



EMPLOYMENT TRIBUNALS

Claimant: Mr Tony Murray

Respondent: Rossi (Southend On Sea) Limited

Heard at: East London Hearing Centre (by CVP)

On: 3 April 2023

Before: Employment Judge Isaacson

Representation

Claimant: In person

Respondent: L Splavska, litigation consultant

JUDGMENT

The claimant's claim for holiday pay succeeds. The respondent is ordered to pay to the claimant the gross sum of £906.50 to be paid either gross to the claimant or net with tax and NIC being paid to HMRC.

REASONS

1. The claimant presented a claim for holiday pay and other payments on 12 September 2022. The other payments related to unpaid tax payments.
2. EJ Jones directed on 13 March 2023 that the Tribunal had jurisdiction to hear his claims under sections 23 and 24 of the Employment Rights Act 1996 but any tax queries must be directed to HMRC.
3. At the beginning of the hearing I clarified with both parties their position. The parties had produced a joint bundle and witness statements. I heard evidence from the claimant and from the respondent's commercial director. Both parties had an opportunity to summarise their case.
4. Most of the facts were undisputed. The claimant had previously worked for McCarthy's Country Stores (MCC) and his employment transferred to the respondent on 6 December 2021, following a business transfer.

5. Prior to the transfer the claimant was paid £600 per week net in cash. It is unclear what tax and NIC was paid by MCC as the claimant did not receive any pay slips.
6. In the bundle at p49 is a schedule dated W/E 12th December 2021 and sets out employees' names, day rate, adjusted day rate, days worked, gross figure and net figure. It is not clear who drafted the document but I find that this document accurately records the claimant's gross weekly figure at MCC prior to the transfer as it fits in with the £600 net figure the claimant was paid weekly. There was no other documents to contradict the information on the schedule.
7. Based on the gross weekly figure of £779 per week the claimant's gross annual salary was £40,508 divided by 260 gives a daily rate of £155.80.

25 days holiday entitlement 2021

8. It is not disputed that the claimant had accrued 25 days holiday for the year 2021 and the respondent agreed to pay £2988.50 for the outstanding holiday but wanted to spread the payments over a 6 month period by paying £498.08 each month from April 2022. Other employees were paid for their holiday entitlement by March.
9. It is not completely clear how the parties reached the figure of £2988.50 for 25 days, as set out in an email dated 18 February 2022 at p 24, as this gives a daily rate of £119.54 but the claimant explained he had calculated his net pay for the 25 days at approximately £3000 based on his net pay of £600 and had agreed the figure. However he was absolutely clear that the figure agreed was for a net amount. This makes sense in light of the claimant's net weekly salary of £600 and his gross weekly salary being recorded in the schedule as £779.
10. The respondent argues that the agreement was to pay the claimant a gross figure of £2988.50, not a net figure. There is no evidence to support that assertion.
11. The claimant was paid two payments of £498.08 on 30 April 2022 and 31 May 2022 but the payments were then taxed at source so the figure was in fact gross rather than net. The claimant complained by email immediately and has maintained the position he was entitled to be paid the figure net. The email exchanges confirm the claimant's position that he expected the agreed holiday payments to be paid were on the basis they were net payments. The claimant resigned because of the payments.
12. The respondent tried to amend the agreement by adding a condition that the claimant do a handover and would not do competing business for 6 months. The claimant did not agree to any amendment.
13. Based on a gross figure of £779 pw and a daily rate of £155.80 I calculate the claimant is entitled to be paid for his 25 days outstanding holiday entitlement $25 \times £155.80 = £3895$. This gross figure is then subject to tax and NIC.

14. It was agreed that the claimant has received from the respondent the following payments for his 25 days holiday entitlement - £996.16 paid in April/May 2022 and £1992.34 in his last pay slip on 30 June 2022, p 36. Therefore the claimant has been paid in total £2988.50 of the £3895 owing to him and therefore a balance of £906.50 remains to be paid by the respondent to the claimant gross or net with tax and NIC being paid to HMRC.

14 days holiday 2022

15. Following the transfer the claimant was promoted to General Manager and paid £57,000 gross per annum. This gives a daily gross rate of £219.23. This figure was agreed.
16. It is also agreed that the claimant was entitled to be paid 14 days accrued holiday pay on his termination. In his last pay slip he was paid £2793.49 gross pay for his holiday entitlement, and tax and NIC was deducted at source. His final payment resulted in the claimant being moved to a higher tax bracket. Hopefully the claimant will be entitled to a tax refund and he has confirmed he will be claiming for one.
17. The respondent then paid £276.22 into the claimant's bank account on 31 March 2023. This was paid without any deduction. The claimant will be liable for any tax and NIC owing on this amount.
18. Based on a daily rate of £219.23 the claimant was entitled to be paid the gross amount of £3069.22. The claimant has received £3069.71 so is not owed any more money for the 14 days accrued holiday entitlement in 2023.
19. In summary the respondent is ordered to pay to the claimant the gross sum of £906.50 or to pay the net amount to the claimant and pay the tax and NIC to the HMRC.

**Employment Judge Isaacson
Dated: 3 April 2023**