



# EMPLOYMENT TRIBUNALS

**Claimant:**  
Mr F Namba

**V**

**Respondent:**  
Prior's Court School

**Heard at:** Reading

**On:** 17 March 2017

**Before:** Employment Judge J Hill

## Appearances

**For the Claimant:** In person

**For the Respondent:** Ms N Beckley (Director of HR)

## JUDGMENT

1. The claim for outstanding holiday pay fails and is dismissed.

## REASONS

1. By a claim presented on 14 December 2016, the claimant sought to recover five days' outstanding holiday pay. The circumstances of his seeking this money were that he had ten days' outstanding leave for the leave year 2016/16. He was unable to take those days and he sought to recover five days' annual leave for which he had been refused permission to carry forward.
2. The respondent disputed that there was a right to carry forward annual leave.
3. I had before me today a bundle of documents prepared by the respondent. I heard evidence from the claimant and Ms Beckley. I found the following facts.
4. The claimant was employed on 11 February 2016. He worked three nights a week as a night care worker.
5. His annual leave entitlement is set out at clause 7.1 of the contract which states: "You are entitled to take 20 working nights (pro rata from 33 days of part time) paid holiday in each complete holiday year which runs from 1 September to 31 August."

6. The provisions regarding holiday entitlement include that the holiday may be taken only by prior arrangement with the manager and ten days prior notice of intention to take holiday.
7. The contract is silent as to what happens if an employee does not take all their annual leave in a leave year.
8. It is apparent from the bundle that in late May 2016, the HR computer system was about to change which would have an impact on the employees' ability to request annual leave. There are emails from Ms Beckley of 12 and 23 May 2016 reminding staff of this problem.
9. There are emails in May in the bundle between managers and HR in which conversations take place about the claimant refusing to discuss his outstanding annual leave until July. The claimant had not had sight of these prior to the preparation of the bundle. As they are not strictly relevant to the issue I must decide, I do not need to take any cognisance of them.
10. I note that the new HR system went live on 17 June.
11. On 22 June, the claimant asked his manager about his leave which he wanted to take in August. He was advised that the annual leave period he sought was not available to him. This related both to its length and its timing.
12. The claimant took no further action to pursue his request for annual leave until 30 July 2016. He then sought to be paid for his outstanding leave which he could not take because others were already on leave.
13. Ms Beckley's evidence was that in relation to the carrying over of leave, a committee was held each year to discuss those employees who had failed to take their annual leave prior to the end of the leave year. The committee would decide who should be allowed to carry forward leave and how many days. As an organisation, the maximum that was allowed was five days. The number of days permitted was purely at the discretion of the employer.
14. It was the claimant's position that if he was only allowed to carry forward five days, the outstanding five days due him that was not carried forward should be paid to him.
15. This was the dispute that I was asked to decide.

### **My conclusions**

16. The contract is silent on the question of leave being carried forward. If I consider the principles behind the taking of annual leave, I must look at the Working Time Regulations 1998. Save for limited circumstances related to sick leave, these make it clear that leave should not be carried forward.

Annual leave is a health and safety issue; for that reason leave should be used in the leave year. The usual mantra: 'if you don't use it, you lose it'.

17. It is apparent from the emails contained within the bundle in May/June when the claimant raised the question of taking annual leave in August he was refused the dates he sought as it was not convenient to the business, other people having already booked that time. The claimant then took no further action until the end of July 2016 to obtain annual leave in August. The respondent was unable to honour that annual leave request. I take judicial notice of the fact it is school holidays and therefore a popular time for leave. The claimant was therefore left in a position, he says, of having ten days' outstanding annual leave, and the respondent says six days' outstanding annual leave, which he could not take before the end of the leave year.
18. Was the respondent required as a matter of contract law to allow the claimant to carry forward his outstanding leave? The respondent says it was within its discretion to allow this.
19. As the contract is silent on the subject, I am satisfied that the respondents are correct. It must be a discretionary matter not an absolute right.
20. The respondent exercised its discretion to allow the claimant to carry forward five days' leave. As the claimant had not used up all his annual leave in the leave year, sadly he loses that. The email trail makes it clear that it was the claimant's own decision not to pursue taking his outstanding leave in the period 23 June to 30 July 2016.
21. There is no obligation on the respondent to recompense him his lost leave. Indeed, within the meaning and spirit of the Working Time Regulations, it would be wrong for them to do so as leave is the health and safety issue. Whilst annual leave is a matter that should be honoured by an employer, this is dependent on annual leave being requested in an appropriate manner and the timing of the requested annual leave being suitable for the arrangements of running the business to allow the leave to be taken as requested.
22. The claimant was advised in late May that his original request for leave in August was refused. He made no application to take it at a more suitable time to the business, and so he lost his leave. There is no order that I can make in law that would give him the recompense for the days' annual leave he was unable to take. The claim fails.

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Employment Judge Hill

Date: .....27 March 2017.....

Judgment and Reasons

Sent to the parties on: .....

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For the Tribunal Office