EMPLOYMENT TRIBUNALS

Claimant: Mr M Rogers

Respondent: Coach Travel Solutions Ltd

Heard at: Manchester **On:** 24 April 2019

Before: Regional Employment Judge Parkin

REPRESENTATION:

Claimant: In person
Respondent: Mr P Maratos, Consultant

JUDGMENT

The judgment of the Tribunal is that the respondent made unlawful deductions from the claimant's wages in the total amount of £700.00 and is ordered to pay the claimant that sum.

REASONS

1. By his claim presented on 7 November 2018 the claimant claimed unlawful deduction from wages and outstanding holiday pay in respect of the termination of his employment as a mechanic/coach driver with the respondent, which on the claim form he stated was on 21 September 2017 but which in fact was on 21 September 2018. He set out that his employer had been taken over by a few different people over the years he had worked and in December (i.e. 2017) Asif Din took over. He wrote that each time his contract rolled over to the new buyer but that the new manager made it hard for him to work there as he told him he was not allowed holidays as he had not earned any yet "as holidays run from April to April, when it actually states that they run January to December in my contract". The claimant contended that the manager had approached him with his holiday request with a grin on his face and said that, if he wanted to discuss this, then "to come back in his own time…to which I had no choice but to walk out".

2. By its ET3 response presented on 7 December 2018, the respondent denied the claimant's claims for outstanding pay, relying both upon entitlement to deduct from final wages for a driver CPC course but also contending that the claimant had

been asked to sign a contract of employment which he refused to sign. It said that, in the months after his employment started he was asked on numerous occasions to sign a contract but refused: "…as he did not want to work under the respondent's terms and conditions and also the holiday period". The response contended that the claimant believed he was still able to work under a contract he had received from a previous company and that he was able to transfer over to the respondent on this contract, but that Mr Asif Din, the director, had already explained that this was not possible and this contract no longer stood. It contended that the respondent's holiday period ran from 1 April 2018 to 31 March 2019 and thus, by the end of his employment, the claimant had used all his accrued holiday days with nothing further owing.

3. The hearing was listed for one hour before an Employment Judge sitting alone, and the Regional Judge directed that both parties attend, having exchanged witness statements attaching all documents which they relied upon in support of the claim or grounds of resistance, including the contract of employment (whether signed or unsigned), statement of particulars, payslips, etc.

4. At the hearing there was no agreed bundle but the respondent provided a 98-page bundle of which included a copy of a document which was unnamed save for its own name (Coach Travel Solutions) and headed "Statement of Particulars of Employment", being a pro forma statement of the main particulars of terms and conditions of employment for a full-time driver. That document was not signed and bore no reference to the claimant and there was no other documentation supporting it which referred to him. The respondent also provided a copy of the claimant's vacation request dated 23 August 2018 requesting vacation absence from 22 to 26 October 2018. On it, the respondent had commented, "Holiday approved but will be unpaid as already taken all holidays", with the HR officer's signature on 20 September 2018.

5. For his part, the claimant also provided voluminous documents including a copy of his original contract of employment with C-MAC Partnership Limited t/a Coach Hire Booking which commenced on 10 September 2012. This at clause 6 gave his entitlement as 23 working days' holiday exclusive of Bank Holidays and stated that the holiday year runs from 1 January to 31 December each year and "builds up at 1/12th of your annual holiday entitlement for each completed month of service". The only remaining document he referred the Tribunal to was dated 6 February 2018, from Rhianna Hughes of the respondent company to him which stated that the letter was in relation to the transfer of services from Harris Travel to Coach Travel Solutions and that he would now be reporting to Asif Din as well as to Michael Harris, directors. It went on to state:

> "All of your daily duties will stay the same as well as hours of work and holidays. You will now be paid weekly through BACS and receive a wage slip each week.
>
> We believe that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) will apply to the transfer…"

The letter concluded: "Please sign and return one copy to me", and at the bottom with the claimant's signature: "I acknowledge the change to my role as outlined above".

6. At the start of the hearing the respondent conceded that 4 days of the holiday pay claimed by the claimant in the sum of £280 was acknowledged as due. Accordingly, the sole dispute related to the remaining six days' holiday pay he claimed, in the sum of £420 gross, the essential issue being whether the claimant had agreed a variation to his original contract of employment changing the holiday year from January to December to April to March or he had affirmed an imposed variation that the respondent had made; otherwise, his claim would succeed.

7. The claimant gave evidence himself, not based upon a witness statement but relying on the content of his ET1 claim form, and the respondent called Mr Asif Din to give evidence based upon his witness statement. Before he gave evidence, Mr Din varied his written statement in some respects in relation to dates at paragraphs 5, 6 and 8. However, in giving evidence, Mr Din contradicted the content of the witness statement, especially significantly in relation to paragraph 11 where he had originally set out that he personally had issued the claimant with a new contract for him to sign: "However, the claimant refused to sign this. I explained the reasons as to why this change was necessary but the claimant refused to listen to me". In oral evidence, he said that this was done by his employee, Rhianna Hughes. Mr Din acknowledged that there was no documentation from the respondent supporting the version of a variation to the contract of employment which he contended for.

Findings of Fact

8. From the oral and documentary evidence the Tribunal made the following key findings of fact which were very limited in view of the ultimate dispute between the parties.

9. Mr Rogers commenced employment as a mechanic/driver with a predecessor in title of the respondent company, namely C-MAC Partnership Limited t/a Coach Hire Booking, on 10 September 2012. From February 2013 if not beforehand, the terms and conditions of his employment were set out fully within a written contract of employment document signed by him and also by Susie Wilkinson, the then HR officer for C-MAC Partnership Limited. Clause 7 dealt with holidays, expressly entitling him to 23 working days exclusive of Bank Holidays, but also significantly "the holiday year runs from 1 January to 31 December each year…".

10. Whilst there was a subsequent transfer of employment to Harris Travel, the claimant's terms and conditions of his contract of employment remained the same, and remained the same when the newest company, the respondent which traded as Coach Travel Solutions, took over in or about November 2017. Mr Din joined Mr Harris at that time in running the new company. Whilst there may indeed have been discussion with the workforce generally or with the claimant individually about a change to the nature of the holiday year, no such change was introduced or imposed at that time in November 2017. Nor was there any documented change to this important term of the contract of employment. Instead, and the Tribunal infers alongside an attempt by Rhianna Hughes, the then HR officer, to get Mr Rogers to sign a new contract of employment including a term that the holiday year ran from April to March each year, the claimant signed the letter dated 6 February 2018 but nothing else, which if anything confirmed a change of employer's name only but no change to the terms and conditions of contract of employment:

> "All of your daily duties will stay the same as well as hours of work and holidays."

11. The claimant was aware of his TUPE rights, or at least satisfied that there was no change to his terms and conditions of employment after the respondent took over, including as to his holiday year. He was prepared to sign the letter dated 6 February 2018, but certainly not prepared to sign a contract which changed the holiday year to 1 April to 31 March 2018. Whereas the respondent had been generous to him over Christmas and New Year 2017/2018, when he put forward his leave request in August 2018 for a week in October 2018 (R, page 35), he was subsequently told on 20 September 2018 that he would only be able to take it as unpaid leave. He resigned very quickly afterwards. This is entirely consistent with paragraph 16 of the original witness statement prepared by Mr Din:

> "The claimant immediately resigned after being notified of his entitlement to annual leave…"

12. The sum outstanding in relation to the disputed sums were £280 gross for four days' holiday pay and a further £420 gross for six days' holiday pay.

Submissions

13. In submissions, the respondent contended that the claimant had affirmed the contract of employment, the claimant having been told at a meeting of all employees in November 2017 that the holiday year would change. It was urged that what prompted his resignation was presumably his misunderstanding in September 2018 when it appeared he was not going to be paid for holiday. For his part, Mr Din in oral evidence had contended that the letter dated 6 February 2018 was simply a mistake on the part of his employee, Rhianna Hughes, in failing to set out that it was only the claimant's holiday entitlement which did not change since the holiday year did change. The claimant continued to contend that he had never agreed a variation to his contract of employment in relation to holiday year or waived any such change.

Conclusions and application of law

14. The Tribunal found as a fact that the claimant never agreed to or waived any right to challenge any imposed variation in his terms and conditions of employment. He pointed to a very clear written contractual term with his original employer and contended it had never changed. The Tribunal concluded that the claimant was correct in his contention, whether as a matter of straightforward law of contract or, the respondent apparently seeking to contend that the TUPE Regulations 2006 applied, on the basis of the regulations themselves. He was entitled to rely upon the terms and conditions of his original contract, both by virtue of the general continuity of employment provisions set out within the Employment Rights Act 1996 at Part XIV, in particular at section 218, and also by reference to the 2006 Regulations which provide at regulation 4 for the continuity of terms and conditions of employment on transfer.

15. As a matter of contract law, notwithstanding the difference in bargaining powers, there can be no change to the main terms and conditions of a contract of employment unless agreed between the parties, expressly or by implication of conduct or by affirmation or waiver following a change. There never was agreement

by Mr Rogers to a variation of holiday year, and, far from affirming any imposed variation, he resigned at once when it was made clear to him in September 2018 that he was not going to be paid for the week's leave in October. Instead of waiving a breach of contract or affirming a variation to the contract, as demonstrated by Mr Din's witness statement, the claimant made clear he was not accepting any such breach. Accordingly, even though the claimant's employment terms and conditions left him on a different holiday year from all other employees, that specific term of his contract of employment was never changed and he was entitled to rely upon it.

16. In all the circumstances, in addition to the £280.00 gross which the respondent acknowledged was owing to the claimant, the Tribunal found the claimant's claim of unlawful deduction from wages in respect of failure to pay 6 days' outstanding holiday pay, or strictly compensation for accrued paid annual leave of termination of employment, in the further sum of £420.00 is well-founded and the respondent is ordered to pay the total sum of £700.00 gross to him.

Regional Employment Judge Parkin

Date 26 April 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON

29 April 2019

FOR THE TRIBUNAL OFFICE

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): **2416785/2018**

Name of case(s): **Mr M Rogers** v **Coach Travel Solutions Ltd**

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: **29 April 2019**

"the calculation day" is: **30 April 2019**

"the stipulated rate of interest" is: **8%**

MR I STOCKTON
For the Employment Tribunal Office

INTEREST ON TRIBUNAL AWARDS

GUIDANCE NOTE

1. This guidance note should be read in conjunction with the booklet, 'The Judgment' which can be found on our website at
www.gov.uk/government/publications/employment-tribunal-hearings-judgment-guide-t426

If you do not have access to the internet, paper copies can be obtained by telephoning the tribunal office dealing with the claim.

2. The Employment Tribunals (Interest) Order 1990 provides for interest to be paid on employment tribunal awards (excluding sums representing costs or expenses) if they remain wholly or partly unpaid more than 14 days after the date on which the Tribunal's judgment is recorded as having been sent to the parties, which is known as "the relevant decision day".

3. The date from which interest starts to accrue is the day immediately following the relevant decision day and is called "the calculation day". The dates of both the relevant decision day and the calculation day that apply in your case are recorded on the Notice attached to the judgment. If you have received a judgment and subsequently request reasons (see 'The Judgment' booklet) the date of the relevant judgment day will remain unchanged.

4. "Interest" means simple interest accruing from day to day on such part of the sum of money awarded by the tribunal for the time being remaining unpaid. Interest does not accrue on deductions such as Tax and/or National Insurance Contributions that are to be paid to the appropriate authorities. Neither does interest accrue on any sums which the Secretary of State has claimed in a recoupment notice (see 'The Judgment' booklet).

5. Where the sum awarded is varied upon a review of the judgment by the Employment Tribunal or upon appeal to the Employment Appeal Tribunal or a higher appellate court, then interest will accrue in the same way (from "the calculation day"), but on the award as varied by the higher court and not on the sum originally awarded by the Tribunal.

6. 'The Judgment' booklet explains how employment tribunal awards are enforced. The interest element of an award is enforced in the same way.