Case Number: 2503212/2018

THE EMPLOYMENT TRIBUNALS

Claimant: **ZZ**

Respondent: **YY**

Interested Party: **VV Council**

Heard at: **North East Region** **On:** **Thursday 24 & Friday 25 October 2019**

Before: **Employment Judge Shore**

Representation:

Claimant: **AA – Lay Representative**
Respondent: **Mr M Howson – Solicitor**
Interested Party: **Ms L Sherlock**

JUDGMENT

1. By consent, the respondent shall pay the claimant £174.84 in full and final settlement of his claim for unauthorised deduction from wages contrary to section 23 Employment Rights Act 1996 ("ERA").

2. The claimant's claim for underpayment of holiday pay and failure to pay for rest breaks required by regulation 12 of the Working Time Regulations 1998 ("WTR") fails.

REASONS

1. The claimant was employed to provide care for QQ (who I will refer to as QQ, to differential him from his father, who is the respondent), an adult with Cerebral Palsy, Hydrocephalus and visual impairment, who lives independently, but requires twenty-four-hour care. The respondent is QQ's father who is responsible for his son's finances and, particularly, arranging his son's care team the finance provided by VV Council which is an interested party in these proceedings.

2. At a preliminary hearing held on 15 October 2019, Employment Judge Garnon decided that two of the claimant's claims could be separated from other claims that he makes and be determined at this hearing. The two claims that were delegated to this hearing are:-

   2.1 whether the respondent made unauthorised deductions from the claimant's pay pursuant to section 13 ERA, and;

   2.2 whether the claimant is entitled to unpaid holiday pay.

3. In preliminary discussions with the parties at the start of the first day of the hearing, it was noted that the claimant's claim for unauthorised deductions was now quantified at a relatively small amount. I asked the parties if they wished to be given time to discuss that claim, which they agreed that they did. After a relatively short time, they returned and advised that agreement had been reached which is reflected in the consent judgment in paragraph 1 of the judgment above.

4. That left the holiday pay claim. Unfortunately, the tribunal's file had not been delivered to the hearing centre, so I only had the bundle produced by the parties and witness statements. I could see that other case management orders had been made, but could not determine what they were. I had the option of either adjourning the hearing to await the arrival of the file or to proceed with the hearing. I decided that the overriding objective, and the specific requirement to avoid delay and expense was best served if I proceeded with the trial. I believed that a fair and just result could be achieved, as I was assured that the tribunal file would arrive at some time during the first day of the hearing, which it did.

5. Before I heard evidence, I thought that it was important to clearly define the scope of the hearing. AA and Mr Howson agreed that the claimant's holiday pay claim related back to the start of his employment in 2011. AA said that the claimant was citing the authority of the ECJ case of King v The Sash Window Workshop: C-214/16 [2018] IRLR 142 as authority for the principal that, where a worker has been denied the opportunity to take holiday pay, there is no time-bar on how back such a claim can go.

6. Additionally, AA said that the claim related to rest breaks. Workers are entitled to a twenty-minute unpaid rest break after working for a period of six hours. The claimant says that he was never given a rest break during his employment and that, as he was now no longer employed by the respondent, he wished to be compensated for the rest breaks he had been denied. The third element of the holiday pay claim was that the claimant claimed to be entitled to holiday pay at the rate of time and a half (1.5X) for holidays taken when he would have been working on a bank holiday waking night shift.

HOUSEKEEPING

7. The parties had produced two bundles for use at the hearing; a bundle of evidence divided into three sections (A, B and C) and a bundle of claims, responses, amendments and other documents filed with the tribunal.

8. A large number of witness statements had been filed, but on the settlement of the unauthorised deduction of wages claim, I only heard evidence from the claimant in person, the respondent in person and MM, the team manager Adult Social Care Financial Services for the Council.

9. Mr Howson and Ms Sherlock both handed up skeleton arguments in support of their closing submissions.

EVIDENCE

10. The respondent gave evidence in chief from a witness statement consisting of twenty-one paragraphs.

11. It was agreed that the claimant's claim for holiday pay to be determined by me only covered the period from the start of his employment to the end of his holiday year 2017/2018 – 31 March 2018. Any holiday pay due to the claimant after that date had not been crystallised at the time that he made this claim and could be dealt with by the substantive hearing. I made it clear to the parties that I would not make any findings of fact that could hamper the ability of the panel at the substantive final hearing to come to its own findings of fact. The respondent's evidence in chief gave details of his son's severe disability and confirmed that his son lives independently. He requires care for twenty-four hours per day, which at all relevant times was given by a team of three carers that included the claimant and the respondent's wife (QQ's mother), XX.

12. QQ is in receipt of direct payments from the Council, which also manages the account on his behalf and provide payroll services for the respondent as the employer of his son's carers. The claimant's latest contract was dated 22 February 2017 and appeared at pages B25 to B28 of the bundle. The relevant parts of the contract relating to holiday pay were on page B26 where it stated:-

> "*the holiday year is from 1st April – 31st March. Your holiday entitlement must be taken during this period. Payment will not be made for any unused holiday. ~~A maximum of 1.6 weeks can be carried over into the next entitlement year and should be used within two months of the new entitlement year starting.~~ Your employer can require you to take all or any of the leave to which you are entitled at specific times, provided that you are given prior notice.*
>
> *The full amount of your holiday entitlement is 5.6 weeks per year pro-rata per completed months employment. One week being the equivalent of weekly hours worked. 123 hours over 4 weeks divided by 4 = 30.75 x 5.6 = 172.2 hours. 10 sleeps over 4 weeks divided by 2.5 x 5.6 = 14 nights.*
>
> *You are entitled to bank holidays with pay and you may be required to work on some bank holidays depending on client need detailed in your job description, in this case you will be paid at the normal rate. If a bank holiday falls on your normal working day you may be entitled*

to time and a half take this as part of your statutory holiday entitlement with permission from your employer."

13. The carers are employed on a shift pattern of one week of days followed by one week of nights. The claimant was employed on a day pattern of Monday to Thursday 3.30pm to 9.00pm and Friday 9.00am to 9.00pm. On the Sunday night, before the commencement of a day shift week, the claimant also worked 6.00pm to 9.00pm. Nights consisted of starting on a Sunday working 6.00pm until 11.00pm paid at normal daily/hourly rate with a night shift then consisting of 11.00pm to 7.00am, followed by 7.00am to 9.30am at normal daily/hourly rate. Night working was paid at a flat rate of £81.00 for an eight-hour shift.

14. The claimant would complete a timesheet for his hours and then sign it. He then brought the timesheet to the respondent's house on the last Friday or Sunday of his shift pattern. The timesheet was then signed off by the respondent, although it would occasionally be signed off by XX. I should note at this point that there was some lengthy discussion in cross-examination around the ability of XX to sign off the claimant's timesheets, but I find there was nothing improper in her being authorised to do so and the fact that she did sign off some of the claimant's time sheets has no impact on my findings of fact in this case.

15. The signed timesheet was then placed in an envelope together with the timesheets of the other employees and given back to the claimant, who would then deliver all the timesheets to the Council.

16. The council then checked out the paperwork, put the figures onto their system and paid the employees through its payroll.

17. From 2016, the system changed. The respondent or his wife would complete a declaration form based on the timesheets which would then be placed in an envelope given to the claimant, who would hand deliver it. From September 2018, the document was sent by e-mail.

18. The respondent could not recall an occasion when the claimant had requested annual leave and it had been denied. When the claimant requested annual leave, it was granted and the hours would be covered either with agency workers or by the respondent or XX themselves.

19. In around 2017, the claimant started to produce diary sheets and Card-Ex documents.

20. On 23 March 2018, QQ wanted to watch Sports Relief with the claimant on TV. This request caused a problem, as XX was was scheduled to work that night and she didn't have enough annual leave left to take the night off as holiday because the holiday year was due to expire on 31 March. The respondent spoke to his wife and it was agreed that they would "fix the timesheets and essentially 'swap' shifts in the first week of April". Accordingly, on 23 March the claimant's timesheet shows that he finished work at 9.00pm and that XX started work at that time. This was not an accurate record of what happened. The claimant continued to work after 9.00pm and XX never started work. On 6 April 2018, the shift

records for XX and the claimant were swapped and she was shown as being on holiday when she wasn't and the claimant was shown as being at work, when he wasn't.

21. The claimant was supposed to write on his timesheet for 6 April the hours he had worked on 23 March. However, he forgot, so XX wrote those hours on his timesheet for him. That ensured that he would be paid for the hours he had worked on 23 March 2018.

22. There was a further error on the timesheet for XX for 23 March 2018 [C104]. It included the words "cover AL/ZZ". That resulted in her probably being paid for hours that she hadn't worked. I find that this in not relevant to the claimant's case.

23. In answer to supplementary questions, the respondent rebutted the suggestion that the claimant had not been permitted to take rest periods. His son requires twenty-four-hour care, so he needed to be looked after for the entirety of the claimant's shift. Whilst he was at work, the claimant would spend some time sitting with QQ and watching TV. He would also do some ironing, make him lunch, do laundry or whatever else the job entailed.

24. In answer to cross-examination questions from AA, the respondent agreed that his son required constant care, which was part of the job. He agreed that this meant that it was difficult to take breaks. Both sides were agreed that breaks were paid, although the WTR does not required them to be paid.

25. There was then a series of questions about a meeting in May 2018 between the respondent, the claimant and a council officer. The claimant's co-worker, JJ was told he couldn't take any more nights off. The claimant's annual entitlement to holiday had been calculated as 172.2 hours plus fourteen-night shifts. A series of hypothetical questions were put to the respondent, whose answer was that the council worked out entitlement for him.

26. It was put to the respondent that the council's own guidance [B258] said that making sure that employees took their leave was the employer's responsibility. The respondent's response was that that document was dated 2019. He accepted that the claimant's latest contract [B26] did not say that it was the claimant's responsibility to ensure he took all his holidays, although his original contract did contain such a clause.

27. The respondent was then taken to the claimant's timesheet for the period 12 March 2018 to 8 April 2018 [C105]. On 23 March 2018, it was agreed that the claimant had written in the appropriate line that he had worked form 9.00am to 9.00pm. On 3 April 2018, the note made was "holiday 3.30pm 9.00pm A/L".

28. The entry for Friday 6 April 2018 showed in the claimant's handwriting that he'd worked 9.00am to 9.00pm and there was then an entry in different handwriting that looked to state "11.00pm C/C *11.00pm-7.00am".

29. The entry for 7 April 2018 was in the same handwriting and said "7.00am – 10.00am C/C*". Underneath the entry for 8 April was noted "cover XX's hols – QQ asked [the claimant]".

30. The respondent agreed that the handwriting for the entries from 11.00pm on 6 April was his wife's. The shift pattern that had been recorded as being worked by the claimant was his wife's shift pattern. He did not recall being at QQ's home on that night himself.

31. The respondent was then taken to his wife's hours sheet for the same period and agreed that she had overclaimed for 25 March [C104]. I note that this was confirmed by XX's evidence statement at paragraph 13.

32. The respondent was then taken to C106 which was the four-weekly declaration for the period 12 March 2018 to 8 April 2018 that the respondent sent to the council in respect of the claimant. That said that in the period the claimant had worked one-hundred and fourteen hours, had taken twenty holiday hours and had worked fourteen nights. There was no entry under the heading "holiday nights".

33. The respondent was then taken to page C110, which was the claimant's timesheet for the period 12 February to 11 March 2018 and the four-weekly declaration for the same period dated 11 March 2018 [C111]. It was put to the respondent that the claimant's timesheet indicates that he'd been on holiday for four nights 20.5 hours, which were recorded on the four-weekly declaration at C111. XX's own timesheet for the same period [C109] indicated that on 26, 27 and 28 February and 1 March, she had covered for the claimant. It was the claimant's case that she had not been at work covering the claimant as alleged. The respondent's response was that the claimant had asked for a cash payment, so they had recorded him as being at work, although he had had time off. His wife then claimed the same period as her work, so the claimant ended up being paid annual leave *and* wages for the same period because, when XX was paid for the four days' holiday, she handed over the cash to the claimant.

34. I asked to look at the payslips. The claimant's payslip was at page C107 and XX's was at C108. The claimant's payslip showed 20.5 holiday hours and four holiday nights. XX's payslip showed no holiday at all. There was a discussion between me and the representatives during which Mr Howson said that the respondent's case is that both XX and the claimant received what was on the timesheets. XX then paid the claimant the pay she got for "covering" him in cash.

35. The next witness was MM, who was employed as Team Manager Adult Social Care Financial Services for the Council. She gave evidence in chief from her witness statement dated 21 October 2019 that ran to twenty-four paragraphs. She said that the personal support team offers a support service to adults who choose a self-managed personal budget. The service provides help with recruitment of personal assistants (such as the claimant), basic employment support and advice, a payroll service for employing personal assistants and management of personal budget funds.

36. Direct payments to QQ had commenced in 2005 and, at that time, a company called Wilf Ward provided the support and advice to the family. In 2014, the Council decided to bring the support service in-house and her team took over the administration of the package. She confirmed the timesheet arrangement that the respondent had told me about. Her team keep a record of annual leave taken by personal assistants and asked employers to keep a record as well. She knew that the respondent had introduced a holiday card for doing this. Her team were happy to answer queries from personal assistants about annual leave.

37. She had reviewed the claimant's annual leave for the holiday year 2017/2018 and found that he had not used 17.32 holiday hours in that year. He had accrued more annual leave because he had worked over time to cover for other personal assistants. Her explanation of the calculation was contained at pages C259 to C260.

38. In answer to supplementary questions from Mr Howson, MM said that there is no statutory requirement to pay the claimant for breaks, but he was paid by the hour, so effectively, he was paid for breaks. It was not always feasible to take a break because of the type of work that the claimant did.

39. In answer to cross-examination questions, MM said that employers were not required to use the template contract supplied by the council. Pages B25 to B28 contained the claimant's last contract. The council doesn't keep copy contracts.

40. The standard contract template did not allow for bank holidays to be paid at time and a half. She accepted that the words "time plus half" in quotation marks had been inserted by hand in the claimant's contract [B26].

41. The council keeps a log system for all telephone calls and enquiries made by PAs.

42. We then had a series of questions which seemed to imply that AA believed there was a legal entitlement to a day off in lieu when a bank holiday had been worked. There was no such provision in the contract and I advised them that there was no such provision either expressly provided for by statute or implied into any contract of employment.

43. MM said that their records only included what they had been given on declarations. Any errors would have either been inputting errors or errors on the declarations that they had been given. They were happy to answer questions about holiday pay, but referred any questions about wages back to the employer.

44. AA asked a few questions about the council's policies, but as I advised him, the contractual issue here was between the claimant and the respondent and whatever the policy of the council was, I couldn't imply that that policy had been incorporated into a separate agreement between the respondent and the claimant.

45. MM said that the support documents that they had produced have to be considered in the light of the fact that they have a large number of clients to

manage and they don't know the terms and conditions of every employer. It's impossible to cover the circumstances of every single package. She said that the council thinks the onus is on the employer to tell the employees about their holiday entitlement. At the end of the year, they get a lot of calls from PAs asking about their remaining holiday entitlement. It's a complex situation and the council doesn't expect people to know exactly what their entitlement is. All the calls to the council are logged, but she had not found a log of a holiday entitlement query from the claimant. There are logs about pay, but he would have been referred back to his employer.

46. The claimant gave evidence from a very long witness statement dated 20 October 2019. Some of the statement obviously dealt with the settled unauthorised deduction from pay claim and some of the statement contained reference to matters which were not relevant to the issue that I had to decide. The claimant's relevant evidence in chief was that, initially, he had delivered timesheets to the respondent, who had signed them off. The claimant had then taken the timesheets for himself and his colleagues to the council to be processed through payroll. He says that he is entitled to at least one twenty-minute break during each shift of six hours or more. He says that he was always unhappy with the way the holiday entitlement was split between working hours and nightshift hours. His point is that one night shift is a period of eight hours and is satisfactorily shown in holiday entitlement. He had been through his payslips from the date he had started employment (which started at page C226 of the bundle) and had calculated the hours worked for complete holiday years for each year. In making the calculation in his witness statement, the claimant had calculated a nightshift as eight hours and had added it to his "normal" working hours to produce the following table:

Holiday Year	**Total Hours Worked**	**Holiday Entitlement In Hours**	**Holiday Hours Taken**	**Holiday Hours Outstanding**
2017/18	2,778	299.15	209.00	90.15
2016/17	2,842	306	256.50	49.54
2015/16	3,140.5	338.18	315.50	22.68
2014/15	3,113.5	335.33	253.50	81.83
2013/14	2,863.2	308.34	261	47.34
2012/13	3,039.5	327.32	41	286.30
2011/12	3,052	328.66	173.5	155.16

The claimant therefore calculates that he is owed 756.54 hours of holiday pay/compensatory rest (although I cannot see where compensatory rest is appropriate in the above calculations).

47. The claimant's evidence then moved on to the anomalies on his timesheets for the February to April 2018 period.

48. I perhaps gave AA perhaps more than I should have done in asking supplementary questions. In answer to those questions, the claimant said he had never taken breaks because no-one had been there to cover his shift and he couldn't leave QQ on his own. The claimant was asked if he'd ever been told he couldn't carry holiday over. His answer was "no". But he added that he can see on the contract that he can't. He was told he couldn't. He was asked about an occasion when the respondent and XX had decided to take QQ to their holiday cabin and gave the claimant very little notice that he would be required to take leave because QQ wouldn't be there.

49. In answer to cross-examination questions, the claimant said that he had been told he wasn't able to carry over his holidays at the start of his employment. He was taken to his original contract dated 20 November 2012 that he recalled signing. He accepted that that contract included a clause that it was his responsibility to ensure that he took any holiday due to him. He accepted that his last contract [B26] included a clause that payment wasn't made for unused holiday pay.

50. There was a dispute about the part of the clause which had been crossed out. The claimant said that it hadn't been crossed out when he signed the document. I accepted that the clause in the contract was that any holiday carried over had to be used in two months in any event. The claimant offered the opinion that holiday pay all merged into one. The four weeks granted by regulation 13 of WTR is topped up by the 1.6 weeks of regulation 13a leave that can be carried forward into the following year. He was asked questions about this and accepted that the contract doesn't say that the 1.6 weeks is a top-up and agreed that the carry forward didn't last for a year. On the issue of rest breaks, the claimant accepted that QQ needs twenty-four-hour care and can't be left alone. He was asked how the respondent should manage the break situation and it was suggested that they could either bring in cover or use XX to cover him for twenty minutes. He did not accept that an employer can tell an employee when to take holiday and said that when holiday was taken was up to the employee.

51. In answer to questions from Ms Sherlock, the claimant agreed that his statement confirmed that a nightshift was 12 or 12.5 hours, but then agreed that it was timed from 11.00pm to 7.00am. That period was paid as a block payment of £81.00. The claimant said that the 1.5X payment for bank holidays should be paid from 11.00pm to 7.00am on the block payment of £85.00.

CLOSING SUBMISSIONS

Claimant

52. AA submitted that there was a lot of common ground in the claim. Witness evidence of the claimant and the respondent was largely in agreement. Timesheets were completed and sealed and the claimant took the sealed timesheets to the council. The council only looked at the consolidation sheets, so any errors on the timesheets would go unchecked. We then had a very long

discussion about the A3 sheet that MM had handed in and she gave her evidence. After some time, it was finally agreed that the last line of the sheet contained an inputting error which stated that the claimant had taken three nights holiday and no holiday hours for the period 12 March 2018 to 31 March 2018. Everyone in the room agreed that this was clearly incorrect. The basis of the claimant's claim was set out in paragraph 20.10.3 and in the table that was contained therein and which I have reproduced above. Given the error in the A3 sheet, it was submitted that the claimant was owed three nights' holiday at 31 March 2018. I asked AA if he put these points to MM when she'd been giving evidence and he said that he'd only noticed the discrepancy in the A3 sheet at the previous evening after evidence had finished.

53. AA confirmed that because of the error in the A3 document, he had recalculated some of the figures in paragraph 2.10.3 of the claimant's witness statement, which had reduced the hours worked by approximately fourteen hours.

54. AA submitted that no faith could be placed in the A3 document, given the error that had been admitted.

55. He went on to submit that there'd been no evidence from the respondent to contradict the claimant's statement at paragraph 2.10.3 as to the hours he'd worked. The respondent had produced a schedule by way of commentary on the claims made by the claimant at pages C257 to C258, but there was no commentary on the years 2016 to 2017. Given the mistakes with the A3 sheet, there could be no guarantee that that the commentary was accurate in any event. The respondent's commentary on 2015/2016 was contained at page C258. The representations from the respondent were just bold statements of alleged excess holiday pay.

56. Prior to 2014, when the payroll service changed to the council, he and the claimant had used the claimant's payslips from the previous payroll provider to calculate hours. It was submitted that the last contract had not had the line put through the holiday pay clause when the claimant had signed it and there was no statement that the claimant was responsible for calculating how much holiday was left. It must be the employer's responsibility to make those details known to the claimant. In July, the claimant had been given virtually no notice that he was to take holiday.

57. On the issue of breaks, AA submitted that it was agreed by the employer that QQ needs twenty-four-hour care. Employees and workers are entitled to a twenty-minute unpaid break away from the workplace when they work more than a six-hour shift. Sitting watching television with QQ was not a break. The claimant was effectively supervising QQ. It was accepted that in one-to-one care it may not be possible to take breaks. If the shift lengths were six hours or less, then breaks would not be an issue. It is the employer that determines the length of the shift. The claimant had never had a break in eight years. It was accepted that he was paid for his breaks. I was referred to the case of **Gomes v Higher Level Care Ltd [2018] EWCA Civ 418**, which, it was submitted, showed that the employment tribunal does not have power to make an award of compensation for injury to feelings where there has been a breach of the WTR, but where the wrong

committed by an employer was the failure to give a pay break during the day, the net effect was that the worker was required to do work for a longer period of time that they were, in substance, being paid for. The natural remedy for that wrong was to make a payment of compensation for that time based upon their rate of pay. So, it was submitted that the appropriate compensation was twenty minutes' pay for each breach of the entitlement to a break. Mr Howson interrupted to say that regulation 20 of WTR (which refers to special cases) applies and that the respondent's position would be that no rest breaks were applicable.

58. AA submitted that the case of **King v The Sash Window Workshop** supports the claimant's position.

59. AA made an application for costs in respect of the unauthorised deduction from wages claim. The claimant had attended to litigate for £174.00. The respondent had denied any liability throughout. The claimant had been put to some time in expense in obtaining evidence of days he had worked and spent over a hundred and fifty hours going through payslips, timesheets and so on. When providing his evidence to the respondent the council conceded that due to a keying-in error of 14.5 hours had been missed recorded. A consent judgment had then been agreed. It was also submitted that section 17 of the Judgment Act applies and that interest should be given on any award. Sections 24(2) entitled the claimant to an additional financial loss attributable to the losses in the complaint made. I asked where that calculation was and AA said it was limited to a £100.00 accountancy fee [C7A].

Respondent

60. Mr Howson referred to his skeleton argument. The previous evening, I had given an indication to the representatives that I would appreciate any guidance from any precedent that stated in which order the four weeks of annual leave provided for by regulation 13 of the WTR and the 1.6 weeks' leave provided by regulation 13A of the WTR should be taken. Mr Howson had been unable to find a precedent, but suggested that a worker or employee should take the regulation 13 leave and then the regulation 13A leave. His first reason for this was that regulation 13 preceded regulation 13A in time and in order. It was also submitted that European law takes precedence over UK law and, practically, if a worker took 3.6 weeks' holiday, he would be entitled to .4 weeks of EU leave and 1.6 weeks of regulation 13A leave. The calculation method used by the claimant in paragraph 2.10.3 of his witness statement was submitted to be an incorrect method. The calculation should be in respect of the four weeks' regulation 13 leave then the additional 1.6 weeks' leave. I was referred to regulation 30 of the WTR and the case of **King v The Sash Window Workshop**. **King** only covers the four weeks' leave provided for in regulation 13. It is not concerned with the 1.6 weeks' leave contained in regulation 13A. The ECJ has no jurisdiction on the additional 1.6 weeks. AA relied on the precedent of **King** to claim leave going back to 2011. On his calculations, Mr Howson that **King** cannot apply to the years 2013/14, 2014/15, 2015/16 or 2016/17, because, in all of those years, the claimant took all of the four weeks' regulation 13 leave that he was entitled to and what was left untaken was his regulation 13A leave.

61. Any regulation 13A leave is subject to a different interpretation and jurisprudence than regulation 13 leave. I was referred to judgment in **King** at paragraph 52 where it was stated that

> *"…. It is clear from the case law that a worker who has not been able for reasons beyond his control to exercise his right to paid annual leave before termination of the employment relationship is entitled to an allowance in lieu under article 7(2) of directive 2003/88. The amount of that payment must be calculated so that the worker is put in a position comparable to that he would have been in had he exercised that right during his employment relationship (judgment of 20 January 2009, Schultz-Hoff and Others, C-350/06 and C-520/06, EU:C:2009:18, paragraph 61)."*

62. However, the right as stated is only in reference to the four weeks' leave provided by the European directive, which had been transposed into UK law by regulation 13 of the WTR.

63. The ECJ addressed the issue of whether the worker is capable of carrying over leave from one leave year to the next in paragraph 48 of **King**, in which it was stated that in answer to the second and fifth questions from the referring court which, in essence, were whether article 7 of directive 2003/88 must be interpreted as precluding national provisions or practices that prevent a worker from carrying over and, where appropriate, accumulating, until termination of his employment relationship, paid annual leave rights not exercised in respect of several consecutive reference periods because his employer refused to remunerate that leave. The ECJ answered the question at paragraph 65 of its judgment:

> "*it follows from all the foregoing considerations that the answer to the second to fifth questions is that article 7 of directive 2003/88 must be interpreted as precluding national provisions or practices that prevent a worker from carrying over and, where appropriate, accumulating until termination of his employment relationship, paid annual leave rights not exercised in respect of several consecutive reference periods because his employer refused to remunerate that leave."*

64. Mr Howson submitted that the important point from paragraph 65 above is that only applied for several consecutive reference periods.

65. It was submitted that **King** can be distinguished from The claimant's case because it dealt with the situation where a worker was prevented from taking annual leave because the claimant was believed not to be a worker or employee. It was submitted that the direct interpretation of the words "where appropriate" in paragraph 65 of the judgment in **King** requires that the worker was prevented through no fault of their own from taking the required four weeks leave and the worker had to have had several consecutive years of non-payment of leave.

66. It was submitted that regulation 13 applies with directive 2003/88 but that regulation 13A is an additional right conferred by the government of the United Kingdom over and above that provided for in the directive.

67. The claimant in this case relies on the precedent of **King** to claim leave going back to 2011. His claim is set out at paragraph 2.10.3 of his statement.

68. On the claimant's claim at its highest, it was submitted that on his own calculations, the circumstances as envisaged by the ECJ in **King** cannot apply to the years to 2013/14, 2014/15, 2015/16 or 2016/17, because in all of those years, the claimant took all the regulation 13 leave that he was entitled to and any period of unpaid leave was unpaid leave granted to him under regulation 13A. For the holiday year 2017/2018 (which is the last holiday year that this decision is required to cover), there is a small amount of regulation 13 leave owed.

69. On the claimant's own evidence, he has two problems:-

    69.1 the claimant had not stated that he was prevented from taking leave. There was referral to a meeting on 25 May 2018 but that was a discussion about the split between waking nights and normal hours in calculated holiday pay. An employer must be able to control and instruct an employee when leave can be taken. The claimant can't provide examples of when the right to take leave had been denied, so the facts of this case are entirely different from that in **King** which can be distinguished. The claimant in this case was not stopped from enforcing his right to leave;

    69.2 paragraph 65 of **King** refers to several consecutive leave years. It is submitted that there is a five-year gap between the leave year of 2012/13 and 2017/18. There's no consecutive default regarding the claimant's regulation 13 leave, so the proper interpretation of **King** is that the claimant lost any unpaid hours.

70. **King** is only relevant to the regulation 13 leave. It is only applicable when a claimant is prevented from taking leave.

71. Mr Howson submitted that the correct way to deal with regulation 13A leave in this case was by reference to regulation 30 of the WTR. Regulation 30(1) sets out a list of complaints that a worker may make against an employer. Regulation 30(2) states that an employment tribunal shall not consider a complaint under regulation 30 unless it is presented before the end of the period of three months beginning with the date on which it is alleged that the exercise of the right should have been permitted… or... that payment should have been made, or within such further period as the tribunal considers reasonable where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of the period of three months.

72. It was submitted that limitation starts to run at the expiry of the leave year so the regulation 13A component of the claimant's claim is out of time for all leave years

unless the claimant can show that it was not reasonably practicable to lodge the claim in time. No evidence was presented by the claimant that it was not reasonably practicable to present the claim in time.

73. Under the regulation 13 element of the claim, the claimant was only able to claim if he was prevented from taking leave. It was submitted he was never prevented from taking leave. The claimant's evidence was that he didn't see the point of requesting leave.

74. There's no requirement to carry over leave in the working time regulations safe for the circumstances set out in **King** or if there is a contractual provision.

75. The claimant's original contract [B4] required him to take his holiday in the appropriate holiday year or lose it. The last contract in 2017 [B25] stated that there was no right to carry over indefinitely. There was a dispute in the evidence about the exact term of the clause because a sentence had been crossed out. It was submitted that this was irrelevant in any event because, even if the crossed-out clause was active, it just operated as a stay of execution to allow up to 1.6 weeks of leave to be carried forward into the next holiday year as long as it was taken within two months (i.e. by 31 May of each year). In summary, Mr Howson submitted that the claimant has lost his regulation 13 leave from 2011/12 onwards because of the judgment in **King** and that he has lost his regulation 13A leave because of the operation of regulation 30(2) of the WTR. He has no right to claim contractual leave, so no money is payable.

76. In respect of rest breaks, Mr Howson began with reference to regulation 21(c)(i) and/or (v) of the WTR. This states that where the worker's activities involve a need for continuity of service or production, as may be the case in relation to services relating to the reception, treatment or care provided by hospitals or similar establishments…residential institutions and prisons or industries in which work cannot be interrupted on technical grounds, regulation 12 of the WTR (which provides for rest breaks) does not apply. It was submitted that the application of regulation 21 requires an objective test. The claimant's evidence was that additional carers could have covered his breaks, but this would have required recruitment of many additional carers, which was neither feasible or practical.

77. If the claimant's case fails under regulation 21, regulation 24 (which deals with compensatory rest) is engaged. This states that where any provision of the WTR is excluded by regulation 21, and the worker is accordingly required by his employer to work during a period which would otherwise be a rest period or rest break, his employers shall, wherever possible, allow him to take an equivalent period of compensatory rest and, in exceptional cases in which it is not possible for objective reasons to grant such a period of rest, his employer shall afford him such protection as may be appropriate in order to safeguard the worker's health and safety.

78. It was submitted that I should find from the evidence that much of the claimant's time caring for QQ took place in QQ's own flat. QQ watches a lot of TV. It was submitted that the function of the care was not too onerous. I was referred to the

case of **M'bye and Others and Stiftelsen Fossumkollektivet in the EFTA Court - Case number E-5/15**. This case concerned therapists who provided alcohol and drug rehabilitation treatment and needed to be with clients for twenty-four hours. This was found to be an exception within article 6 of the directive 2003/88. I will return to this case in my reasons below.

79. The tribunal is authorised to interpret contractual terms and it is clear from the claimant's contract of employment there is an enhanced hourly rate applied to his working hours during the day and not to his night shift, for which he was paid a fixed rate. If the right to enhanced pay for bank holidays applied to waking night shifts, then the contract should have said so. I was encouraged to look at the custom and practice of the claimant's employment with the respondent. He had never been paid an enhanced rate for night work on a bank holiday.

80. On the issues of costs, it was submitted that the cost application was entirely inappropriate. There is a factual and legal dispute on holiday pay, so an award of costs would not be appropriate. On the issue of the unauthorised deduction from wages claim, I was invited to look at the schedule of loss filed by the claimant dated 9 April 2019, which totalled the claimant's claim at £14,923.68. Under the part of the claim that was dealt with in this hearing, the claimant's claim was £468.03. There was a continuing dispute, but if the claimant had said in his schedule of loss that he was claiming £174.00, there may be more weight to his application. AA had not set out which of the grounds listed in rule 76 were relied upon by the claimant.

81. It was submitted that the respondent had not acted in any of the ways proscribed by rule 76. Costs were not appropriate and the application was entirely unreasonable.

82. On the issue of interest, it was submitted that interest was not payable. The reference by AA to the Judgment Act only applies to calculations of interest in discrimination cases. There is no jurisprudence to suggest that interest applies to claims for unauthorised deduction from wages or holiday pay.

Ms Sherlock

83. Ms Sherlock advised that she was only addressing the issues of holiday pay and payment for bank holidays. She referred me to her skeleton argument. It was submitted that the relevant law in the United Kingdom is that workers are entitled to 5.6 weeks of paid holiday each holiday year, which is more than the minimum of four weeks' annual leave stipulated by the Working Time Directive (2003/88/EC).

84. Regulation 13(9) of the WTR provides that leave may be taken in instalments, but it may only be taken in the leave year in respect of the leave year in which it is due and, very importantly, may not be replaced by payment in lieu except when the worker's employment is terminated.

85. The WTR does not give workers rights to carry forward untaken leave (subject to limited exceptions) and in the absence of a contractual position permitting

carrying forward, basic leave not taken is simply lost, other than in certain circumstances. Such a circumstance was illustrated in **King v The Sash Window Workshop Ltd [2018] ICR 693**, where the situation was that a worker is deterred from taking some or all of their holiday entitlement because the employer refuses to pay holiday pay. In **King**, this was because the employer erroneously believed the worker to be self-employed and not entitled to holiday pay at all.

86. The range of circumstances in which regulation leave may be carried forward if not taken within a particular leave year had been further developed by ECJ's decision in **Max-Planck-Gesellschaft Zur Förderung Der Wissenschaften E.V. v Shimizu C-684/16 [2019] 1 CMLR 1233**. In that case, it was held that both article 7 of the directive 2003/88 and article 31(2) of the Charter of Fundamental Rights preclude national legislation by which a worker who has not taken his or her full entitlement to leave during the leave year automatically loses the untaken part "without prior verification of whether the employer had in fact enabled him to exercise that right, in particular through the provision of sufficient information". In other words, the employer must not merely permit the taking of leave if the worker asks (and pay for the leave if taken), but must also take steps to ensure that the worker does not, by failing to take the leave, lose it.

88. It was submitted that the evidence was that the claimant didn't fail to take leave because of a fear that he wouldn't be paid for it. He gave evidence that there were instances of his not being allowed to take leave, but no details were given. There was no evidence produced of any complaints by the claimant about a failure to allow holidays. AA submitted that MM had said the claimant could not speak to the council about holidays, but could speak about payroll. It was respectfully submitted that he had got the facts the wrong way around and the evidence of MM was that the claimant could speak to the council about holidays but not about wages.

88. The claimant's evidence was that he thought that he could take holiday whenever he wanted.

89. It was submitted that I did not need to concern myself with the changes to limitation made by the decision of the ECJ in **King**, as the facts of this case were not relevant to ECJ's decision.

90. Ms Sherlock had handed up an extensive extract from Harvey on Industrial Relations and Employment Law starting at paragraph 146 of that publication, which included an analysis of the ECJ decision in **King**. Paragraph 146.03 of Harvey's suggests that ECJ in **King** had decided that the directive 2003/88 precluded national provisions that prevent a worker from carrying over or accumulating, without limit of time, until the termination of the employment, any leave not taken because the employer refused to pay for it. At paragraph 146.04, the commentary analysed the ECJ's decision as meaning that the position of workers denied paid holidays because of mistaken belief that they are self-employed is more favourable than that of workers unable to take holidays because of a period of sick leave.

91. In the opinion of the author, the two-year limit on claiming back pay back for unpaid or underpaid leave introduced by the Deduction from Wages (Limitation) Regulations 2014 would have no application.

92. Ms Sherlock reiterated Mr Howson's point that **King** only applied to regulation 13 leave.

93. With regard to the case of **Max-Planck**, I was referred to the final paragraph of the judgment of the ECJEU, which stated that:-

> "*in the event that it is impossible to interpret national legislation such as that issue in the main proceedings in a manner consistent with article 7 of directive 2003/88 and article 31(2) of the Charter of Fundamental Rights, it follows from the latter provision that a national court hearing a dispute between a worker and his former employer who is a private individual must disapply the national legislation and ensure that, should the employer not be able to show that is has exercised all due diligence in enabling the worker actually to take a paid annual leave to which he is entitled under EU law, the worker cannot be deprived of his acquired rights to that paid annual leave or, correspondingly, and in the event of the termination of the employment relationship, to the allowance in lieu of leave not taken which must be paid, in that case, directly by the employer concerned."*

94. It is suggested that there is a duty on employers to tell employees about their regulation 13 leave. It was submitted that the limitation period under regulation 30 applies to regulation 13A leave.

95. It was submitted that there was not enough evidence that the respondent has refused the claimant permission to take his entitlement.

96. The claimant had said that there one of the lines in his 2017 contract [B25] had been struck through after he had signed it, but provided no evidence of this. He has not produced a copy of the contract without a strike-through.

97. On the issue of bank holiday pay, the claimant's original contract allowed for bank holidays with pay at 1.5X. In his latest contract, the words "time plus half" had been added next to the paragraph outlining pay for bank holidays. On behalf of the council, MM had said that generally workers are not paid at 1.5X on bank holidays, but that the council agreed to honour the claimant's original contract in respect of 1.5X for the hourly rate.

98. The claimant had accepted that the fixed rate was paid between 11.00pm and 7.00am for a waking night and that this was not paid at an hourly rate. Therefore, there was no contractual obligation to pay an additional amount for the time period between 11.00pm and 7.00am when worked on a bank holiday. Given the wording of the original contract, it is likely that the intention of the parties was that the words "time and half" written into the updated contract was such that it would only be the same as in the original contract i.e. for the hourly rate only.

99. I indicated to the parties that I would make a reserved decision.

Findings of fact and decision

100. In addition to the three witnesses I heard from, I was also provided with the witness statements of WitnessD, WitnessE, WitnessF and WitnessL for the claimant and XX for the respondent. As none of the claimant's witnesses attended to give evidence and be cross-examined, I give their witness statements very little weight indeed. If WitnessE, WitnessD and WitnessF had attended to give evidence, I would have been interested to hear how the claimant managed to attend the [redacted] pub with QQ "pretty much every Saturday lunchtime for a couple hours" (WitnessF) and/or "every weekend" (WitnessD) when WitnessE, who worked at Pizza Hut, says that the claimant and QQ entered her restaurant "every Saturday 12.00-1.00pm". XX did attend, but her statement only really dealt with the issue of the shift swap on 23 March 2018 and 6 April 2018. The employment tribunal does not employ the same rule against heresy as used in the High Court. The respondent effectively gave the evidence that XX would have given in her witness statement. He was cross-examined on that evidence.

101. I found MM to be a truthful witness. I find that she made every attempt to assist the tribunal to reach a just and fair result in this case. Her evidence on the workings of her department and the mechanics of the self-managed personal budget was useful, as was her evidence as to record of annual leave taken by personal assistants. Her review of the wages position of the claimant set out in paragraph 15 of her witness statement enabled that claim to be settled without a lengthy hearing.

102. She was open and honest in admitting that mistakes had been made either by her department or by the claimant or by the respondent when either completing or inputting declaration forms.

103. Unfortunately, the A3 sheet that was handed up when she gave her evidence, and which contained a table of how the claimant's 2017/2018 wages and holiday pay was processed, and a further analysis amended in the light of further information about inputting errors, cannot be relied on. The reason that I make this finding is that all parties were agreed that, whilst the claimant was paid for twenty holiday hours' and three holiday nights in the period 12 March 2018 to 31 March 2018 on 9 April, the amended schedule records zero holiday hours for him. That is a serious and obvious error and casts some doubt on the credibility of the rest of the document.

104. I found the claimant's evidence in chief to be set out in a way that did not particularly assist me in understanding the evidence and the issues in the case. Large parts of the evidence appeared to be an attempt to implicate the respondent and his wife in making false claims for her wages. His evidence was also littered with irrelevant comment and asides. The respondent's evidence, in contrast, was probably less detailed than it needed to be. The actual disputes between the parties were not that many in number, but the dispute about whether

or not the claimant had been allowed to be paid for leave and working for the same period was not addressed, other than in cross examination.

105. I have some empathy for the position that both the claimant and the respondent find themselves in. For the respondent, it cannot be easy being the parent of an adult child with permanent and severe disabilities. For the claimant, it cannot have been easy to determine what his rights were. The respondent was clearly heavily reliant on the advice he received from the local authority.

106. Having considered all the evidence in the round I make the following findings of fact:-

106.1 the claimant worked as a personal assistant for the respondent from 26 April 2011 until 18 September 2019. It is not necessary for me to specify his effective date of termination, as the scope of this hearing only requires me to deal with his claim for unauthorised deduction from wages to 30 March 2018 (which is the subject of the consent judgment above) and his holiday pay claim of the period of employment between 26 April 2011 and 30 March 2018;

106.2 I find that the claimant's initial contract of employment from 2011 [B4] makes it clear that the claimant's holiday entitlement was twenty days' leave plus bank holidays. As there are never less than eight bank holidays in England, that provision satisfied the minimum required in regulations 13 and 13A of the WTR;

106.3 I find that the contract makes it clear that no holiday could be carried forward and that any leave not taken by the end of the holiday year on 30 March would be lost. I find that the claimant was entitled to payment for bank holidays at 1.5x his normal hourly rate. I find that the claimant's final contract was presented to him with the sentence struck out before he signed it. The claimant produced no copy of the contract that contained the sentence with no line through it. In a situation where he who alleges must prove, the only documentary evidence supports the respondent's case;

106.4 the evidence of the claimant and the respondent was that he was never given a formal twenty-minute break during any six-hour shift. Both the claimant and the respondent agreed that the claimant's duties required him to be available to care for QQ for every minute of every shift that he worked and that there was no facility for him to leave QQ. There was no evidence before me that the claimant ever complained about his working hours, holiday pay, wages or lack of a break before 2018. I have to give some weight to that fact, but bear in mind that the claimant is not a highly educated individual.

106.5. The evidence clearly indicates that there are a number of errors made in the calculation of the claimant's pay and holiday pay over time.

106.6. The support given by the local authority to the claimant and the respondent was as good as could reasonably be expected, given that the

local authority is managing seven hundred clients who have their own budget for care and each will employ a number of carers. There is no suggestion that all the carers are on the same sort of contract, so it would not be reasonable to expect advice given to all those with personal care budgets to be correct for each one of them. This is a case where one size does not fit all.

106.7. the practical advice or information given by the local authority to those holding budgets or administering budgets on behalf of those for whom they have caring responsibility, such as the respondent, cannot be used to interpret a contractual position between employee and employer. The principle of privity of contract applies, so I cannot use evidence of what the local authority puts in its newsletter or what it believed to be the position regarding holiday pay, bank holiday pay and so on as binding upon the respondent and the claimant. Neither the local authority nor the respondent had any records regarding the claimant's working hours before the contract was taken on by the local authority in 2014. I therefore find that the hours that the claimant has recorded for the years 2011 to 30 March 2014 have to be accepted on the balance of probabilities as being correct;

106.8. there is a dispute between the claimant and the respondent that came to a head in a meeting on 10 May 2018. The reason for the dispute was because the claimant was paid on a fixed rate for night work between the hours of 11.00pm and 7.00am. He thought that he ought to be paid an hourly rate because of the effect that the method of calculating pay had on his ability to take holiday;

106.9. the claimant's position on taking holiday was that he was at the start of the year, calculation was made of his likely day working hours based on his standard pattern of working which was then multiplied by 5.6 weeks to give his annual holiday entitlement for day working hours. A similar calculation was made for the number of night shifts he was likely to work and this was then multiplied by 5.6 to give his annual entitlement of holiday pay for the year. If the claimant subsequently worked more hours than it expected, a recalculation was made and the commensurate increase in holiday entitlement was made. Sometimes this wasn't done until close to or at the end of the holiday year which meant that some holiday was lost;

106.10. I find that whilst the claimant is to be commended for the effort he put in to calculating his hours worked for complete holiday years between 2011 and 31 March 2018, the basis of his calculation at paragraph 2.10.3 of his witness statement is based on a mistaken premise. That premise is that his total hours of work were calculated on the basis of every night shift constituting eight hours. That was not the contractual arrangement. I find that the contractual arrangement between the claimant and the respondent for the calculation of holiday was that he was entitled to 5.6 weeks of his average working daily hours and 5.6 weeks of his average night work. That calculation would mean that it would be possible for the

claimant to end up with a fraction of a night shift either outstanding or overpaid. I find that the timesheets completed by the claimant and the respondent (and XX for that matter) contained so many errors and anomalies has to be unreliable as evidence.

106.11. I find that the evidence of the alleged shift swap between 23 March and 6 April 2018 is more credible on the side of the respondent. I make this decision because the respondent's evidence as to the actual facts of what happened on 23 March regarding QQ's wish to watch Sports Relief with the claimant, is tethered to an actual event. The claimant's evidence, by contrast, merely says that he didn't do what the timesheets recorded him as doing. However, the net effect was that he was paid for the work that he did.

106.12. I find, however, that the claimant was underpaid for three holiday nightshifts in the holiday year 2017/2018, but that this amount was carried forward to his entitlement for 2018/2019, which is outside the scope of this judgment. There was no pressure put on the claimant to stop him taking holidays. I reject his evidence to that effect, which was only given in cross examination. As some form of coercion is essential to make out a legal case that the claimant is putting, the absence of this evidence in his evidence in chief, undermines his claim.

Applying the facts to the law

Rest breaks

107. It was agreed that the claimant never took rest breaks. By regulation 12 of the WTR, a worker is entitled to a rest break of twenty minutes, which is unpaid, if their daily working time is more than six hours. It was agreed that whilst the claimant did not take rest breaks, he was paid for the entirety of his working hours.

108. Regulation 21 of the WTR states that, subject to regulation 24, regulation 12 does not apply to a worker where the worker's activities involve the need for continuity of service or production as may be the case in relation to services related to the reception, treatment or care provided by hospitals or similar establishment (including the activities of doctors in training), residential institutions and prisons. This application applies where the worker works in an industry in which work cannot be interrupted on technical grounds.

109. I read the case of **M'bye** that was referred to me by Mr Howson and do not accept that it is an applicable precedent in this case. I find that the special cases in regulation 21 are not exclusive. I find that the claimant in this case was, by agreement of evidence, engaged in work that required his constant attention with QQ did not allow for the possibility of his taking a break. I have the applied the point of view of the work done by the claimant, not the function undertaken by the respondent. I find that it would be unworkable and impracticable for cover to be provided for a twenty-minute break to be taken or for shifts to be split in a way

that reduced them to less than six hours. I note that it was never suggested by the claimant that this should occur whilst he worked for the respondent.

110. In the alternative, I find that the care industry in which the claimant was engaged and the work that he undertook within that industry could not be interrupted on the technical ground that he may be needed to give care or assistance to QQ at any time.

111. My finding that regulation 21 applies and that the claimant's employment is a special case engages the requirement to consider regulation 24 as to whether the respondent should wherever possible have allowed him to take an equivalent period of compensatory rest or, if it is an exceptional case in which it is not possible for objective reasons to grant such a period of rest, the respondent should have afforded him such protection as may be appropriate in order to safeguard the claimant's welfare and safety.

112. I find that it was objectively not possible to grant such a period of compensatory rest and, in all the circumstances of the case, I find that the respondent afforded the claimant appropriate protection because of the nature of the work which included relatively long periods of sitting with QQ watching TV. Whilst I appreciate that this was work and that supervision was required, the practicality of what was happening was that there must have been long periods of time when the claimant's level of engagement in his work was much less than at other times.

113. I therefore find that the claimant's claim that his employer has refused to permit him to exercise any right he has under regulation 12(1) of the WTR fails.

Bank holidays

114. In the light of my findings above, I find that the claimant was appropriately paid for working night shifts or bank holidays at a flat composite rate which, at the date of this claim, was £81.00 for a shift between 11.00pm and 07.00am. Accordingly, that claim also fails.

Underpayment of holiday pay

115. I accept the submissions made by Mr Howson and Ms Sherlock that the position with regard to the four weeks of regulation 13 leave is different to the position of the 1.6 weeks of leave granted under regulation 13A. AA's submissions were solely predicated on reliance on the case of **King v The Sash Window Workshop**, but I am afraid that he has misinterpreted the scope and effect of that case. As submitted by Mr Howson and Ms Sherlock, the scope of **King** is limited only to the four weeks of regulation 13 leave where the worker was prevented from taking that required four weeks leave and for a worker to claim for several years of unpaid leave in lieu that the default occurs in consecutive years.

116. I accept Mr Howson's submission that on the claimant's own evidence (including accepting that evidence on the miscalculation of hours because the hours of the

nightshift had been added in) he was able to take his entire regulation 13 leave in holidays years in 2013/14, 2014/15, 2015/16 or 2016/17. I therefore find that he has failed to meet the narrow window of opportunity offered by the judgment in **King** and that there has not been actual or implied refusals to allow him to take his regulation 13 leave.

117. I find that on a proper analysis of his holiday entitlement as between working hours entitlement and nightshift entitlement, he was able to take all his regulation 13 leave in the holiday year 2017/2018.

118. I find that the claimant's claim for holiday pay fails.

Costs

119. I refuse the claimant's application for costs. The overriding objective requires matters to be dealt with proportionate to its relative importance and the value of the matters in dispute. The claimant has lost his holiday pay claims so no costs should be awarded in those claims. The claimant agreed a figure of £174.00 for his unauthorised deduction of wages, having initially submitted a schedule of costs for more than twenty-times that sum.

120. The fact that the claimant has undertaken a hundred and fifty hours of preparation is, with respect, his choice.

121. I do not find that the respondent has behaved unreasonably or in any other way proscribed by rule 70 and the application for costs is refused.

Interest

122. I accept Mr Howson's submission that no interest is payable on awards for unauthorised deduction from wages. It would neither be proportionate nor reasonable to make an award compensating the claimant the cost of £100.00 paid to an accountant to check his figures.

EMPLOYMENT JUDGE SHORE

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON
9 December 2019
JUDGMENT SENT TO THE PARTIES ON

13 December 2019

AND ENTERED IN THE REGISTER

Miss K Featherstone

FOR THE TRIBUNAL

Judgment anonymised pursuant to rules 50(1) and (3)(b) of the Employment Tribunals Rules of Procedure 2013 and Art 8 of the European Convention on Human Rights, by Order of the Tribunal signed on 19 January 2021.