EMPLOYMENT TRIBUNALS

Claimant: **Ms E Donkor-Baah**

Respondents: **University Hospitals Birmingham NHS Foundation Trust and others**

JUDGMENT

The claimant's application dated 9 July 2021 for reconsideration of my judgment that the claimant's claim under Regulation 12 of the Working Time Regulations 1998 be struck out against the first respondent because it has no reasonable prospect of success, which was sent to the parties on 25 June 2021, is refused.

REASONS

I find that that there is no reasonable prospect of the original decision being varied or revoked because:

1. In her application the claimant says this

> 1. I respectfully contend that Judge Cookson's decision is an error of law and should be reconsidered and revoked in the interest of justice and in accordance with the overriding objective.
> 2. That regulation 36 WTR 1998 ***does not*** apply in my case. Regulation 36 is only applicable to agency workers who are otherwise not agency workers and classed as ***out of scope*** within the Agency Workers Regulation 2010 (AWR 2010 guidance attached). My ongoing contract with the agency means I am ***in scope*** of AWR 2010 however Judge Cookson had mistakenly identified me as ***out of scope***.
> 3. That examples of agency workers who fall into regulation 36 are agency workers who are supplied on permanent contract to the hirer or agency workers who are supplied as being genuinely self-employed (guidance and examples attached) none of which apply in my case.
> 4. I respectfully refer the tribunal to the case of Kocur v (1) Angard Staffing Solutions ltd (2)Royal Mail Group Ltd EAT/0181/17 ; Mr Kocur an agency worker (in scope of AWR) was able to proceed with a rest break WTR claim against Royal Mail Group Ltd who was the hirer.

2. I find these grounds somewhat difficult to follow. It appears at their heart there appears to be a misunderstanding on the part of the claimant. My decision that she cannot pursue her claim under Regulation 12 of the Working Time Regulations 1998 against the first respondent relates only to the Working Time Regulations. I have never determined that the claimant is "out of scope" of the Agency Worker Regulations (AWR), she plainly is. Indeed at the same hearing where I reached this decision on the Regulation 12 claim under Working Time Regulations, I refused an application from the respondents that a claim under the AWR should be struck out.

3. As I have repeatedly sought to explain to the claimant, Regulation 30 sets out how a remedy for breach of the WTR will be determined that provides that claims are brought against a worker's "employer". The exception to that is if Regulation 36 applies. The regulation, exceptionally, allows some agency workers to pursue claims against the "hirer" (to use the language commonly used in this context), that is the company to whom their services are provided, rather than the employment business they work for. As the claimant herself identifies in her application, it is common ground between the parties that although she is an agency worker, she does not fall within the narrow category of agency workers who fall within Regulation 36 of the WTR. That means she can only bring her WTR claim within the scope of regulation 30 and that means she can only bring a claim against her "employer" as defined by the WTR. The first respondent is not the claimant's employer for these purposes.

4. The AWR provisions are simply irrelevant to a WTR claim. The case the claimant refers to, Kocur v (1) Angard Staffing Solutions ltd (2) Royal Mail Group Ltd EAT/0181/17, is a claim under Regulation 5 of the AWR. Mr Kocur did not bring a claim under reg 12 of WTR against Royal Mail Group Ltd as the claimant asserts. He brought a claim about rest breaks but his complaint was that it was a breach of the AWR that he was only entitled to rest breaks which met the WTR minimum requirements whereas comparable directly employed employees of Riyal mail Group were entitled to much more generous rest breaks. The case does not provide the authority claimant suggests or support her application in any way.

5. I am satisfied that the claimant's application is misconceived and a reconsideration of this matter would not be in the interests of justice.

Employment Judge Cookson
30 July 2021