



EMPLOYMENT TRIBUNALS

Claimant: Mr A Jones

Respondent: Bacchus-Les-Vignobles De France Limited

Heard at: LONDON SOUTH **On:** 29 January 2018.

Before: Employment Judge Siddall

Representation

Claimant: In person

Respondent: Mr P Bruckhard, Director

JUDGMENT

It is the decision of the tribunal that:

1. By agreement, the Claimant is entitled to be paid a statutory redundancy payment by the Respondent in the amount of £4819.50.
2. The Respondent shall pay the Claimant damages for breach of contract in respect of notice pay in the amount of £3294.00 net of tax
3. It is declared that the Claimant is entitled to payment for accrued annual leave in the amount of £1319.22 net of tax and this sum shall be paid to him by the Respondent.

REASONS

1. The Claimant brings claims for a statutory redundancy payment under section 135 of the Employment Rights Act 1996, for breach of contract in relation to a failure to pay notice pay under the Employment Tribunals (Extension of Jurisdiction) Order 1994, and for accrued holiday pay under regulation 14 of the Working Time Regulations 1998.
2. The Respondent agrees that a redundancy payment is due and this sum is awarded by consent.
3. The background to the claims is as follows. The Claimant commenced work for the Respondent as a delivery driver in January 2006. On 11 September 2017 Mr Patrick Bruckhard, a director of the Respondent, wrote to the Claimant to notify him that due to a downturn in the business, his employment would be terminated with effect from 30 September 2017. His actual words were: 'You probably anticipated this letter but it is with great regret that I have to let you go at the end of this month 30/09/17'. There was nothing in the letter about working on beyond that date. The parties agree that the Claimant received this letter on Friday 15 September 2017, and that the Claimant worked until Friday 29 September 2017

- and was paid for the month of September.
4. The Claimant had a written contract of employment under which he was entitled to one week's notice per completed year of service. He was entitled to 24 days holiday plus public holidays, and the holiday year ran from 1 January to 31 December.
 5. Mr Bruckhard says that he asked the Claimant to work out the remainder of his notice period but the Claimant did not respond. He produced an email dated 16 October 2017 asking the Claimant to come back to work for the rest of his notice period. The Claimant says he did not receive this letter.
 6. I explained to Mr Bruckhard that the Claimant had a legal entitlement to eleven week's notice pay. He had worked two weeks of his notice period down to the end of September, but as at the termination date of his employment on 30 September 2017 he was due a balance of nine week's notice pay. The letter dated 11 September 2017 effectively gave the Claimant short notice of the termination of his employment, which therefore came to end on 30 September. Given the wording of the letter of dismissal, this was the effective date of termination and the Claimant had no obligation to carry on working for the next nine weeks unless he chose to do so. I find that Mr Bruckhard did email the Claimant on 16 October 2017 asking him to work for the remainder of his notice period but by this point the employment of the Claimant had already come to an end as a result of the Respondent's actions. He therefore had no obligation to work for another nine weeks. I therefore awarded the Claimant the sum of £3294 net representing nine week's net pay calculated at £366 per week.
 7. In relation to holiday pay, the employment of the Claimant had ended 9 months into the holiday year. He said he had taken no holiday up to that point. He agreed that he had a week off in July 2017 for a bad back, and his brother and mother covered for him. The Respondent said that it 'strongly suspected' that the Claimant had taken all his holiday and that the week taken in July 2017 was holiday not sickness absence. However the Respondent was not able to produce any holiday records showing other times when the Claimant had taken holiday, nor provide any evidence of any other dates when he was not at work. On the balance of probabilities I accepted the evidence of the Claimant that he took a week off work with a bad back and had taken no other leave during the relevant holiday year. His pro rata holiday entitlement (ignoring public holidays which he was not required to work) was 18 days up to the 30 September 2017 and I awarded him 18 days holiday pay calculated at £73.29 per day net.
 8. The total sum awarded to the Claimant is £9432.72.

Employment Judge Siddall

Date 29 January 2018.