



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr D Dobosz

**Respondent:** Chantry Concrete Products Ltd

**Heard at:** Southampton

**On:** 29 March 2017

**Before:** Employment Judge Reed

## **Representation**

**Claimant:** Miss M Inkin, Lay Representative

**Respondent:** Miss P Thompson, Finance Manager

**JUDGMENT** having been sent to the parties on 20 April 2017 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## REASONS

1. In this case the claimant Mr Dobosz made a number of claims against his former employer, Chantry Concrete Products Ltd (“the Company”). He claimed he had not been paid notice to which he was entitled: that he had not received a proper payment by way of holiday accrued and untaken when his employment terminated; and that he had been underpaid during a period of sickness absence.
2. Miss Thompson on behalf of the Company conceded that Mr Dobosz was entitled to notice pay amounting to £245.51 and a further payment of holiday pay of £4. That left only one matter for me to determine, namely payment when Mr Dobosz was off sick.
3. I heard evidence from Mr Dobosz himself and, on his behalf, from Ms Faryna and Ms Wyczęsana. Miss Thompson herself gave evidence and my attention was directed to certain documents. I reached the following findings.
4. Mr Dobosz began working for the Company on 28 April 2016, as a carpenter.

5. On 16 May 2016 he sustained an injury and was obliged to take time off work. There was no right to occupational sick pay under his contract.
6. On 24 May he was visited at home by his manager Mr Cleall. What happened in the course of that meeting was at the core of the issue between the parties. Put shortly, Mr Dobosz and his witnesses (who were present at the meeting) insisted that Mr Cleall had given an undertaking that the Company would pay Mr Dobosz's entire wages throughout his period of sickness. In fact, Mr Dobosz returned to statutory sick pay from 2 June although he was actually off work for a total of 18 weeks.
7. Mr Dobosz insisted that the effect of the discussion with Mr Cleall had been to vary his contract and therefore after he had returned to SSP during his period of sickness absence, there had been unauthorised deductions from his wages.
8. Miss Thompson told me that she had spoken to Mr Cleall shortly after the meeting and he (Mr Cleall) told her that he had agreed to pay Mr Dobosz full pay only for two weeks (ie for the duration of the then current sick note).
9. Mr Cleall did not give evidence to me and therefore the only first hand testimony of the events of that day came from the claimant and his witnesses. In the circumstances I was prepared to accept their version of events. There had indeed come about a variation to Mr Dobosz's contract such that, throughout the period of his sickness he was entitled to his full pay of £353.68, rather than SSP of £88.45. The difference between those two figures is £265.23 and the period during which he was underpaid amounted to sixteen weeks, producing a total of £4,243.68.



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Employment Judge Reed

REASONS SENT TO THE PARTIES ON

15<sup>th</sup> July 2017



FOR THE TRIBUNAL OFFICE