



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
MR D MARTIN

AND

Respondent
TRAVELSMITH HOLIDAYS LTD

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: BRISTOL ON: 21ST OCTOBER 2021

EMPLOYMENT JUDGE MR P CADNEY
(SITTING ALONE)

APPEARANCES:-

FOR THE CLAIMANT:- IN PERSON

FOR THE RESPONDENT:- MR J SMITH

JUDGMENT

The judgment of the tribunal is that:-

1. The claimant's claim for unpaid holiday pay is not well founded and is dismissed.

Reasons

1. By this claim the claimant brings a claim for unpaid holiday pay. The claimant was employed by the respondent until his dismissal by reason of redundancy on 10th November 2020. He contends that he had taken no holiday in the leave year 2020 and is owed his full pro rata holiday entitlement. The respondent contends that he had taken all his holiday for the whole year and that there is nothing owing.

2. It is not in dispute that the claimant was contractually entitled to 31 days paid leave each year; nor that the holiday year matched the calendar year and ran from 1st January each year. The claimant was also permitted to take one month's unpaid leave each year and it was his practice to take all his leave in one block at the beginning of the year. In 2020 he was absent from 1st January to 11th March, which comprised one month's unpaid leave together with his complete holiday entitlement. There is only one point in dispute, whether the leave taken in 2020 was the claimant's 2020 leave, or whether it was in fact his 2019 leave which he had been permitted to carry forward to 2020. If the former he has no untaken 2020 leave, if the latter he had taken no leave referable to the 2020 leave year.
3. The claimant's evidence is that he started to work for the respondent in June 2009 as an hourly paid worker. He became a salaried employee in 2013. He had taken no holiday in 2009 and carried his leave over to 2010. The practice of taking all of his holiday in a block at the beginning of the year started in 2010, and he used his carried over leave from 2009 in 2010 and carried on doing the same each year thereafter.
4. Mr Smith's evidence is that this is simply not true. At the end of each year hourly paid workers were paid for any untaken holiday and no staff were permitted to carry over any unused holiday. This is reflected in the Staff Handbook. The claimant would not have used any untaken leave for 2009 in 2010 but would simply have been paid it. On becoming a salaried member of staff the situation regularised in that he was permitted to have one month's unpaid leave and to use his annual leave to give him some 10 weeks off in a block each year, but he was using that year's holiday entitlement and had not carried forward anything at any stage.
5. I asked whether there was any documentary evidence, but both parties agree that there is no documentary evidence which would assist in resolving this (beyond the staff handbook and various emails he parties have provided) , and it will have to be decided simply on the oral evidence of the parties.
6. The claimant submits that Mr Smith would obviously not have permitted him to take all of his leave at the beginning of any given year, as if he left during the year he would have been overpaid his holiday entitlement and that it must have been accrued holiday from the previous year. He contends that Mr Smith is simply trying to take advantage of the fact that this agreement was never recorded in writing and is trying to cheat him out of his 2020 holiday entitlement.
7. Mr Smith contends that it is the claimant's proposition which is absurd. The handbook, and the practice, is quite clear that leave must be used and not carried over; and if there is any unpaid leave it is paid. He refutes the idea that he and the claimant had some private oral agreement by which he would uniquely be entitled to hold over not simply some unused leave, but the whole of his holiday for every leave year. He submits that the claimant has never understood holiday pay and has at various points advanced the proposition that he should be paid holiday pay on top of his salary (i.e. effectively being paid twice whilst on holiday), or that the respondent

- was paying rolled up holiday pay without complying with the requirement to record that in the payslips, whereas the claimant was in receipt of a salary and the question of rolled up holiday pay did not arise; and the current claim is equally based on a complete misunderstanding of the position in relation to his holiday.
8. This is not an easy case to resolve. The staff handbook supports the respondent's position, but given that it is the claimant's case that there was a separate oral agreement, not necessarily to any significant extent. Equally it is obvious that the parties did have an unusual agreement to permit the claimant to take all of his holiday in one block every year, and to supplement it with a month's unpaid leave; which makes the claimant's assertion that here was a further unusual element to the agreement less improbable. Equally it is clear that the respondent is correct and that the claimant's emails do betray a number of fundamental misunderstandings about his annual leave and holiday pay, which calls into question his understanding of this issue.
 9. The major difficulty for the claimant, in my judgement is the lack of a coherent account of how he says the practice came about. He accepted that he had been paid for any unpaid leave in 2009, which if correct would appear to contradict the proposition that he had carried it over and used it in 2010; and even if he had not he could only have had pro rata leave for the period June 2009 to December 2009 and on the face of it must have used at least some of his holiday entitlement for 2010. How he came to have a full year's untaken leave to carry over at any point is in my judgement difficult to understand.
 10. Whilst I have not found this easy to resolve, I am not satisfied that the claimant has provided sufficient evidence from which I could conclude on the balance of probabilities that here is any outstanding unused holiday for the leave year 2020 and the claim must be dismissed.

Employment Judge Cadney

Date: 25 October 2021

Judgment sent to the parties: 17 November 2021

For the Tribunal Office