.3. A copy of the UK Government guidance on furlough and holiday pay; and
  - 7.4. An article from the law firm Shoosmiths on the same subject.
8. The case was only listed for an hour, so I had limited time to deal with the evidence and documents before making a decision.
9. The claimant and Mr Edwards gave evidence in person. I find that both of them were honest.
10. The hearing was conducted by video on the CVP application and ran without any IT issues.

### **Findings of Fact**

11. All findings of fact were made on the balance of probabilities. If a matter was in dispute, I will set out the reasons why I decided to prefer one party’s case over the other. If there was no dispute over a matter, I will either record that with the finding or make no comment as to the reason that a particular finding was made. I have not dealt with every single matter that was raised in evidence or the documents. I have only dealt with matters that I found relevant to the issues I have had to determine.

No application was made by either side to adjourn this hearing in order to complete disclosure or obtain more documents, so I have dealt with the case on the basis of the documents produced to me. I make the following findings.

### Background

12. I should record as a preliminary finding that nearly all the significant facts were not disputed:

12.2. The claimant began work with the respondent on 25 February 2020 because she had seen its advertisement for a work assignment that she was interested in.

12.3. The respondent is not an umbrella agency. It supplies staff to customers and engages people to carry out that work.

12.4. The respondent had a standard contract that described itself as "Contract for Services for Temporary Workers (PAYE)". The claimant confirmed that the contract dated 19 February 2020 was her and that she had read it before signing it.

12.5. The claimant began work on 25 February 2020 and only worked 20 days at the end client. She worked for 37.5 hours on a five-day week. She was paid £337.50 gross per week.

12.6. The claimant was paid £270.00 gross for her first week; £337.50 gross for her second, third and fourth weeks; and £67.50 for her final week.

12.7. The end client requested that the claimant (and another colleague) were furloughed by the respondent, as they wished to keep her services after furlough/lockdown had ended. The respondent paid the claimant for her accrued holiday pay for the 20 days that she had worked.

12.8. The claimant was not paid any accrued holiday pay for the period from 25 March 2020 to 31 July 2020.

13. The claimant says she became aware that she may have a claim for accrued holiday pay as her employment with the respondent neared its end. She found other work and resigned with effect from 31 July 2020.

14. The respondent's position is that it relied on the UK Government's own website and a supporting article on the website of a national firm of solicitors to justify its refusal to pay holiday pay to the claimant. The UK Government advice was:

*"Some agency workers on a contract for services may not be entitled to the accrual of holiday or to take holiday under the Working Time Regulations while on furlough because they are not workers or treated as workers under those regulations when between assignments or otherwise not working on assignments. Contracts may nevertheless include holiday provisions which will continue to operate in the same way as they did prior to the furlough period."*

15. Mr Edwards submitted that the claimant's contract did not require her to be paid holiday pay between assignments.

16. I find that this is not the key point in the case. The key point is that furlough does not affect the terms of the worker's contract. I find that on the facts presented and agreed by both sides, the claimant's assignment at the end client did not end, as she was placed on furlough. That mean that I did not have to make any decisions about the contract or the claimant's status and/or entitlement to holiday pay whilst between assignments.
17. I put the dates that the claimant started furlough and ended her employment in the Gov.uk calculator and find that the claimant had accrued 10 days' leave in that period.
18. The claimant agreed with this figure and with her daily rate of £65.00, so I find that her claim is well-founded and that she should be paid £650.00 before deduction of any tax and NI.

Employment Judge Shore  
23 April 2021