



EMPLOYMENT TRIBUNALS (SCOTLAND)

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**Case No: 8000980/2024 Hearing at Edinburgh by Cloud Video Platform on 18
September 2024**

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Employment Judge: M A Macleod

Ryan Patterson

**Claimant
In Person**

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JAD Homes Limited

**Respondent
Represented by
Mr J Dickson
Director**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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**The Judgment of the Employment Tribunal is that the claimant's claim
succeeds, and that the respondent is therefore ordered to pay to the
claimant the sum of £300.30 (Three Hundred Pounds and Thirty Pence) in
respect of net holiday pay which was unlawfully deducted from him and
which was properly payable to him on termination of his employment.**

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REASONS

1. The claimant presented a claim to the Employment Tribunal on 4 July 2024 in which he complained that he had been unlawfully deprived of pay in

respect of holiday untaken but accrued at the date of termination of employment.

2. The respondent submitted an ET3 denying the claimant's claim.
3. A Hearing was listed to take place by Cloud Video Platform on 18 September 2024. The claimant appeared on his own behalf, and the respondent was represented by their owner and director, John Dickson.
4. Some documents were sent to the Tribunal in advance of the Hearing, though no formal bundle of documents was produced by the parties. Where a document is referred to below there is no page number attached, for that reason, but identified according to its nature and date, where available.
5. Both the claimant and Mr Dickson gave short evidence.
6. Based on the evidence given and the information available, the Tribunal was able to find the following facts admitted or proved.

Findings in Fact

7. The claimant, whose date of birth is 11 July 1983, commenced employment as Commercial Manager for the respondent on 13 March 2023. The respondent is a joinery contracting business, owned and operated by John Dickson. The claimant's training is as a Quantity Surveyor and Estimator.
8. The claimant was employed at a salary of £60,000 per annum. No written contract of employment was provided by the respondent to the claimant.
9. The respondent's holiday year runs from January to December each year. The claimant was entitled to 28 days' holiday each year.
10. The claimant's claim is restricted to his entitlement in the year from January 2024 until the date of termination of his employment, on 29 March 2024.
11. In 2024, it was understood by both parties that he would take 1 and 2 January as holidays.

12. The respondent operated a "WhatsApp" messaging group, comprising Mr Dickson, the claimant, Murray McCormack and Nicola Campbell. On 2 January 2024, Mr Dickson sent a message to the group wishing the team a happy new year. The Claimant sent a message at 4.59pm that day: *"Not sure if we were planning to be back tomorrow or not but I need to work from home. Got a guy coming to check for parts to repair my sofa and they can't give me a window confirmation. Still got tenders I'm working on and will submit Clark Contracts tomorrow."*

13. Mr McCormack replied: *"Am on site tomorrow morning will be a slow start this week mate, all good"*

14. The claimant took this as authorisation to work at home the following day, and replied *"Figured as much. That's fine then"*

15. Mr Dickson did not intervene in this exchange. His evidence before me was essentially that the claimant simply tended to inform him that he was going to work from home, and that the business did not have a choice in the matter. However, he said that on 31 May and 14 July 2023 he had sent messages to staff that nobody could work from home.

16. The claimant normally worked in the office, but on occasion found it convenient and possible to work from home on the basis that he was able to have access to documents and information on the shared drive operated by the respondent.

17. The claimant said that he had not taken any holidays after that until his employment ended. He said that he had asked Mr Dickson if he could work from home on 29, 30 and 31 January 2024, as he wanted to visit his father, and that Mr Dickson had said that he could work from home as long as the work got done. His father was in Kenmore at that time, staying in a holiday timeshare.

18. On 30 January 2024, the claimant had an exchange of messages with Nicola Campbell. He informed her that he was up in Kenmore, and that he would be back in the office on Thursday. She replied to him by saying that

she would see him then, and told him to “Have fun!”. The claimant responded by sending a photograph bearing to show an open laptop on a table, apparently in a living room. On the screen of the laptop there appears to be an account or document with words to the left and columns of figures to the right, and the message below it says “My current fun”, with an emoji. Ms Campbell replied “Oaft. Dedicated!!” The claimant said “Yup!”, and “Doesn’t get noticed. This was my weekend too”, with another emoji.

19. Before the end of 2023, it had been made clear to the staff that if no further work was won for the business, it would be likely to close. At the end of February 2024, Mr Dickson came into the office and said that they could no longer keep him on. He said that the claimant had the option of going at the end of February or at the end of March. The claimant said his preference was to go at the end of March, and his evidence was that “It appeared to be agreed that I would go at the end of March.”

20. The claimant maintained that he did work in the office during the course of March 2024, and was paid full time for the month.

21. On a weekly basis, including during the months from the start of 2024, the claimant would go with his ill mother to the doctor, taking time out of his morning’s work to do so, with the knowledge of Mr Dickson. He said that he was never called in about this.

22. Mr Dickson’s position was that he was aware that the claimant was going to stay with his father and that this was a holiday. If the claimant carried out any work during that time, that was the claimant’s choice, but the respondent understood that he was on holiday.

23. The claimant’s employment ended on 29 March 2024. On 11 April 2024 he messaged Mr Dickson to ask if redundancy or unused holidays were being paid with the final payroll. Mr Dickson replied “No mate I gave you a month it will be 19th”. The claimant replied to acknowledge that since he lacked 2 years’ service he was not entitled to redundancy pay, but asking about unused holiday pay. Again Mr Dickson replied: “Ryan march was always the date we all spoke openly about if there was no work then it had to change.

Then I gave you a choice you could go in march or I could pay you one more month. That you where not in much more than 10-15 hours a week on. I have payed you for 6 months out my own pocket I don't have any money it's all away."

5 24. The claimant responded: "I get it's tight, John, I'm just looking for what I'm legally due which is unused holidays. There is even a gov formula that has to be used for employees."

10 25. Mr Dickson responded again: "Your kidding. You have not done a full week work. You had a week off and loads of mornings afternoons sorting you mum house whatever. What do you think I am due you"

15 26. The claimant's response was: "I took 2 days to go away with my dad and worked the whole time I was gone on a tender for Ogilvie. Granted I wasn't in at 8am but I was still working some evenings until 10pm on tenders. I was still in every day and still worked even if I wasn't in the office. It works out at 4 days unused holiday."

27. Mr Dickson replied "If I knew this I would have just payed you the 4 days in march. Final date for a job was always march."

20 28. The exchanges continued without any resolution being achieved. Mr Dickson said "If you wanted holiday pay you should have left in march. I gave you the choice you got payed for march. I am a man of my word I payed you the month. In my opinion that's holiday redundancy everything." The claimant's response was "You said leave end of February or end March, there was no redundancy consultation, meeting etc it was a 2 minute chat. I chose March as I had no job lined up. That may be your opinion but legally it doesn't work. I was an employee and so covered by totally different laws to when you had Bryan or Darren as they were self employed. I wasn't 25 employed for over 2 years so don't get redundancy pay beyond when I worked, but I still get holidays."

Discussion and Decision

29. The parties are agreed that the issue before me is whether or not the claimant had taken his full holiday entitlement for the period 1 January to 29 March 2024.

5 30. The claimant is claiming for 5 days' annual leave untaken but accrued at the date of termination of his employment. However, there is some confusion here, as he indicated in a text message on 11 April to the respondent that he was due 4 days' annual leave.

10 31. The claimant's entitlement to annual leave was 28 days for the full year. The period for which he worked was almost exactly 3 months, and accordingly, he had accrued the right to 7 days' annual leave up to the date of termination of his employment.

32. The claimant accepted that he took 2 days' leave, on 1 and 2 January 2024. That would leave him with 5 days to take.

15 33. The first area of dispute was whether the claimant was permitted to work at home on 3 January 2024, or had taken a day's leave for that day. In my view, it is clear that the claimant had sought permission to work from home on 3 January, and had specified the work which he would be doing on that occasion (the tender for Clarks Contracts). He had notified the respondent of his intention to do so, and Murray McCormack had clearly indicated to the claimant that this would be acceptable. This exchange took place on a
20 WhatsApp group, of which Mr Dickson was a member, but he took no steps to contradict or overrule Mr McCormack

34. Accordingly, it is clear to me that the claimant did not take a day's annual leave on 3 January 2024, but worked from home.

25 35. I noted the evidence of Mr Dickson that he had sent messages in the previous year to tell staff they could not work from home, but there was no evidence that that was enforced, and the fact that he did not intervene in the exchange between the claimant and Mr McCormack means that he cannot now say that the claimant was not authorised to work from home on that
30 date.

36. I observe in passing that this is plainly an unsatisfactory state of affairs, where there is a lack of clarity about what the respondent's intentions were when it came to working from home.

5 37. The next area of contention between the parties relates to 29 to 31 January 2024. The claimant maintains that he was working while in Kenmore with his father at the holiday timeshare accommodation, and relies upon the text messages and photograph exchanged with Ms Campbell. The respondent's position is that it was well known to him that the claimant was taking time off to be with his father on holiday, and that if he chose to work during that
10 time, that was his choice.

38. There are three points which undermine the claimant's position on this: firstly, he accepted that he was not working full-time while he was away, and was slightly vague as to the precise hours which he did work while in Kenmore. Secondly, in his text messages to Mr Dickson he said "I took 2
15 days to go away with my dad and worked the whole time I was gone on a tender for Ogilvie." The phrasing of the text message is, in my view, significant – "I took" 2 days is suggestive of someone taking time off from work. Thirdly, he took 3 days away, not 2, which undermines his claim to have been working 3 days during that time.

20 39. I am not satisfied that the evidence demonstrates that the claimant was known to be working from home during this time, and the claimant's own inconsistency on this point undermines his claim that he did not take this time as holiday but as time working. That was certainly not the understanding of the respondent, and there appears to be justification for Mr
25 Dickson's position.

40. Accordingly, I find that the claimant did take the 3 days as annual leave on 29 to 31 January 2024.

41. That leaves 2 outstanding days' leave, since the claimant's initial claim was for 5 days' leave.

42. The remaining dispute was essentially two-fold: that the claimant was paid for the balance of his leave by the payment of a month's pay for March, and that in any event the claimant was accustomed to taking time off during each working week to attend to his mother.

5 43. With regard to the first point, it is clear that no mention was made of annual
leave or holiday pay in the brief discussion which took place between Mr
Dickson and the claimant about payment for March. While there is a
difference between them as to the precise words used, there was no
express agreement that the payment for March would include any
10 component of annual leave. Mr Dickson's position is that the claimant was
rarely in the office more than 10 to 15 hours per week in March 2024, and
the claimant did not clearly differ from that assertion. However, the fact that
he was not working full time hours does not mean that he and his employer
had agreed that he should use up annual leave. The agreement was that he
15 would be paid for March, and over the course of the month it appears that
there was a diminishing amount of work for him to attend to. Accordingly, it
is not apparent from the evidence that the claimant took any annual leave
during March, nor that there was any agreement by either party that he
would do so.

20 44. As to the second point, again, there is no evidence that when the claimant
left to attend to his mother he would be taking annual leave. Presumably,
had that been the case, he would have used up his annual leave allowance
very quickly. The claimant did not understand that to be the case, and the
respondent's position seems to be that it would not be fair for them to have
25 to pay annual leave for any time during March when he was not working full
time and was taking time off to help his mother; however, this is not an
issue of fairness, but of contract, and of the claimant's holiday entitlement.

45. In my judgment, the claimant cannot be said to have taken any annual leave
during the remainder of his employment in February and March 2024.

30 46. As a result, the claimant is entitled to pay in respect of 2 days' annual leave.

47. The claimant's payslips disclose that his net pay each month was £3,253.19. Multiplying that by 12 brings a payment of £39,038.28. Divided by 52 this brings a weekly wage of £750.74. The claimant is entitled to 2 days' pay, being two-fifths of £750.74, namely £300.30.

5 48. The respondent is therefore ordered to pay to the claimant the sum of £300.30 in respect of net holiday pay which was unlawfully deducted from him and which was properly payable to him on termination of his employment.

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Employment Judge: M A Macleod
Date of Judgment: 8 October 2024

Date sent to parties

08/10/2024

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I confirm that this is my Judgment in the case of Patterson v JAD Homes Limited and that I have signed the Judgment by electronic means.