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EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case Number: 4100974/2019

Held in Glasgow on 24 April 2019

Employment Judge: David Hoey

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Mr M Milewski

**Claimant
In Person
Interpreter -
Martha Sydlowski**

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TLC Car Care Ltd

**Respondent
Represented by:-
Mr W Lane –
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The claim for payment in respect of accrued holidays arising in 2018 that were not taken is dismissed.

REASONS

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1. This case called for a full Hearing to determine liability (if anything was due) and remedy (what specifically was due). The claimant represented himself and the respondent was represented by Mr Lane. As English was not the

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claimant's first language an interpreter ensured the claimant could fully participate in the Hearing. This was confirmed by the interpreter.

5 2. The Hearing began by identifying what the issues the Tribunal had to decide were. The claimant explained that he believed he was due a payment in respect of accrued holidays for the holiday year of 2018.

3. The claimant gave evidence as did Ms Moncrieff, office manager, for the respondent and both parties lodged productions.

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Facts

4. I find the following facts established on the balance of probabilities. I focus on the facts that are necessary to determine the issues arising

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5. The claimant worked for the respondent in the course of 2018 and had outstanding holidays which he had accrued. He had accrued 104.39 hours.

6. The claimant had taken holidays during the 2018 holiday year.

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7. Two of the claimant's requests for holidays had been refused. On one occasion this was due to pressure of business and the second was due to the claimant providing insufficient contractual notice to take holidays. The claimant had taken alternative holidays.

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8. The claimant had entered into a contract of employment and Employee Handbook which he confirmed he had understood and accepted. In terms of his contract, holidays were to be taken during the course of each holiday year. Employees were encouraged to take holidays during the holiday year. Carrying forward of holidays was not permitted. Proper notice required to be given in order to ensure holidays could be taken. Notice of twice the duration of the holiday was required.

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9. It was possible for the claimant to have taken his full 2018 holiday entitlement during the course of the 2018 holiday year but he believed it would not have been in the interests of the business to take his holidays. He chose not to take his full entitlement but he could have done so. The respondent did not prevent the claimant from taking his full holiday entitlement in 2018.

The Law and Decision

10. As a matter of law, holiday entitlement is governed by the Working Time Regulations (and the contract of employment). It is important that workers take their holiday entitlement during the holiday year. Employers are under a duty to ensure this is done. It is only in exceptional circumstances that holidays can be carried forward (usually where the worker was prevented from taking leave for specific reasons).
11. Regulation 13 (9) of the Working Time Regulations prohibits the carrying forward of leave and the paying in lieu of accrued leave (except on termination of employment). In this case the claimant's employment is continuing.
12. The claimant was clearly a hard worker who placed the interests of the business ahead of his own. He had been promoted and wanted to make an impression and not leave the business in difficulty by his absence. However, he failed to ask the respondent to take the holidays to which he was entitled and chose himself not to take his leave.
13. It was entirely possible for the claimant to have taken his entire leave entitlement during the 2018 holiday year and in accordance with the contract (by the giving of the requisite notice for holidays).
14. On that basis it is not possible for the claimant to seek payment for leave that was not taken. There is no proper basis upon which the claimant is entitled to seek payment for such leave in all the circumstances.

15. The claim is therefore dismissed.

5 **Employment Judge: David Hoey**
Date of Judgment: 25 April 2019
Entered in register: 07 May 2019
and copied to parties

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