



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Mrs M Lopez**

**v Premier Cleaning Contractors Ltd**

**Heard at:** Leeds (CVP)

**On:** 3 May 2022

**Before:** Employment Judge A James

## **Representation**

**For the Claimant:** In person

**Spanish Interpreter:** Mr J McGregor

**For the Respondent:** Mr S Messruther, Director

# JUDGMENT

- (1) The claim for unauthorised deduction of wages (S.23 Employment Rights Act 1996 ) is upheld in the sum of £6.24.
- (2) The claim for holiday pay (Working Time Regulations 1998) is upheld in the sum of £243.30.
- (3) The respondent shall pay the total amount of £249.54 gross to the claimant as soon as possible, less tax and National Insurance.

# REASONS

## **The issues**

- 1 In her claim form, issued on 28 February 2022, following a period of early conciliation between 11 January and 21 February 2022, the claimant makes claims for wages and holiday pay. The issues which the tribunal had to determine were as follows:
  - a. whether during her employment, the claimant was paid less in wages than she was contractually entitled to; and if so, by so how much?

- b. on the termination of her employment, was the claimant paid all of the accrued holiday pay that she was entitled to; if not, how much extra pay is she entitled to?

## **The hearing**

- 2 The hearing took place on the afternoon of 3 May by video link. The tribunal heard evidence from Mrs Lopez and Mr Messruther. The Judge then summarised his understanding of their respective cases and checked that his understanding was correct. There was insufficient time left for the Judge to make findings of fact, and reach conclusions on the issues. Judgment was therefore reserved.

## **Findings of fact**

- 3 The claimant worked for the respondent as a cleaner between 11 July 2019 and 14 November 2021.
- 4 The claimant was initially employed on two sites in Leeds city centre. In March 2020, as a result of the national lockdown which was imposed during the Covid-19 pandemic, the sites closed temporarily. All staff were placed on furlough.
- 5 One of the sites subsequently reopened. The other site, The Pack Horse, did not. Following the return to work, furlough pay was no longer payable. The claimant returned to work at the reopened site in May 2021. Negotiations took place before then between the respondent and their employees, because the closure of businesses as a result of the pandemic led to less cleaning work being available. An agreement was reached that hours would be reduced, in order to avoid redundancies. Unfortunately, the respondent did not confirm this in writing. That is regrettable, and something which the respondent may wish to consider doing in future, to avoid unnecessary disputes.
- 6 The claimant's new working week guaranteed her 20 hours work per week, rather than the 24 hours which she had previously been guaranteed. The two sites that the claimant was assigned to were The Wardrobe and The Stew and Oysters.
- 7 Rotas for the claimant for the period 26 July 2021 to 12 September 2021 show that claimant was rostered for at least 20 hours, save for the week commencing 30 August, when she was rostered for 18 hours only. Her pay slip for that week shows she was however paid for 20 hours. The claimant says that she emailed the respondent to protest about the reduced hours but records of emails to her supervisor produced by the respondent did not verify that. The claimant did provide any copies of emails to the Tribunal herself. The only email of which there is a record was an email sent on 12 November 2021 confirming that the claimant was resigning from her role. On the balance of probabilities, the tribunal finds that there was an agreement that the claimant's hours would be reduced and that the claimant did not protest about that change in any event.
- 8 From 13 September 2021, the claimant was rostered for 22 hours or more per week. More work has become available at that stage.
- 9 The claimant's pay slips for the relevant period show that she was paid for at least 20 hours work, apart from the payslip for the period 6 to 12 September

when the claimant was paid for 18 hours work and £14.26 'furlough pay' (even though further was not payable at this stage. Mr Messruther was not able to explain why furlough pay was shown as being paid on this payslip). Two hours at £8.91 per hour (which was the claimant's hourly rate), comes to £17.82 - which shows an apparent shortfall for that week of £3.56.

- 10 The payslip for the period 4 to 10 October 2021, shows the claimant was paid £175.52, £2.68 short of 20 hours pay.
- 11 The final payslip, for the week 8 November to 14 November, show the claimant was paid for 8.67 hours. The claimant queried that. There had been a new signing in system introduced and there were teething problems with it. The respondent accepted that the claimant had worked more hours that week, and the claimant was subsequently paid a further £122.61, bringing her wages up to £199.82 for that week. The claimant accepts that.
- 12 The total shortfall in wages, assuming a 20 hour week is therefore £6.24.
- 13 As far as holiday pay is concerned, the claimant says that she only took 24 days holiday during the period she worked for the respondent. No evidence was presented from the claimant, with regard to holiday pay, or holiday taken. It is the respondent's case that all holiday pay due was paid in 2019 and 2020. The respondent's holiday year runs from January to December. During 2021, the pay slips show that the claimant was paid for 50 hours holiday between May and November 2021. During lockdown, the holiday pay due was automatically paid every three months. So the claimant was paid her holiday pay for the period January to March 2021.
- 14 Taking a broad brush approach to the calculation of holiday pay, the payslip up to the period 7 November 2021 shows gross pay of £6184.07. The gross pay shown on the payslip for the period up to 25 July was £3238.26. The difference is £2945.81, for a period between those two slips of 15 weeks. Adding the £6.24 shortfall gives a figure of £2952.05. Average pay for that period was therefore £196.80.

## **Relevant Law**

- 15 section 13 of the Employment Rights Act 1996, gives a worker the right not to suffer an unauthorised deduction of wages. If a worker is not paid the correct amount of wages for any week, they are entitled to bring a claim to an employment tribunal for the shortfall – see section 23.
- 16 Taken together, regulations 13 and 13A of the Working Time Regulations 1998 give a worker an entitlement to 5.6 weeks holiday each year. Regulation 14 gives a worker a right to a payment in lieu of accrued holiday not taken during the holiday year, on termination of their employment. Regulation 30 gives a worker a right to bring a claim to an Employment Tribunal in respect of any shortfall. Where a worker works regular overtime, as appears to be the case for the claimant, the worker is entitled to be paid on the basis of the average wage, over the 13 week period prior to the holiday being taken, not taking into account those weeks when holiday was actually taken.

## **Conclusions**

- 17 An analysis of the claimant's wage slips appears to show a shortfall of £6.24. That apparent shortfall was not explained during the hearing. That amount therefore is found to be due to the claimant.
- 18 As for holiday pay, the claimant was paid all holiday pay due up to the end of March 2021. The period 1 April to 14 November 2021 is 7.5 months, or 0.625 years.
- 19  $5.6 \text{ weeks holiday pay} \times 0.625 \text{ years} = 3.5 \text{ weeks}$ . 3.5 weeks at 196.80 per week is £688.80. The claimant has been paid for 50 hours for that period, or £445.50. The claimant is therefore due the difference, £243.30.
- 20 The total due to the claimant is therefore £249.54 gross.

Employment Judge A James  
North East Region

Dated 18 May 2022