Case No: 2501476/2020
1601287/2020
1601062/2020
1602505/2020

EMPLOYMENT TRIBUNALS

Claimant:	**Mr C Riley** **Mr P Whitby** **Mr P Jones** **Mr B Irvine**	
Respondent:	**G4S Secure Solutions (UK) Limited**	
Heard at:	**Cardiff**	**On: 29 November 2021, 30 November 2021 and 1 December 2021**
Before:	**Employment Judge R Brace**	

Representation:

Claimant:	In person
Respondent:	Mr C McDevitt (Counsel)

RESERVED JUDGMENT

It is the decision of the Employment Judge sitting alone that:

1. The particulars of employment, supplied to each Claimant on the various dates set out below, are in error as to holiday entitlement. The particulars of each Claimant are dated as follows:

    a. Mr Riley – 5 February 2018

b. Mr Jones – 18 August 2017
c. Mr Whitby – 6 November 2010
d. Mr Irvine – 8 June 2017

2. The correct particulars are that each Claimant is entitled to 28 days' leave per annum (a day being a 12 hour shift).

3. There will be a further hearing listed for one day on video (CVP) to consider

   a. Mr Whitby's unlawful deduction from wages claim (s.13 Employment Rights Act 1996);
   b. Any claim in relation to Regulation 30 Working Time Regulations 1998 in respect of annual leave for 2019 and up to the date of the issue of the ET1 calculated in accordance with the Working Time Regulations 1998 that each Claimant was prevented from taking by the Respondent.

REASONS

1. The final merits hearing was listed for three days commencing on Monday 29 November. The Claimants appeared in person and the Respondent was represented by Counsel.

2. I was provided with an agreed bundle of some 454 pages and, on the third day of the hearing, the Respondent also provided an analysis of the Claimants' leave; from 2017 in respect of Mr Irvine and from 2019 in respect of Mr Whitby, Mr Jones and Mr Riley [455-457], together with copies of the Claimants' scheduling records detailing annual leave taken since 2019.

3. Each Claimant had produced a written witness statement and the Respondent's representative cross-examined each witness. I also had a witness statement from Ms Mandeep Gujral, HR Business Partner for the Respondent and each Claimant in turn was given the opportunity to ask Ms Gujral questions, which they did. I also asked questions of each Claimant and Ms Gujral.

4. No reasonable adjustments were required by any witness and the hearing was a fully remote hearing by video CVP with little connectivity issues.

Background

5. The Claimants are all employed by the Respondent as security officers to provide security at sites of a client of the Respondent, Bank of America.

6. The claims had all started life as single claims and had been consolidated relatively late in the proceedings and at differing times. There had been a number of case management hearings in the some of the separate claims prior to consolidation, but there had been no case management preliminary hearing once all cases had been consolidated.

The Claims and previous case management

7. Mr Whitby had brought his claim on 15 April 2020 having entered into early conciliation on 3 March 2020 that had ended on 3 April 2020. In his claim he complained that his holiday entitlement reduced to 23 days was not documented and an unlawful deductions from wages in respect of 4 days' annual leave in December 2019 which he had taken as unpaid.

8. Mr Riley brought his claim on 28 May 2020 having entered into early conciliation of 24 April 2020 that ended on 19 May 2020. In his claim he complained that his holiday had been reduced from 28 days to 23 days. He also brought a claim for five days holiday '*lost*' in 2019 [8].

9. Mr Jones brought his claim on 2 August 2020 having entered into early conciliation of 22 April 2020 that ended on 2 June 2020. In his claim he complained that he wanted his '*5 days holiday paid back*' to him from 2019 and his 28 days' holiday '*honoured*' [212];

10. Mr Irvine brought his claim on 4 December 2020 having entered into early conciliation on 17 November 2020 that ended on 3 December 2020. In his claim, he complained that his holidays had reduced from 28 to 23 and that he wanted 5 days' holiday pay owed from 2020 and wanted his 28 days holiday honoured moving forward [323];

11. At the case management preliminary hearing on Mr Riley's complaint on 25 August 2020, Mr Riley had asserted that in his contract of employment he was entitled to 28 days holiday (and these were the holidays he had taken in 2018,) but in 2019 there had been a rumoured change and he was only able to take 23 days and, despite a grievance, this had not been resolved. He confirmed that he had not lost money had he had not taken in excess of the 23 days, what he had lost was the opportunity to take 28 days' leave in 2019 and so far in 2020 [26].

12. Judge Ward had set out the issues to be determined in his case which were

> *A reference and determination under sections 11 and 12 Employment Rights Act 1996*
>
> *a. What does the Claimant's statement of particulars with regard to holidays say?*
> *b. Has the Claimant been able to take the holidays specified in his contract?*
> *c. Should the Tribunal confirm, amend or substitute the statement of particulars?*

13. On 11 December 2020 a further preliminary hearing took place at which point the cases for Mr Whitby, Mr Riley and Mr Jones had been linked. Mr Irvine's case had only just been issued at this point and had not at time been linked.

14. At that hearing:

    a. Mr Jones had also confirmed that he had also suffered no financial loss but also sought a declaration (under s.12 Employment Rights Act 1996 ("ERA 1996")) as to his annual leave entitlement; and

    b. Mr Whitby also confirmed that he sought a similar declaration but also sought compensation in that he asserted he was required to take some annual leave without pay in 2019 as he took 4 days of leave in excess of the 23 days to which the Respondent asserts he was entitled.

15. Mr Irvine's case had been case managed only to the extent that a decision was made to consolidate his claim with others [348] and no claims and issues had been identified at case management.

<u>Further case management</u>

16. As a result, and because the Working Time Regulations 1998 (WTR) are not uncomplicated or easy to navigate particularly where, as it was in this case, the employees did not work Monday to Friday, 5 days per week, but shift patterns of 12 hour shifts working 4 on 4 and four off, whilst some complaints and issues arising had been explored at earlier case management, to ensure that all the Claimants understood what it was that the Tribunal was being asked to determine, the first day was spent seeking to identify what the Claimants believed their agreed contractual terms were with regard to holidays, and what it is that they believed that they were claiming.

17. The Claimants had overnight after the first day of the hearing to confirm their positions but on return on the second day, it appeared that there was still some

confusion as to what they could claim in the Employment Tribunal and what claims they were seeking to bring. This, it appeared, arose largely out of confusion between calculation of holiday *leave* and calculation of holiday *pay* under the WTR. Some further time was spent clarifying the claims and this was resolved in the morning of the second day.

18. It was clarified that the dispute related to the number of holidays i.e. holiday *leave* entitlement, with the claim forms of each Claimant identifying that they asserted that they were entitled to 28 days' annual leave a year, with a 'day' being a full 12 hour shift.

19. The Claimants also assert that in 2019 they were prevented from taking their 28 days' leave and that (save for Mr Whitby) the Respondent only allowed them to take 23 days' leave. In Mr Whitby's case, the Respondent did allow him to take a further 4 days but this had been unpaid (in respect of which he is claiming under s.13 ERA 1996).

20. The Respondent says that the Claimants are entitled to only 20 days' annual leave, due to the Claimants' shift patterns of four 12-hour shifts on and four 12-hour shifts off and a calculation based on the WTR. It says that in such a case, an employee with a 4 on 4 off work pattern and a 42 hour week contract, would have an entitlement of 235.5 hours per annum. When those hours were divided by 12, being the number of hours in each working day/shift, this would give a statutory holiday leave entitlement of 19.6 days.

21. The Respondent's position is that the Claimants' contracts of employment reflect the correct calculation of holidays based on entitlement to holiday leave under the WTR and that the Respondent's granting the Claimants holiday leave of 28 days/shifts, had been a mistake/error.

22. In respect of the claims, in addition to the reference under 11 ERA 1996, the following claims were discussed.

23. As part of the case management discussion, it was clarified by the Respondent that whilst the Respondent's position was that the holiday leave entitlement was calculated in accordance with the WTR, the rate of holiday pay was in accordance with the contract which was more beneficial for the employees than the provisions of the WTR.

Breach of contract

24. All Claimants were still in the employment of the Respondent.

25. As this had only been explored and explained to only some of the Claimants at case management stage, it was again explained to the Claimants that as their contracts of employment had not come to an end, that the Tribunal did not have jurisdiction to decide on any breach of contract claim.

Unlawful deduction from wages (s.13 Employment Rights Act 1996)

26. It was explained to the remaining Claimants that s.13 Employment Rights Act 1996 provides that if a worker is paid less than is 'properly payable' they may claim the difference as an unlawful deduction.

27. Only Mr Riley had brought a clear claim for unlawful deductions from wages. Mr Whitby has particularised his claim within his ET1 as being 4 days' pay, with a day being 8.4 hours at £10.09 per hour, totalling £339.02 [125].

28. Following discussion with Mr Riley, Mr Jones and Mr Irvine, they also confirmed that, unlike Mr Riley, they had not taken time off unpaid. They were therefore not claiming for unlawful deduction from wages.

Working Time Regulations 1998

29. It was identified during this case management that the claims also appeared to include a complaint under Regulation 30 WTR on the basis that the Respondent *may* have refused to permit them to exercise rights in respect of annual leave pursuant to regulation 13 or regulation 13A WTR.

30. With regard to such a claim, it was accepted by the Claimants that:

    a. under the WTR, as they worked 12 hour shifts, four days on four days off, their working hours consisted of on average 42 hours per week;
    b. that this equated to a holiday entitlement under the WTR of 235.2 hours (42 x 5.6 (weeks of entitlement)); and that
    c. this included the 4 weeks' holiday provided for in the Working Time Directive (as set out in reg 13 WTR), and the additional 8 days' holiday (reg 13A WTR).

31. Further, it was accepted by the Claimants that to calculate WTR entitlement in days, the holiday entitlement of 235.2 hours would be divided by 12 (hours in each day/shift) which would give an average of 19.6 days' holiday leave entitlement per year.

32. If the Claimants are successful in their s.11/12 ERA 1996 reference, they will need to consider whether there is therefore an outstanding claim under Reg 30 WTR in any event.

33. It was decided that the hearing would be split and the final merits hearing would deal with the determination of the reference under s.11 Employment Rights Act 1996 only and, once the parties had received the judgment on the reference, directions would be proposed for determination of any outstanding claims including:

    a. any claim of unlawful deductions from wages brought by Mr Riley;
    b. any complaint being brought under Regulation 30 WTR that the employer had refused to permit him to exercise his rights in respect of annual leave pursuant to regulation 13 or regulation 13A.

34. It was determined that evidence would be taken from Mr Whitby, Mr Riley, Mr Jones and Mr Irvine in that order and that the Claimants would also have the opportunity to ask the Respondents witness in that order. Likewise, when the Claimants provided submissions the same order prevailed.

Facts

35. Whilst all Claimants were employed by the Respondent as security officers to provide security for at client sites, Bank of America, the historical employment positions of the Claimants differed in that:

    a. Mr Whitby had a contract that had been transferred to the Respondent in 2013, by operation of a relevant transfer pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"); and
    b. Mr Riley, Mr Jones and Mr Irvine had been directly employed since the commencement of their employment by the Respondent.

<u>Mr Whitby</u>

36. Mr Whitby was employed initially with Vision Security Group Limited ("Vision Security") in 2009. In October 2010, he commenced working a 4 on 4 off shift pattern and on 6 November 2010, signed a contract of employment which provided that the company holiday year run from 1 April to 31 March [170]. It also provided as follows:

> You are entitled to 28 (pro rata) days holiday. Each holiday day will be paid at 1/5 of your normal weekly hours, for example:
>
> *4* on *4* off shift pattern

Normal hours worked each week = 42
Holiday entitlement is 28 days, paid at 8.4 hours per day *(42 ÷ 5* = 8.4)

37. Mr Whitby gave evidence that for the remainder of his employment with Vision Security up to 2013, when his contract of employment transferred to the Respondent as a result of TUPE and thereafter, during his employment with the Respondent from that date up to December 2019, the Claimant was able to and did take 28 days' holiday leave (of 12 hour shifts) per year.

38. In February 2015, Mr Whitby was advised that the rate of holiday *pay* had changed as a result of '*a high court ruling governing how holiday pay was to be calculated*[1]*'* [153]. He was notified that with effect from 1 January 2015, for staff that worked regular overtime, an employee's overtime would be taken into account when pay was calculated and that this applied to the first four weeks (20 days) of holiday as laid down under the Working Time Directive, in any holiday year. Whilst this may have altered Mr Whitby's holiday pay thereafter, he continued to be given and take 28 days' leave per year.

39. Whilst the Respondents had not provided holiday records prior to 2015 as part of disclosure, the annual leave records for Mr Whitby from 2015, contained in the Bundle from 2015 [203L-203AR, supported his live evidence that he took 28 days' leave per year, for which he received:

    a. holiday pay for 12 hours for the first 20 days; and
    b. holiday pay for 8.4 hours only for the remaining 8 days' leave.

40. I accepted that evidence and found that Mr Whitby received 28 days' (i.e. 28 x 12 hour shifts) holiday leave from 2010 until December 2019, when Mr Whitby was informed by Mike Hughes, the Site Security Manager, that his entitlement was 19.6 days, which the Respondent had '*rounded up to 23 days'*. He was informed that the Respondent would honour any time booked for the remainder of 2019 [189] resulting in Mr Whitby taking 4 days' annual leave as unpaid leave [176].

41. On 12 December 2019, Mr Whitby lodged a grievance complaining that the Respondent had breached his contract which entitled him to 28 days holiday [157]. A meeting was held on 7 January 2020 before John Matthews, Site Security Manager and the notes of the meeting [160] reflect (and I found) that at that meeting Mr Whitby complained that his contractual entitlement of 28 days a year had not been

[1] Bear Scotland Ltd v Fulton and anor; Hertel (UK) Ltd and anor v Woods and ors (Secretary of State for Business, Innovation and Skills intervening) 2015 ICR 221 EAT

honoured and that holidays had been taken off him. He complained that other security officers in London and Chester continued to receive 28 days annual leave entitlement.

42. His grievance was not resolved to his satisfaction as on 20 January 2020 (mistakenly dated as 20 December 2020), Mr Whitby received an outcome letter which stated that the contract stated 28 days pro-rata and was in compliance with 'statutory leave' i.e. leave calculated in accordance with the WTR [187]. He was informed that his leave allocation remained at 23 days.

43. Mr Whitby appealed on 27 January 2020 [189] and an appeal meeting was held on 25 February 2020 by Robert Ayling [193].

44. An outcome letter was sent on 2 March 2020 which stated that in late 2018 the Respondent had realised in '*late 2018 ….that annual leave was being allocated incorrectly. A decision was made to correct this error and annual leave was realigned to what the employee's individual contract states. This is the reason why you have seen the reduction from 28 days that you previously took.'*

45. Mr Ayling indicated that he was unable to comment on comparisons with how other employees were treated [202].

<u>Mr Riley, Mr Jones and Mr Irvine</u>

46. The contracts of employment in the Bundle in respect of Mr Riley [41], Mr Jones [238] and Mr Irvine [350] were in same or similar format and Clause 9 provided as follows

> 9.1 The number of holidays you are entitled to under your contract of employment will be calculated in accordance with the provisions of the Working Time Regulations and will not exceed the maximum statutory entitlement. Holiday pay is calculated on the basis of contracted hours as detailed below.
>
> 9.2 All UK workers are entitled to paid holidays under the provisions of the Working Time Regulations. The maximum statutory entitlement is 5.6 weeks per annum, of which 8 days are paid in lieu of "Bank Holidays" (worked or unworked).
>
> 9.3 "Bank Holidays" refer to the eight recognised Bank or Public Holidays applicable to the relevant geographical area, except where the 25th December, 26th December, 1st January or (in Scotland) 2nd January falls on a Saturday or Sunday, then the Saturday

or Sunday will be deemed to be the Bank Holiday for the purpose of this document.

9.4 The Holiday year will run from 1st January to 31st December. In the first year of employment, the entitlement to paid holiday will accrue at the rate of one twelfth of the annual entitlement (to the nearest half day) each month. The entitlement accrues at the beginning of the relevant month.

9.5 Where paragraph 9.6 does not apply, holiday entitlement is calculated on the basis of the employee's weekly contracted hours. For example an employee on weekly contracted hours of 42 will be entitled to 42 ÷ 5 = 8.4 hours for 28 days per year.

47. The remaining provisions of Clause 9 also set out how holiday pay was to be calculated.

48. The contracts of employment contained in the Bundle contained a typed electronic signature as opposed to a copy of a 'wet signature' that the Claimant had personally hand-written.

49. Whilst Mr Riley did not dispute he had signed such terms (whether by e-signature or otherwise):

    a. Mr Riley's evidence, given on cross-examination, was that whilst he accepted that the wording of clause 9 did provide that holiday leave entitlement would be calculated in accordance with the WTR and would amount to 19.6 days per year, he also added that '*there were other factors';*
    b. When pressed by Mr McDevitt what he meant by '*other factors'* he responded that when he took on the role he was told that he was entitled to 20 days' leave paid at 12 hours and 8 days' leave at 8.4 hours;
    c. When challenged that this was the first time that this had arisen in evidence, Mr Riley shared that he has dyslexia and short-term memory loss; that stress caused problems and he was unsure whether it was even relevant;
    d. When challenged again that this was not what he was told, Mr Riley stayed firm to his first response and confirmed that this was what he had been told and that he didn't know how to read a detailed contract and he would have just signed at the end without reading the contract.

50. Mr Jones' evidence by way of written statement was brief. He was not asked whether he had signed such a contract, but his but in live evidence on cross-examination when it was put to him that it was not true that he was ever told that he would get 28 days' annual leave:

a. he also confirmed that he had been informed of this a week before being offered the job by 'John the manager and the boss who had left';
b. His explanation for failing to put such evidence in his witness statement was that he couldn't '*recall everything'*.

51. Mr Irvine, in cross-examination gave evidence that:

a. he had not signed the contract of employment. Whilst his initial response was that he had signed the contract, he qualified that by indicating that he assumed that he had but that he did not recall signing either a soft copy or a hard copy of the contract of employment and he did not recall seeing a copy;
b. He too told me that when he went for his interview with his manager Chris Price and Mike Hughes, he was also verbally told about the '*holiday situation'* and that they verbally agreed that it would be 20 days paid at 8.4 hours 'topped up' and 8 days paid at 8.4 hours;
c. He maintained, when challenged by Mr McDevitt, that he had raised this in his grievance albeit he didn't say word for word the same as given in cross-examination.

52. I accepted Mr Riley's, Mr Jones' and Mr Irvine's evidence. Whilst such evidence was not contained in the witness statements, I did not consider that this detracted from the honesty of their evidence which I did not consider had been fabricated in any way. Rather, I recognised that these were all claimants representing themselves and would not necessarily have considered such evidence to be of significance. I found their evidence was given honestly and candidly.

53. I found that each of Mr Riley, Mr Jones and Mr Irvine had been informed during their interviews, conducted with one or more of the Respondent's management, and more likely than not to have been one or both of Mike Hughes and Chris Price, that their holidays would be 28 days per year, working 4 on and 4 off 12 hour shifts, and that that the rate of pay for the first 20 days holiday leave would be calculated on a different basis to the subsequent 8 days, that a 'day' was a 12 hour shift.

54. Whilst having been given an opportunity to check their own email system to ascertain if they could confirm that a copy of the contract of employment that had been sent to Mr Irvine, and/or that they had some form of documented confirmation that Mr Irvine had seen the soft copy of the contract, the Respondent were unable in the time-frames of the hearing to provide such evidence. Mr Irvine's evidence was that despite lots of emails between him and Chris Price at that time, he did not have any email trail which indicated that this had been sent to him for signature. On the basis of the evidence before me, I found that it was more likely than not that Mr Irvine had not been sent a copy of the contract to sign.

55. Each of the three Claimants independently raised grievances with the Respondent that they had been prevented from taking full 28 days' leave entitlement in 2019 by way of grievances as follows:

    a. From Mr Riley on 18 February 2020 [66], complaining that others had been given the 28 days' holiday and days 'lost' from 2019;
    b. From Mr Jones on 16 February 2020 [268], that he was being treated unfairly with regard to holiday entitlement; and
    c. From Mr Irvine in June 2020 [374 and 379], complaining that it was agreed that he had 28 days holiday when he started employment and that it was common practice that he always had 28 days' holiday.

56. Grievance meetings took place on various dates before Mike Hughes, Security Manager and outcomes were provided, indicating broadly the same terms that the calculation of holiday was in accordance with the WTR [72 and 274] and/or had been wrong historically and the Respondent had made a decision to correct that mistake [381].

57. All appealed the outcome and all appeals were unsuccessful. All appeals were dealt with by Robert Ayling, Head of Security Operations who communicated that:

    a. the Respondent had decided to rectify their mistake in their calculation of holiday leave entitlement in late 2018;
    b. that the original grievance decisions would be upheld;
    c. that the Claimants were entitled to 19.6 days per year; and
    d. that the 5 days from 2019 would not be given [82, 288 and 393].

58. Neither Mike Hughes nor Robert Grayling have been called to give evidence for the Respondent. Instead, evidence was given by Ms Mandeep Gujral, HR Business Partner who had been employed by the Respondent since 2015 who was not involved in the grievances and could give no assistance on Mr Whitby's employment prior to the 2013 TUPE transfer.

59. Whilst Ms Gujral gave evidence that the Respondent had recognised that they had calculated annual leave incorrectly when they sought to introduce and implement new annual leave software, Javelin, in November 2018, there was no evidence that there was any communication to staff regarding this until late in October 2020 [394]. She confirmed that no prior communication could be found when undertaking disclosure and that consultation with the recognised union, the GMB, since February 2020 to 'resolve ….issues so that holiday is managed correctly'.

60. I found that none of the Claimants had been informed of any change or proposed change to their holiday entitlement prior to this communication in October 2020.

The Law

61. Section 11 ERA 1996 gives tribunals the power to determine what particulars ought to have been included in order to comply with S.1 ERA 1996.

62. There are four situations in which a worker may invoke the assistance of S.11. They are:

    a. where the employer has provided no written statement at all;
    b. where the employer has provided a statement, but it is incomplete in that it does not include all the particulars that are required;
    c. where the employer has failed to provide a written notification of changes to the statement required by S.4(1); and
    d. where a complete statement is provided, but there is a dispute as to the accuracy of the terms set out.

63. Mr McDevitt has suggested that this case involves the final subsection – where a complete statement is provided, but there is a dispute as to the accuracy of the terms set out and reminded me of **Railcare Ltd** v **Cook** EAT 1052/98; and the principle that tribunals are limited to deciding the particulars that were applicable at the date of the originating application, and not at the date of the hearing.

64. He has also drawn my attention to **Eagland** v **British Telecommunications plc** 1993 ICR 644 CA and that when considering a reference under s.11 ERA 1996 a tribunal must not invent a 'non-mandatory' term of the contract and must apply normal common law principles governing the process whereby contractual terms are implied to give business efficacy to the agreement as a whole. Where all particulars are recorded, the tribunal's job is therefore simply to see that they are accurate and reflect what the parties actually agreed: the tribunal cannot go beyond the statutory statement to add its own gloss on the agreement.

Conclusions

<u>Mr Whitby</u>

65. Ms Gujral on behalf of the Respondent could not give any evidence regarding Mr Whitby's annual leave prior to the TUPE transfer in 2013 but , given my findings that

Mr Whitby had since he commenced in his role in 2010 always been allowed to and did book and take 28 days' annual leave per year, a period of over 10 years, I concluded that this was evidence was of a practice inherited and continued by the Respondent of providing leave of 28 days of 12 hour shifts per annum. Such holiday entitlement had been granted regularly over a decade and was well-established and well-known; a practice that a number of security officers, including those who had not transferred to the Respondent but had been employed directly, also benefitted from.

66. I concluded that it was an implied term of the agreement between Mr Whitby and the Respondent that he was entitled to 28 days' holiday leave per annum (a 'day' being 12 hour shift) on the basis of normal custom and practice that had operated since he had commenced in that role in 2010 and which had been inherited under TUPE by the Respondent.

67. The written contract of employment as a s.1 ERA 1996 statement of particulars was therefore inaccurate as at the time that Mr Whitby issued his ET1 claim form, the statement incorrectly stated that he was entitled to 28 days (pro rata) and is to be amended to record that it is an agreed term that holiday leave entitlement was 28 days' leave per annum, a 'day' being a 12 hour shift.

Mr Riley, Mr Jones and Mr Irvine

68. Given my findings that Mr Riley, Mr Jones and Mr Irvine were, as part of the interview processes, told that their holiday entitlement would be 28 days, consisting of 20 days, paid at 12 hours' pay and 8 days at 8.4 hours pay, and that they did in fact receive in excess of 19.6 days (and in the case of Mr Irvine for 2019 did receive 28 days) I concluded that the verbal offer, coupled with the practice of giving staff 28 days' leave, amounted to an express term of the contract.

69. The written contracts of employment, as a s.1 ERA 1996 statement of particulars were therefore inaccurate as, at the date that Mr Riley, Mr Jones and Mr Irvine issued his ET1 claim form, the statement incorrectly included particulars that holiday leave entitlement was to be calculated in accordance with the WTR and is to be amended to record that it is an agreed term that holiday leave entitlement was 28 days' leave per annum, a 'day' being a 12 hour shift.

Reconvened Hearing

70. A one day public hearing will be listed for one day to take place by video (CVP) to consider:

a. Mr Whitby's claim for unlawful deduction from wages under s.13 ERA 1996; and
b. Any claim under regulation 30 WTR 1998.

Employment Judge R Brace

14 December 2021

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON 16 December 2021

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FOR EMPLOYMENT TRIBUNALS Mr N Roche