



EMPLOYMENT TRIBUNALS

Claimant

Relin Beeden

Respondent

Manvinder Ranger

v

Heard at: Watford by CVP

On: 15 April 2021

Before: Employment Judge Allen sitting alone

Appearances

For the Claimant: In person, unrepresented

For the Respondent: In person, unrepresented

COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals

This has been a remote hearing which was not objected to by the parties. The form of remote hearing was Video. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The bundle was not available during the hearing but the parties were able to email copies of the relevant documents to the court and to each other during the hearing as follows: Respondent's statement; Annual leave policy sheet; bullet points of September 2018 staff meeting, bullet points of Jan 2019 staff meeting; Claimant's statement; Screen shot of social media messages 25/9/2018; spreadsheet of staff leave. The order made is described below.

RESERVED JUDGMENT

1. The judgment of the Tribunal is that the claim is not well founded and is dismissed.

REASONS

The Claim

2. The claim relates to holiday entitlement accrued in the calendar year 1 January to 31 December 2018.
3. The claimant asserts she was not permitted to take any leave in 2018 nor was she permitted to carry over her 2018 leave into 2019 or alternatively she received no payment in compensation for that untaken leave.

Issues

4. Was there a formal process for booking Holidays?
5. What were the arrangements for the Christmas period in 2018?
6. Was the claimant refused leave at any time in 2018?
7. Was the claimant refused leave over the Christmas period in 2018?
8. Did the claimant have outstanding leave at the end of 2018?
9. Was there a Regulation 13A agreement providing for unused Regulation 13A 'Additional' leave to be carried from one calendar year to the next?

Findings of Fact

10. The claimant was employed as a part time assistant; working 20 hours per week in the respondent's Londis convenience store. The respondent's business is a small one employing a total of 8 full and part-time staff.
11. The claimant was employed between 1 May 2017 and 31 July 2019 when she resigned.
12. Her effective date of termination was 31 July 2019.
13. Her final payment in July 2019 included payment for holiday entitlement accrued but not taken during the 2019 leave year.
14. The claimant took no annual leave in 2018 and on 31 December 2018 had accrued 28 days leave.
15. None of this leave was carried over into the next leave year (2019).
16. The claimant received no payment in compensation for the accrued but unused 2018 leave.

17. The respondent's leave policy is as follows:

- a. The leave year runs from 1 January to 31 December each year;
- b. 50% of leave entitlement to be taken between January – June;
- c. 50% of leave entitlement to be taken between July – December;
- d. Any annual leave entitlement not taken by the end of the financial year will be lost;
- e. Applications to be made in writing on the appropriate form;
- f. Leave to be applied for no later than 25th day of the preceding month;
- g. Only 1 member of staff to be on leave at any time;
- h. Leave to be granted on a first come first served basis;

The policy is silent as to whether financial compensation can be exchanged for leave accrued but not taken.

The policy was available to staff should they wish to refer to it and a leave calendar was posted on the wall of the stockroom also available to staff, updated by the respondent to show what leave dates were booked and therefore no longer available to other staff.

Sub-paragraph d. above is inconsistent with the policy that leave is to be calculated on a calendar basis. Reference here to the financial year is clearly an error since all other evidence points to a calendar year.

18. The claimant signed the policy on 30 May 2017 endorsing that she had read and understood the policy (her signature appears about $\frac{3}{4}$ of the way down the page). She did not dispute that this was her signature.
19. The respondent did keep records of refused leave requests. The leave application form is in two parts; the top of the sheet is retained by the respondent and the lower portion is returned to the employee confirming approval or refusal of the request.
20. The respondent has no record of refusing any leave application made by the claimant. The claimant whilst asserting that she was refused leave in June 2018 has produced no evidence of the same; nor was this asserted in her claim or contained in her statement.
21. Christmas leave is an issue every year; the same employees want to take the whole week; Christmas 2018 wasn't unusual in that respect. There were no special arrangements for applying for Christmas leave consequently Christmas leave had to be applied for by the 25th November. The company also had an issue with the same employees saving all of their holiday entitlement to the end of the year hence the policy that 50% should be taken between January and June.
22. The 2018 leave calendar has not been retained.

23. The claimant did not apply to take leave between July – December 2018.
24. The claimant was entitled to 28 days holiday per year on a part-time basis (28 4-hour days).
25. The claimant took holiday in 2017, the respondent wasn't certain if she had taken all of her entitlement that year but she did take some. If there was any outstanding entitlement at the end of the year it was not carried over and she received no payment for it in the alternative.
26. In a letter to the respondent dated 30 September 2019 the claimant asserts she was unaware of her entitlement to paid leave until September 2018.
27. The business was owned by Mr Ranger and staff were supervised by his daughter Miss Reena Ranger.
28. On 25 September 2018 Miss Ranger sent the following WhatsApp message to staff:

'Hi all just to let you know there is no more holiday/time off left for December and only a couple of days left for the year.'

The respondent did not recall if there were available dates between the 1st and 19th December.

29. The respondent held regular staff meetings and often reminded staff to make sure that they used their annual leave entitlement. I have seen 2 bullet point agenda confirming this (1 for September 2018 and 1 for January 2019).
30. The respondent prepared a bullet point agenda to ensure that everything intended was covered during the team meetings; these were not circulated but instead served as an aide memoir for Miss Ranger. There were no records of what was discussed at each meeting although handwritten notes were added to the bullet points agenda and each bullet point was ticked off as it was covered.
31. On the September 2018 agenda it says:

'I know some of you may be upset/frustrated that you didn't get to take all your holiday of the year. However, this is exactly why we have the procedure for you to take 50% at the beginning of the year and 50% at the end. [document you all signed] this will hopefully teach you for next year to book it early. As you can see from the calendar only three holiday periods were taken till July and now, we have 12 holiday periods taken from August till December.'

Two members of staff booked leave immediately after the meeting; one over the Christmas period [18 to 31 December 2018] and one in October [23 to 28 October 2018].

32. The claimant explained that she did not make a request for leave in December because she understood following the meeting and WhatsApp messages in September that the period was already fully booked.
33. I accept the evidence of the respondent that if the claimant had applied for leave even if for a time when another member of staff was already off and it had to be refused Miss Ranger would have worked with the claimant to find an acceptable alternative period.
34. I accept the evidence of the respondent that the claimant neither applied for nor was refused leave in 2018.

The law

Regulations 13 – 13A, Working Time Regulations 1998

35. **Entitlement to 'Basic' annual leave**

13.— (1), a worker is entitled in each leave year to a period of leave determined in accordance with paragraph (2).

(2) The period of leave to which a worker is entitled under paragraph (1) is —

(a) - (b) N/A

(c) in any leave year beginning after 23rd November 1999, four weeks.

(3) A worker's leave year, for the purposes of this regulation, begins—

(a) on such date during the calendar year as may be provided for in a relevant agreement;

(4) - (8) N/A

(9) Leave to which a worker is entitled under this regulation may be taken in instalments, but—

(a) it may only be taken in the leave year in respect of which it is due, and

(b) it may not be replaced by a payment in lieu except where the worker's employment is terminated.

13A Entitlement to 'Additional' annual leave

(1), a worker is entitled in each leave year to a period of 'Additional' leave determined in accordance with paragraph (2).

(2) The period of 'Additional' leave to which a worker is entitled under paragraph (1) is—

(a) - (d) N/A

(e) in any leave year beginning on or after 1st April 2009, 1.6 weeks.

(3) The aggregate entitlement provided for in paragraph (2) and regulation 13(1) is subject to a maximum of 28 days.

(4)-(5) N/A

(6) Leave to which a worker is entitled under this regulation may be taken in instalments, but it may not be replaced by a payment in lieu except where—

(a) the worker's employment is terminated; or

(b)-(c) N/A

(7) A relevant agreement may provide for any leave to which a worker is entitled under this regulation to be carried forward into the leave year immediately following the leave year in respect of which it is due.

Conclusion

36. In accordance with regulations 13 and 13A the claimant was entitled to a total of 28 days leave (4-hours each day based on her part-time status).

a. 4 weeks (20 days) 'Basic' leave under regulation 13(1)

b. 1.6 weeks (8 days) 'Additional' leave under Regulation 13A(1) & (2)(e).

37. Was there a formal process for booking Holidays? -

There was a formal process set out in the leave policy document and signed by the claimant on 30 May 2017.

38. What were the arrangements for the Christmas period in 2018?

This leave was booked and approved on a first come first served basis and to be applied for no later than 25th November 2018. Only 1 member of staff to be on leave at any one time.

39. Was the claimant refused leave at any time in 2018?

The claimant was not refused any leave application in 2018 because she didn't make any applications.

40. Was the claimant refused leave over the Christmas period in 2018?

The parties agree the claimant did not apply for any leave in the period between July and December 2018.

41. Did the claimant have outstanding leave at the end of 2018?

The claimant had accrued 28 days leave (calculated on a part-time basis of 4-hours per day none of which had been used).

42. Was there a Regulation 13A agreement providing for unused Regulation 13A 'Additional' leave to be carried from one calendar year to the next?

There was no Regulation 13A(7) agreement in existence which provided for the carry-over of 8 days 'Additional' leave from one year to the next. In fact, the respondent's leave policy makes it plain that leave not taken will be lost.

In accordance with Regulation 13(9)(a) the claimant was not entitled to carry over 'Basic' leave from one calendar year to the next.

The 8 days "Additional" leave accrued under 13A(1)&(2) did not fall under paragraphs (2) (a),(b),(c), or (d) and consequently, payment in lieu does not apply in this case.

In accordance with Regulation 13(9)(b) the claimant was not entitled to receive payment in lieu of "Basic" leave accrued but not taken except where her employment was terminated.

Employment Judge Allen

Date: 2 May 2021.....

Sent to the parties on:

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For the Tribunal Office