



EMPLOYMENT TRIBUNALS

Claimant: Mr R Blygen

Respondent: Islington Borough Council

Heard at: London Central (by video)

On: 29-30 June 2023

Before: Employment Judge S Connolly

Appearances

For the claimant: Ms Lewis (Counsel)

For the respondent: Mr McCombie (Counsel)

JUDGMENT

1. The reason for the Claimant's dismissal was capability.
2. The Claimant was not unfairly dismissed so his claim is not well founded.
3. The Claimant's claim for holiday pay is well founded. The Respondent shall pay to the Claimant the sum of £1,628.02 in relation to unpaid holiday pay. The Respondent shall make deductions for income tax and national insurance before making payment to the Claimant.

REASONS

Background

4. The Claimant was employed by the Respondent as a caretaker. He was dismissed on capability grounds in September 2022, after a history of absence. He has brought claims of unfair dismissal and unpaid holiday pay.

5. In the background is a dispute that arose in July 2018 when a trainee manager (Mr Patel) criticised the Claimant's cleaning standards during a phased return from work from a shoulder injury. An informal grievance was launched in July 2018, which the Respondent believed it had resolved in May 2019 as the Claimant moved to a new work location with a new manager. However, the Claimant submitted a formal grievance on 10 October 2019.
6. The Respondent did not investigate until reminded of it at an absence management meeting in February 2022. It was then investigated, and an adverse outcome given in July 2022. Meanwhile, the Claimant had been off sick with stress from 7 June 2021, and was dismissed on capability grounds on 22 of September 2022.

Claims and Issues

7. The claimant made the following complaints:
 - 7.1 Unfair dismissal;
 - 7.2 Unpaid annual leave
8. The issues were as set out in the Case Management Order of EJ Goodman dated 17 April 2023 following a PH on the same day. These are below.

Unfair dismissal

1. *What was the reason or principal reason for the Claimant's dismissal? Was it a potentially fair reason? Employment Rights Act 1996, s 98(1), (2)*

The Respondent relies on the potentially fair reason of capability. The claimants case is that he was not dismissed by reason of capability but because he had lodged a formal grievance and complained it had not been investigated'

2. *Did the Respondent act reasonably in the circumstances, including its size and administrative resources, in treating the alleged incapability as a sufficient reason for the Claimant's dismissal? (ERA 1996, s 98(4)) In particular:*

2.1 Did the Respondent genuinely believe the Claimant was no longer capable of performing his duties?

2.2 Did the Respondent adequately consult the Claimant?

2.3 Did the Respondent carry out a reasonable investigation, including finding out about the up-to-date medical position?

2.4 Could the Respondent reasonably have been expected to wait longer before dismissing the Claimant?

3. *Was dismissal a sanction within the range of reasonable responses open to the Respondent? (ERA 1996, s 98(4))*

4. *Did the Respondent follow a fair procedure? (ERA 1996, s 98(4))*

If the Claimant succeeds in his unfair dismissal claim:

5. *What basic award should be made to the Claimant? (ERA 1996, s 119)*

6. *Are there any grounds on which the basic award should be reduced, e.g. contributory fault? If so, by how much? (ERA 1996, s 122)*

7. *What compensatory award should be made to the Claimant, taking into account what is just and equitable in all the circumstances having regard to the loss sustained by the Claimant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer? (ERA 1996, s 123)*

In particular:

7.1 *what past losses has the Claimant sustained as a result of his dismissal?*

7.2 *what future losses is the Claimant likely to sustain as a result of his dismissal?*

7.3 *what amount should be awarded for loss of statutory rights?*

7.4 *to what extent, if any, did the Claimant contribute to his dismissal? (ERA 1996, s 123(6))*

7.5 *if the dismissal is found to be procedurally unfair, what is the likelihood that the Claimant would have been dismissed fairly in any event, and when would such fair dismissal have taken place?*

7.6 *if the dismissal is found to be substantively unfair, would the Claimant have been fairly dismissed by reason of ill health within a short period thereafter?*

7.7 *has the Claimant made reasonable attempts to mitigate his losses? If not, by what date and at what rate of pay and relevant benefits could the Claimant have been expected to have obtained alternative employment if such reasonable attempts had been made?*

7.8 *should any sums be deducted to reflect payments already received by the Claimant?*

7.9 *did the Respondent unreasonably fail to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures? If so, would it be just and equitable to increase the award of compensation? If so, by what percentage (up to a maximum of 25%)? (TULR(C)A 1992, s 207A(2))*

7.10 *did the Claimant unreasonably fail to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures? If so, would it be just and equitable to decrease the award of compensation? If so, by what percentage (up to a maximum of 25%)? (TULR(C)A 1992, s 207A(3))*

7.11 *does the compensatory award need to be grossed up to take into account the impact of taxation?*

7.12 *what is the statutory cap on the maximum compensatory award in this case? (ERA 1996, s 124)*

Holiday Pay (Working Time Regulations 1998)

- 2.1 Did the Respondent fail to pay the claimant for annual leave the Claimant had accrued but not taken when their employment ended?
- 2.2 What was the Claimant's leave year?
- 2.3 How much of the leave year had passed when the Claimant's employment ended?
- 2.4 How much leave had accrued for the year by that date?
- 2.5 How much paid leave had the Claimant taken in the year?
- 2.6 Were any days carried over from previous holiday years?
- 2.7 How many days remain unpaid?
- 2.8 What is the relevant daily rate of pay?
- 2.9 What was the Claimant paid for untaken holiday pay in leave year 2022/23?

Procedure, documents and evidence heard

9. The hearing was conducted via video. The Claimant and his representative were present in the Employment Tribunal on Day One but joined by video. The Judge and the Respondent joined remotely by video. There were no technical issues during the hearing which impacted the effective running of proceedings.
10. Tribunal had the benefit of an Agreed Bundle, with the Respondent separately sharing one additional document in relation to the unfair dismissal claim. This was a full copy of the meeting notes from the final Stage Three formal meeting with the Claimant on 22 September 2022.
11. The following documents in relation to the Holiday Pay claim were provided by the Respondent on the afternoon of Day One
 - 11.1 Email from Ernest Okrah to payroll dated 2 August 2022;
 - 11.2 The Respondent's Annual leave FAQ document.
12. The Tribunal heard Witness evidence from the Claimant and the following

witnesses on behalf of the Respondent:

12.1 Billy Wells – Dismissing Manager;

12.2 Paul Tannett- Employee Relations Specialist;

Findings of Fact

13. The Claimant was employed as a Caretaker from 16 October 2007 until his dismissal on 22 September 2022. He was paid in lieu of 12 weeks' notice.
14. At this point, the Claimant had been absent continuously from 7 June 2021 due to stress at work. He also had previous periods of absence between 8 July 2018 and 15 April 2019 (some of which related to shoulder pain following an incident at work and some in relation to stress at work).

Sickness absence

15. Several sickness absence meetings took place during the Claimant's absence and the Respondent obtained Occupational Health reports on a number of occasions, including reports dated:
 - 25 June 2018,
 - 14 September 2018
 - 3 February 2019
 - 29 July 2021
 - 14 February 2022
 - 9 September 2022.
16. The Occupational Health reports refer to stressors at work as the reason for the Claimant's stress and his absence from work. The Claimant himself stated in the hearing that the way his grievance was being handled was the reason for his absence. The Tribunal accepts that stress suffered by the Claimant in relation to the work related issues was the reason for his absence from 7 June 2021.
17. The Occupational Health reports make various recommendations including to resolve the Claimant's issues at work and to carry out a stress management risk assessment.
18. The Claimant's counsel suggested that the stress management risk assessment did not take place. However, this is referenced in various contemporaneous documents and the Claimant accepted that he did one and discussed it with Mr Sunday Ali of the Respondent. The Tribunal finds that this assessment did take place.

Grievance history

19. The Claimant raised a complaint on 13 July 2018 in relation to an incident he had with Mr Patel being rude and aggressive to him, where Mr Patel challenged what he saw as poor standards in the Claimant's work. The Claimant raised this in writing to John Farrant (Head of Homes and Neighbourhood services). The document, was headed "Informal Grievance". The Claimant was asked in evidence whether he wanted it addressed informally and he said that he wanted it to be addressed as quickly as possible.
20. This matter was passed to Mr Wells and a meeting to discuss this informal grievance took place on 24 July 2018 with Mr Wells. Mr Wells also spoke to Mr Patel as part of this process. It was Mr Wells' evidence that it was agreed with the Claimant that further detailed discussion would be postponed until he was back at work. In his evidence, the Claimant did not accept that he agreed this. However, this reflects the contents of a letter from Mr Wells to the Claimant on 24 August 2018. It is the Tribunal's conclusion that it was agreed between the Claimant and Mr Wells that further detailed discussion of the informal grievance would be postponed until the Claimant was back at work.
21. The Claimant continued to chase the Respondent in relation to the grievance, including a letter to Jo Murphy (Senior Manager Homes and Communities) on 17 September 2018 and emails sent via his Trade union in November and December 2018.
22. The Claimant returned to work on 15 April 2019 and a meeting to discuss his informal grievance took place on 9 May 2019 with Mr Wells. Mr Wells sent a letter to the Claimant after this meeting confirming the outcome on 13 May 2019. It summarises what was discussed and agreed at the meeting this included the following: that the Claimant would be moved to another site, that the Claimant did not wish to participate in mediation, an apology from Mr Wells for any misunderstanding about the handling of his informal grievance and that the understanding of management had been that the matter would be addressed upon the Claimant's return to work. This letter also stated that as the Claimant was now back at work working on a different patch with a new manager the Claimant wanted to put the matter behind him.
23. In his evidence, the Claimant seemed to suggest that this letter did not reflect the conversation and essentially that Mr Wells had written what he wanted. The Claimant does not appear to have raised any issue with the accuracy of this letter at the time. He suggested that this dishonesty was evident when Mr Wells indicated that the Claimant was supported by a trade union representative but this was before he had joined the union. The Claimant did not provide any further evidence on his assertions. This allegation was not put to Mr Wells in evidence. In the absence of any further evidence, it is the Tribunal's position that the letter accurately reflects what was discussed in the meeting.
24. The Claimant made further assertions that the minutes of some of the meetings were not accurate. The Claimant does not appear to have raised

any issue with the accuracy of any minutes at the time and did not provide any further evidence on his assertions. These allegations were not put to the Respondent's witnesses. In the absence of any further evidence, it is the Tribunal's position that the minutes in the bundle accurately reflect what was discussed in the meetings.

Formal Grievance

25. The Tribunal accepts that Mr Wells had a genuine belief that the matters in his letter of 13 May 2019 would resolve the Claimant's complaints. However, whilst the Claimant accepted that he did move patch (albeit after further delay and initially being turned away from a new patch), it is clear that the issues were not resolved for him.
26. He raised matters in a grievance in writing on 10 October 2019. It is accepted by the Respondent that this was not addressed in a timely manner. It was initially allocated to Jed Young, who failed to address it.
27. This was noticed during an absence meeting on 28 February 2022. Mr Tannett committed to find out what had happened to this matter and to address it.
28. The grievance was then investigated by Jed Young. He met with the Claimant on 9 May 2022. Mr Young apologised to the Claimant for the delay in addressing the grievance. He also interviewed Mr Patel, Mr Wells and Mr Paul Stokes (whose interaction with the Claimant began after he had moved patch).
29. Mr Young sent an outcome letter dated 14 July 2022. The grievance was not upheld. The grievance essentially found that the steps taken by Mr Wells following the meeting in May 2019 were proportionate to address the matter that the Claimant complained about. The grievance outcome also stated that Mr Young was not provided with copies of the Occupational Health reports so made no findings on them. This was despite Mr Young summarising that the management response to Occupational Health recommendations following sickness absence was part of the Claimant's grievance.

Final meeting

30. A Stage 3 Absence Management meeting took place on 22 September 2022, following which the Claimant was dismissed from his employment with a payment in lieu of notice. This meeting was conducted by Mr Wells.
31. The Claimant initially expressed concern about whether Mr Wells was an appropriate manager to hold this meeting. In the end, The Claimant went for a walk, discussed the matter with Mr Sunday Ali, and decided to participate. Mr Wells said in evidence that as it was his department, he was best placed to carry out the meeting. He said his main focus was to get people back to work to provide the service to users. He said he took advice from HR and that he had no concerns and was happy to proceed.

32. At the time of the meeting, the Claimant had been absent for 325 days in the preceding 24 months and remained off sick. The most up-to-date Occupational Health report, dated 9 September 2022 (based on a consultation with the Claimant on 8 September 2022) stated that the Claimant remained unfit for work and would be unlikely to return in the foreseeable future. It also stated that the Claimant remained stressed and discontented with the outcome of his grievance, and that when asked if he would return to the workplace once his concerns had been addressed and resolved he said that he was unsure if he would be able to. The consultant also repeated the passage from the February 2022 Occupational Health report regarding the “current impasse” and possible “parting of ways”.

Reason for dismissal

33. The Respondent’s case is that this is a clear case of a capability dismissal due to the Claimant’s long term absence. The Claimant alleges that the real reason for his dismissal was because he raised a grievance and had complained to senior manager. Mr Wells said that this was categorically not the case.
34. He further suggested that management and his trade union representatives were in collusion to orchestrate his dismissal. He did not provide any detailed evidence or potential motive for any such collusion and these allegations were not put to Mr Wells.
35. In the absence of any other evidence in relation to collusion, the Tribunal does not find that any collusion took place as alleged.

Holiday Pay

36. The Tribunal did not have the benefit of detailed evidence in relation to this matter.
37. The parties agreed that the holiday year was 1 April – 31 March. This reflected the position in the Respondent’s Annual Leave FAQ document.
38. It was the Claimant’s position that his annual entitlement was 30 days. Mr McCombie submitted that the entitlement was 35 days because the Claimant had TUPE’d from another company and had more than 5 years’ service. The 35 days would appear to accord more with the email of Mr Okrah which refers to a figure of 40 days, which, in the submissions of Mr McCombie, was 35 days plus 5 days of the usual carry forward allowance.
39. It is the conclusion of the Tribunal that the Claimant’s annual entitlement was 35 days.
40. The Respondent paid an amount to the Claimant in August 2022 (£2,035.21) which corresponded to 20 days and a further sum in September 2022 of £71.24, which corresponded with a further accrual to the termination date.
41. The FAQ document states the following question and answer:

“Do I still earn annual leave while on sick leave?”

You will continue to accrue annual leave while sick. You can only, request to carry over your leave if you have been unable to take it due to long-term sickness. The maximum that can be carried over is the statutory 140 hours. Please contact HR Advice in these exceptional circumstances”

42. It was the Claimant’s unchallenged evidence that he took 5 days holiday in the year 2021- 2022. He was absent due to sickness from 7 June 2021 until the end of his employment.
43. According to the payslip for August 2022, The Claimant’s pay is follows;
 - 43.1 Annual salary - £26,535.00
 - 43.2 Contract hours – 35
 - 43.3 Hourly rate – 14.5397

Therefore, this results in a weekly rate of £508.89. On the basis of the contract hours, 140 hours is the equivalent of 20 days.

The Law

Unfair Dismissal

44. Section 94 of the Employment Rights Act 1996 confers on employees the right not to be unfairly dismissed. Enforcement of the right is by way of complaint to the Tribunal under section 111.
45. Section 98 of the 1996 Act deals with the fairness of dismissals. There are two stages within section 98. First, the employer must show that it had a potentially fair reason for the dismissal within section 98(2). Second, if the Respondent shows that it had a potentially fair reason for the dismissal, the Tribunal must consider, without there being any burden of proof on either party, whether the Respondent acted fairly or unfairly in dismissing for that reason.
46. Section 98(4) then deals with fairness generally and provides that the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and shall be determined in accordance with equity and the substantial merits of the case.
47. Generally, whether the Respondent made the Claimant sick is of limited relevance in unfair dismissal cases. The Court of Appeal case of *McCadie v Royal Bank of Scotland* [2008] ICR 1087 recognised that as a matter of common sense, there may be cases where it is reasonable for an employer to “go the extra mile” in finding alternative employment or putting up with a

longer period of sickness but the fact that the employer causes the illness does not mean it cannot fairly dismiss.

48. Ms Lewis for the Claimant referred the Tribunal to two authorities and one document she described as academic writing from Occupational Health Medicine. Copies of the authorities were not provided to the Tribunal or to the Respondent. The two cases were first instance Tribunal decisions and they are therefore not binding on this Tribunal. From Ms Lewis' brief summary of the cases it appeared that they were quite fact specific. For example the first case was a constructive dismissal case and both cases also had disability discrimination claims included. Therefore, the Tribunal has not attached any weight to the authorities referred to.

Holiday Pay

Entitlement

49. Regulation 13 and 13A of the Working Time Regulations 1998 set out the entitlement to 5.6 weeks' annual leave per annum.
50. Regulation 14 of the Working Time Regulations 1998 gives the right to make a claim for accrued but untaken annual leave.

Carrying forward leave

51. There are a number of cases which support the allowance of 20 days carry over if an employee is unable to take annual leave during a period of sick leave. This includes the cases of *HM Revenue & Customs v Stringer* [2009] IRLR 677 (HL) and *NHS Leeds v Larner* [2012] IRLR 825 (CA).

Submissions and Conclusions

Submissions

52. The Respondent's submissions can be summarised as follows:
- 52.1 The Claimant had significant absence which had gotten worse over time. The Occupational Health reports were pessimistic about his prognosis.
- 52.2 The Claimant's grievance was resolved. There were delays but the Respondent apologised for this.
- 52.3 The Claimant did not like the outcome but that is not the point. The stressors referred to in his medical evidence had been taken away. The Respondent's method of resolving the grievance was a reasonable management decision they were entitled to take.
- 52.4 Mr Wells' process was exemplary. He gave the Claimant time and was focused on getting the Claimant back to work. There was clearly no issue with consultation.

- 52.5 There were allegations made by the Claimant, including in relation to collusion, but no evidence was provided and these allegations were not based in fact.
- 52.6 There was no need for the Respondent to wait longer before dismissing. It would have been extraordinary to say that the Respondent needed to wait longer than the 15 months that had already expired.
- 52.7 The Respondent was faced with an employee on medication, who remained off sick. There is some suggestion of a return within 6-12 weeks but Occupational Health also suggested the situation is irretrievable. There was no obvious commitment from the Claimant. He was sadly fixated on alleged senior management failing in relation to his grievance.
- 52.8 It is hard to see what the alternative was for the Respondent. The decision was within the band of reasonable responses and the Tribunal should not trespass into a reasonable management action.
53. The Claimant's submissions can be summarised as follows:
- 53.1 The Claimant was not challenging the procedure but was challenging the reason.
- 53.2 The delay to the Claimant's grievance was unacceptable and he wasn't listened to.
- 53.3 The Occupational Health reports were not considered. Had these been addressed, the Claimant could have returned to work.
- 53.4 The Occupational Health reports confirmed that the Claimant wanted apologies. This would have restored his trust and confidence. All he got was an apology for the process taking too long which was not sufficient.
- 53.5 The Respondent was not interested in his grievance. It was more interested in meetings about process. This left the Claimant with no understanding of why the grievance was not upheld.
- 53.6 He was left to wonder why he was dismissed. The only conclusion was that management were against him because he complained and he wasn't believed. The circumstances left the Claimant with no other conclusion that he must have been dismissed because he complained.

Conclusions

Unfair Dismissal

The reason for the dismissal

1. *What was the reason or principal reason for the Claimant's dismissal? Was it a potentially fair reason? Employment Rights Act 1996, s 98(1), (2)*

54. The Respondent's position is that this is a clear case of a capability dismissal due to the Claimant's long term absence. The Claimant alleges that the real reason for his dismissal was because he raised a grievance and had complained to senior managers.
55. The Claimant further suggested that management and his trade union representatives were in collusion to orchestrate his dismissal. He did not provide any detailed evidence or potential motive for any such collusion and these allegations were not put to Mr Wells. In the absence of any other evidence in relation to collusion, the Tribunal does not find that any collusion took place as alleged.
56. Part of the Claimant's case appears to be that the Respondent caused the absence by how it treated his grievance. It is the view of the Tribunal that whether the actions of the Respondent made the Claimant unwell is of limited relevance. The Respondent did pause the meeting in early 2022 for the grievance to be heard before picking up the process again once the grievance had been heard and the outcome provided.
57. This does not mean that the fact that the grievance was raised was the reason for the dismissal. The fact that the employer causes the illness does not mean it cannot fairly dismiss for capability.
58. Based on all of the evidence, the Tribunal finds that the reason for dismissal was capability due to long term sickness and that this is a potentially fair reason for dismissal.

The fairness of the dismissal

59. The Tribunal has considered the issues as follows:

2. Did the Respondent act reasonably in the circumstances, including its size and administrative resources, in treating the alleged incapability as a sufficient reason for the Claimant's dismissal? (ERA 1996, s 98(4)) In particular:

2.1 Did the Respondent genuinely believe the Claimant was no longer capable of performing his duties?

2.2 Did the Respondent adequately consult the Claimant?

2.3 Did the Respondent carry out a reasonable investigation, including finding out about the up-to-date medical position?

2.4 Could the Respondent reasonably have been expected to wait longer before dismissing the Claimant?

3. Was dismissal a sanction within the range of reasonable responses open to the Respondent? (ERA 1996, s 98(4))

4. Did the Respondent follow a fair procedure? (ERA 1996, s 98(4))

60. Given the level of absence and the prognosis from the up to date Occupational Health report, it was reasonable for the Respondent to treat capability as sufficient reason for the Claimant's dismissal. He had been off sick from 7 June 2021 with no clear prognosis for an imminent return.
61. Mr Wells' witness statement gave clear evidence on the Respondent's consideration. He considered the substantial adverse effect of the Claimant's lengthy absences on the service, the significant and mounting cost of providing cover and the Claimant's inability and/or unwillingness to return to work.
62. He considered that the Respondent had no potential dates or ways for the Claimant to return to work and his view was that all other options had been exhausted.
63. He stated that he wanted to support the Claimant to return to work and allowed extra time. Mr Wells asked what the Respondent could do to get him to return, but the Claimant's response was ultimately that the Respondent could do nothing.
64. There was a significant delay in relation to the grievance and the investigation could have been more thorough, particularly in relation to investigating whether Occupational Health recommendations had been followed. However, the Tribunal does give weight to Mr Wells' attempts to initially resolve the matter informally.
65. The Tribunal also notes that the sickness absence management process was a comprehensive one. It is that process which led to the Claimant's dismissal. The Claimant did not appear to take any issue with that process.
66. The Claimant was provided with information in advance and was invited to comment on it. The Claimant had a formal invitation to the final meeting and allowed the right to be accompanied and the right of appeal. The Tribunal notes that the Claimant did raise concerns about Mr Wells but in the end, he did go ahead and participate in the meeting. The Tribunal considers that Mr Wells was an appropriate person to conduct the meeting.
67. Previously, the Claimant had been issued with a Final Notice of Consideration and was made aware that dismissal was a potential outcome of the meeting on 22 September 2022. He was made aware of the seriousness of the issues.
68. Mr Wells gave evidence that he looked at options to get the Claimant back to work. This was clear in his evidence and reflected in the documents.
69. Given that options were considered and that the Claimant suggested he may not be able to come back regardless of steps taken, it was reasonable for the Respondent to treat level of absence as sufficient reason for dismissal and take that decision. The Tribunal does not find it reasonable to expect the Respondent to have waited longer.

70. The Tribunal finds that Mr Wells did have a genuine belief that the Claimant was no longer capable of carrying out his role. The detailed process, discussions Mr Wells had with the Claimant and the use of Occupational Health advice convinces the Tribunal that the Respondent carried out a reasonable investigation and adequate consultation with the Respondent. This was ultimately a fair procedure.
71. As mentioned above, it is the view of the Tribunal that whether the actions of the Respondent made the Claimant unwell is of limited relevance. The fact that the employer causes the illness does not mean it cannot fairly dismiss for capability.
72. It was reasonable for the Respondent to take the decision to dismiss. It was within the range of reasonable responses to take this decision based on position as at September 2022.
73. On this basis, the Judgement of the Tribunal is that the Claimant was not unfairly dismissed by the Respondent.

Holiday Pay

74. The Claimant was entitled to 20 days (i.e. 140 hours or 4 weeks) carried forward from the 2021 – 2022 holiday year in addition to any holiday accrued between 1 April 2022 and the termination date of 22 September 2022.
75. From 1 April 2022 to 22 September 2022 is a period of 24.8 weeks so the accrued leave (based on 35 days) (i.e. 7 weeks per annum) was 3.34 weeks (7 / 52 x 24.8).
76. This means that the Claimant was due to be paid for 7.34 weeks of holiday (4 weeks plus 3.34 weeks)
77. $7.34 \text{ weeks} \times \pounds 508.89 = \pounds 3,734.47$
78. The Claimant received a sum of $\pounds 2,106.45$ ($\pounds 2,035.21 + \pounds 71.24$)
79. There is a shortfall of $\pounds 1,628.02$
80. The Tribunal does not consider that there was any unreasonable failure on the part of the Claimant to raise this issue via a grievance before submitting a tribunal claim.
81. Therefore, The judgement of the Tribunal is as follows: The Respondent shall pay to the Claimant the sum of $\pounds 1,628.02$ in relation to unpaid holiday pay. The Respondent shall make deductions for income tax and national insurance before making payment to the Claimant.

Employment Judge S Connolly

Date Signed: 24 July 2023

Sent to the parties on:

24/07/2023

For the Tribunal Office: