



# EMPLOYMENT TRIBUNALS

**Claimant:**  
Miss D Moreira

v

**Respondent:**  
Mr John Cronin

**Heard at:** Reading

**On:** 21 September 2017

**Before:** Employment Judge Gumbiti-Zimuto

## Appearances

**For the Claimant:** No attendance or representation

**For the Respondent:** In person

## JUDGMENT

1. The respondent failed to pay to the claimant in respect of holiday pay the sum of £49.68. The respondent is ordered to pay to the claimant the sum of £49.68. This is a gross amount.
2. The claimant's complaint of unpaid wages is not well founded and is dismissed.

## REASONS

1. In a claim form presented on 10 June 2017, the claimant made a claim alleging that she was owed wages and unpaid holiday. The claimant's claim as set out in the claim form was for the sum of £1,362.24 in respect of holiday pay and the sum of £404.64 in respect of unpaid wages relating to overtime which she says she was not paid.
2. The claimant has not attended and has not been represented. Attached to an email sent to the employment tribunal on 20 September 2017, is a statement in which she states that her total claim is for the sum of £709.32 in unpaid wages, holiday pay and SSP.
3. I have had an opportunity to read the claimant's document entitled 'Defense Statement'. I have also considered the documents attached. These are a contract of employment dated 29 July 2016, a new starter form dated 31 July 2016, an HMRC 04/16 form which is headed 'Starter

checklist', a copy of the claimant's passport, correspondence from the Department for Work and Pensions, emails that the claimant has sent to the respondent relating to a Subject Access Request and also other correspondence with the respondent.

4. The claimant says in her statement that the payment of £1,219.68 is to cover 22 days of accrued unspent holiday. This figure is the figure calculated by the claimant in respect of unpaid holiday. It continues that: "Although the number of holiday days this figure covers is correct, the payment does not correspond to the amount that I have expected. Please see the spreadsheets and how I have calculated these figures". The claimant states that: "The way my holiday was calculated by Crema Ltd is rather confusing and misleading. According to the respondent, my holiday should not include the break time that was given and paid for during working days. I cannot find any evidence in my contract with Crema explaining that this is the normal procedure and the respondent himself has refused to explain any of his calculations to me."
5. In his evidence to me today, Mr Cronin explained that the claimant is correct in saying that that is how the claimant's holiday pay has been calculated. Mr Cronin explained that while the respondent chooses to pay its employees in respect of break times when at work, the respondent does not pay this element to employees in respect of holiday periods.
6. I am of the view that the effect of that is that in the holiday periods, the claimant is not being paid at the rate that she was entitled to be paid. There has therefore been a failure to pay her at the correct rate of pay. Mr Cronin has calculated that this difference amounts to £49.68. He arrives at this by taking 22 lots of 20 minutes, amounting to 440 minutes which results in a payment due to the claimant in the sum of £49.68.
7. I therefore order the respondent to pay to the claimant the sum of £49.68 as it appears to me that that is a sum which is due to her.
8. In respect of the claim for unpaid wages, I have considered the schedule which the claimant has produced and I note that in the last three months of the claimant's employment, there are no claims made in respect of unpaid overtime. The figure for May is zero; the figure for April is zero and the figure for March also is zero. In the circumstances, the claimant's claim for unpaid overtime does not represent any sums claimed for the period within the last three months of employment.
9. In those circumstances, it seems to me that even if the claimant is able to show that there was a series of deductions extending over a period of time, the last of that series of deductions was more than three months prior to the termination of the claimant's employment. Having regard to the provisions contained in section 23 Employment Rights Act 1996, I am of the view that the claimant's claim in respect of overtime is out of time.

10. I note that in her statement, the claimant seeks to make claims in respect of compensation and statutory sick pay during her notice period. These claims do not appear on the claimant's claim form. Having read the claimant's statement, I am unable to be satisfied that the claimant is entitled to a remedy in respect of those sums. I therefore say nothing further in respect of them.
  
11. The judgment I make therefore is that the respondent is to pay to the claimant the sum of £49.68 in respect of unpaid holiday pay. The claimant's claim in respect of unpaid wages is dismissed. The Employment Tribunal does not have jurisdiction to consider the complaint.

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Employment Judge Gumbiti-Zimuto

Date: 10 October 2017.....

Judgment and Reasons

Sent to the parties on: .....

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For the Tribunal Office