



EMPLOYMENT TRIBUNALS

Claimant: Mrs L Senosi

Respondent: Unique Yorkshire Catering Services

Heard at: Leeds Employment Tribunal

On: 28 April 2022

Before: Judge Sills

Representation

Claimant: No appearance

Respondent: No appearance

RESERVED JUDGMENT

The Claimant's claim for holiday pay is dismissed.

REASONS

Introduction

1. The Claimant (C) brings a claim for holiday pay.

Factual Background

2. C has provided the following background information to her claim. C states that she was employed from 6 July 2019 until 9 December 2021. She worked front of house at Leeds Golf Centre. The ET1 states that she is owed holiday pay.
3. C gives the following further details at section 8 of the claim form:

Since 2019, I have communicated the issue of not receiving payment for untaken holiday with my employer at the time, David Carrack. When his new manager, Gillian, was employed in 2020, I raised this issue again and asked for it to be resolved. After several weeks, Gillian informed me that I have "lost" all holiday pay. The contract of employment states that I am entitled to 20 working days holiday in each complete calendar year inclusive of statutory and public holidays and if on termination of employment I have holiday entitlement still owing, the Company may, at its discretion, require me to take my holiday during my notice period or they would make a payment in lieu

of untaken holiday entitlement. I have not received payment for untaken holiday since 2019.

4. The ET1 gives no details of C's pay in section 6, but in section 9 C states she is seeking £2000.

Procedural History

5. The Respondent (R) failed to respond to the claim within the required period and has played no part in the proceedings.

6. I summarised the following developments in these proceedings in my case management directions of 28 April 2022:

3. *Notice of today's hearing [on 28 April 2022] was provided on 2 March 2022. On that date the Claimant was ordered to provide the Respondent with a document setting out how much she was claiming and how it had been calculated and all supporting documents within 4 weeks. The Respondent did not file an ET3.*

4. *On 7 April 2022 the Tribunal directed the Claimant to provide the Tribunal with a breakdown of what she was owed and further information within 7 days and informed that judgment may be issued without the need for a hearing. The Claimant did not respond.*

5. *On 27 April 2022 in the morning, the Claimant agreed to bring the next day's afternoon hearing forward to the morning. Later that day, at 15.39, the Claimant emailed the Tribunal to say that she could not attend the hearing and requested the matter be rescheduled. In response to a request for further information, the Claimant sent a further email this morning (28 April 2022) to state that this was due to her mental her [sic]. The Tribunal was unable to contact the Claimant by telephone today.*

7. Neither party attended the hearing. I reserved my decision on C's postponement application and whether to proceed to determine the claim in C's absence and made the following directions:

6. *In considering how to proceed I have taken into account the Rules 2, 21, 30A, and 47 in particular. I take account of the need to deal with cases fairly and justly. That includes avoiding delay and saving expense. I note that the Claimant has failed to comply with Tribunal directions previously, only sought the postponement the day before the hearing, and has provided no medical evidence to support her claim that she cannot attend due to her mental health.*

7. *Taking these matters into account I make the directions below for the Claimant to provide evidence of her ill-health, and further information about her claim. After the expiry of this deadline for compliance with the directions, and based on the documents submitted by the Claimant, the Tribunal will decide whether to grant the postponement request and list the case for again for a final hearing or determine the claim on the basis of the information available.*

Directions

By close of business on 5 May 2022 the Claimant is to file with the Employment Tribunal the following:

- a. Medical evidence confirming:
 - i. That her mental health prevented her attending the hearing on 28 April 2022,*
 - ii. Whether or not the Claimant would be able to attend a future hearing within the next two months.**
- b. A document setting out a breakdown of what she says she is owed. This should include the following details if known:
 - i. Her weekly gross pay;*
 - ii. When the leave year began;*
 - iii. The number of days holiday taken for which she has not been paid and when;*
 - iv. The number of accrued and untaken days holiday in the final leave year at the point at which her employment terminated;*
 - v. The number of days holiday taken in the final leave year for which she was paid.*
 - vi. Whether the contract provided for her to carry over any leave, and if so how many days, and how many days she carried over to the final leave year.**
- c. Documentary evidence supporting her claim, including the contract of employment referred to in her claim form.*

8. C did not respond to these directions.

Application to postpone

9. I refuse the application to postpone. As C was unrepresented, R played no part in the proceedings, and C had stated that her mental health prevented her from attending the hearing, on the day of the hearing I decided it was in the interests of justice to give C the opportunity to provide evidence in support of her claim that medical problems prevented her from attending the hearing before determining the postponement application. C has provided no such evidence. Nor has she responded to request further time to provide such evidence.
10. As C applied for the postponement the day before the hearing, Procedure Rule 30A(2) applies. C cannot satisfy (a)(i) as R did not consent and the postponement does not give the parties the opportunity to resolve the dispute by agreement given R has not engaged with the claim. Even if R's non-participation implies consent, I do not consider that the postponement is in accordance with the overriding objective. Parties are required to co-

operate with the Tribunal and C has repeatedly failed to provide evidence and information in support of her claim. C has failed to provide evidence that her medical problems prevented her attending the hearing. The overriding objective includes avoiding delay and saving expense. I am thus not satisfied that the postponement would be in accordance with the overriding objective. Rule 30A(2)(b) does not apply as the application was not necessitated by an act of the Tribunal or another party. In the absence of any medical evidence, or even a request for further time to obtain medical evidence, I am not satisfied that there are exceptional circumstances. As Rule 30A(2) applies, and C cannot satisfy any of the requirements for ordering a postponement, I dismiss C's application for a postponement.

11. As I have refused the postponement request, having considered the reasons for C's non-attendance, Rule 47 applies. I have decided to determine the claim in C's absence.

Findings on holiday pay claim

12. I find that C has not discharged the burden upon her of establishing that she is entitled to an award of holiday pay. The main reason for this is that C has failed to substantiate her claim.
13. C states that she has not received pay for untaken holiday since 2019. She claims £2000. C has failed to provide the required information to establish her claim for holiday pay, whether as a breach of contract, unauthorised deduction from wages, or under the Working Time Regulations 1998.
14. C has neither stated her rate of pay, nor given details of her working hours, so it is not possible to calculate her daily pay. C has failed to state when her leave year begins. C has failed to state the number of days accrued but untaken holiday for each leave year, and for the last year in particular. C has failed to state the basis on which she claims to be able to carry forward any untaken holiday if that is what she is claiming.
15. In these circumstances, C has not established that she is due any holiday pay from R whether as a breach of contract, unlawful deduction from wages, or under the Working Time Regulations claim. I therefore dismiss C's claim for holiday pay.

Judge Sills

Date 12 May 2022