



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4113828/2021

Held via Cloud Video Platform (CVP) on 11 March 2022

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Employment Judge Murphy

Mr K McDougall

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**Claimant
In Person**

G&I Allison

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**Respondent
Represented by
Mr M Sutton,
Representative**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. The claimant's claim for under Regulation 30(1) of the Working Time Regulations 1998 for alleged breaches of Regulation 10(1) of those Regulations does not succeed and is dismissed.

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REASONS

Preliminary Discussions

1. The claimant, a former Chef de Partie with the respondent, brings a claim under the Working Time Regulations 1998 (WTR) in relation to his daily rest periods. He complains that contrary to R10(1) of the WTR, he was frequently denied 11 consecutive hours' rest in each 24-hour period

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during which he worked. The claimant confirmed during the preliminary discussion that this is his only claim and he brings no other complaint.

2. The parties agree the claimant was employed from 5 July 2021 to 24 October 2021. The claimant seeks a remedy under R30 of the WTR. He initiated Early Conciliation with ACAS on 7 November 2021. An Early Conciliation Certificate was issued on 19 November 2021 and the ET1 was lodged on 25 December 2021. I drew to parties' attention to R30(2), dealing with time limits. Time begins to run on the date on which it is alleged that the exercise of the right should have been permitted. The claimant confirmed that he claims only in respect of the period of his employment which is not, on the face of that provision, time barred. He clarified that the claim, therefore, relates to the period commencing 8 August 2021.
3. I also drew parties' attention to R30(1) which says a worker may present a complaint that his employer "has refused to permit him to exercise any right he has under - (i) regulation 10(1)". The claimant accepts he did not raise the issue of his right under Reg 10(1) with the respondent until 12 October 2021, when he did so by email. I explained to parties that the question of whether an employee can claim to have been refused a rest period in the absence of an express request has given rise to conflicting decisions from the Employment Appeal Tribunal. In the circumstances, I indicated I would hear evidence about the period from 8 August to 24 October 2021, but that parties could address the question in their submissions of whether the claimant can invoke a remedy for the period before 12 October 2021, having regard to R30(1) and interpretive caselaw. (In the event, neither party did so).
4. Mr Sutton confirmed that the respondent relies upon R22(1)(c) and R24 of the WTR to disapply R10(1) to the claimant's circumstances.

30 **Issues**

5. The parties agreed that the issues to be determined are:-

- 5 a. Did the respondent afford the claimant a rest period of not less than eleven consecutive hours in each 24-hour period during which he worked for the respondent between 8 August 2021 and 24 October 2021? The respondent accepts that routinely, the claimant only had 9.5 hours' consecutive rest between the conclusion of dinner service in the evening and breakfast service the next morning. The claimant for his part maintains that often he had just 9 hours' consecutive rest between dinner and breakfast service.
- 10 (i) When (between 8 August and 24 October) did the respondent afford the claimant less than eleven consecutive hours' rest? and
- (ii) How many hours' consecutive rest were afforded on these occasions?
- 15 b. Was the claimant at the material time engaged in activities involving periods of work split up over the day?
- c. Where the claimant was not afforded eleven consecutive hours' rest in any 24-hour period, did the respondent, wherever possible, allow him to take an equivalent period of compensatory rest?
- 20 (i) When was he afforded compensatory rest?
- (ii) How much compensatory rest was he afforded?
- d. Did the respondent refuse to permit the claimant to exercise his right to eleven consecutive hours rest in any 24-hour period? If so, when?
- 25 e. If the claimant's complaint is well founded, did he suffer any financial loss which can be attributed to the matters complained of?
- f. Should the Tribunal make a financial award? What sum
- 30 would be just and equitable in all the circumstances?

Findings in Fact

6. The claimant gave evidence on his own behalf and the respondent led evidence from Isabelle Allison, partner in the partnership G & I Allison

which trades as the Port Charlotte Hotel. The respondent also led evidence from Chris Martin, Head Chef at the hotel. Reference was made by the witnesses to an electronic joint bundle which included time sheets, indicating the number of hours the claimant worked in the period from 29 August 2021 until his employment ended. I make the following findings in fact on the balance of probabilities:

6.1 The respondent is a partnership of two individuals who operate the Port Charlotte Hotel.

6.2 The claimant was employed by the respondent as a Chef de Partie from 5 July 2021 to 24 October 2021 when the respondent terminated his employment after breakfast service.

6.3 The claimant signed a written contract of employment with the respondent on 18 July 2021. It included a clause headed "Hours of Work" which, so far as material, was in the following terms:

Your current standard working week will be approximately 40 per week, the pattern determined in conjunction with your manager. However, these hours may vary according to the needs of the business.

...

By signing this statement, you confirm that you will not be covered by the 48 hour weekly limit on working time contained in the Working Time regulations 1998. You may decide at any time to exercise your right not to work an average of more than 48 hours in any 17 week period. However, you must give the Company at least three months' notice in writing of your wish to do so.

...

6.4 During the material time, between 8 August 2021 and the termination of the claimant's employment, the respondent operated breakfast and dinner service only. The claimant's hours of work were organized according to this offering. They were communicated to him on a Saturday by a rota prepared by Chris

Martin, the Head Chef, which was pinned up in the hotel kitchen. This confirmed the hours of the kitchen staff for the forthcoming week from Sunday to Saturday.

5 6.5 No findings of fact regarding the claimant's pattern of work and rest are made in respect of the period from 8 to 28 August 2021.

6.6 During the period between 29 August 2021 and 24 October 2021 (for which weekly time sheets were produced), the claimant was afforded 9.5 consecutive hours' rest in a 24 hour period during which he worked for the respondent on 19 occasions, as follows:-

10 (i) 3, 4, 6, 12, 13, 17, 18, 20, 25, 30 September 2021

(ii) 1, 2, 6, 9, 10, 16, 17, 23 and 24 October 2021

15 In each case, the claimant worked until 10pm the evening before on dinner service and began work at 7.30 am the following morning on breakfast service. There were occasions when the claimant attended in the kitchen at 7 am instead of 7.30 am. He was not required to do so by the respondent but did so of his own volition. He did not record this extra time as working time on his time sheets.

20 6.7 During the period from and after 29 August 2021, the claimant took three days' annual leave on 29, 30 and 31 August 2021. He was also allocated (unpaid) days off by the respondent as follows:-

(1) w/c Sun 29 Aug: 1 day (1 Sep)

(2) w/c Sun 5 Sep: 1 day (9 Sep)

25 (3) w/c Sun 12 Sep: 1 day (15 Sep)

(4) w/c Sun 19 Sep: 2 days (21 and 23 Sep)

(5) w/c 26 Sep: 1 day (28 Sep)

(6) w/c Sun 3 Oct: 2 days (4 and 7 Oct)

(7) w/c Sun 10 Oct: 2 days (11 and 12 October)

30 (8) w/c Sun 17 Oct: 2 days (18 and 19 October)

6.8 During the period from 29 August to 24 October 2021, the claimant was not always allocated to work on the breakfast service on his working days. On such occasions, where he had worked on dinner service the preceding day, he was afforded 16 consecutive hours' rest between 10 pm the preceding evening and 2 pm the following working day. He was given mornings off after working the dinner service the day before on 13 occasions during the period from 29 August, as follows:

- (i) 5, 7, 8, 11, 14, 16, 26, 27 Sep 2021
- (ii) 3, 14, 15, 21 and 22 Oct 2021.

6.9 In the period from 29 August to 24 October 2021, on days when he worked during both the breakfast and dinner service, the claimant commonly had a break of 2.5 or 3.5 hours between his breakfast and dinner hours. He commonly finished working on breakfast at 11.30 am and began working on dinner service at 2 or 3 pm.

6.10 Throughout the period from 5 July 2021 to 11 October 2021, the claimant at no time raised a concern with the respondent about the number of consecutive hours' rest he was being allocated. He did not ask to be allowed to exercise his entitlement under Reg 10(1) during this period, or otherwise mention the entitlement.

6.11 On 12 October 2021, the claimant sent an email to the respondent in the following terms:

Much as I very much enjoy being in your employment, it has become apparent that my legal statutory rights as an employee have been abused and overlooked.

There are other issues which probably merit discussion, however, the abuse of my right to 11 hours uninterrupted rest between shifts is the most prescient. That is the law.

6.12 There followed a chain of emails between Isabelle Allison and the claimant. Ms Allison offered to meet with him to discuss the matter but the claimant declined a meeting that day as it was his day off.

When the claimant returned to work, Ms Allison did not follow up on the issue with the claimant and the claimant did not raise the matter again with the respondent. After he raised the issue by email on 12 October 2021, he was allocated hours which allowed for fewer than 11 consecutive hours' rest on 16, 17, 23 and 24 October 2021.

6.13 On 24 October 2021, shortly before the respondent terminated the claimant's employment, the claimant submitted a statement of sickness for the purpose of claiming statutory sick pay. He attributed his illness to stress, anxiety, depression and a back injury.

Observations on the evidence

7. There were no time sheets or rotas available for the period between 8 and 28 August 2021. The claimant gave evidence only that his working pattern in the period 8 and 28 August 2021 was 'similar' to that in the period from and after 29 August 2021. He could not give any specific details about the occasions when he did not get 11 consecutive hours rest in this period. There was no clarity regarding the precise pattern of work and rest during those working weeks. The claimant has not discharged the burden of proving any specific deficits in the 11-hour entitlement contemplated by R10(1) in the period before the w/c 29 August 2021.

8. Most of the evidence related to the ensuing period from 28 August to 24 October 2021 was uncontroversial. The respondent did not dispute the hours worked by the claimant as recorded in the time sheets produced.

9. There was, however, a conflict in the evidence regarding the efforts made by Ms Allison to discuss the claimant's complaint in his email of 12 October 2021 during the period after that date. Ms Allison gave evidence that she asked the claimant on several occasions if he wanted to discuss his concern during face-to-face conversations. She alleged the claimant said he didn't wish to discuss it; that there was no issue.

The claimant denied that Ms Allison asked him about it after the email chain on 12 October.

10. I resolved this dispute of fact in favour of the claimant's account. When I asked Ms Allison about the claimant's response to her enquiries, I found her evidence to be somewhat hesitant and evasive. She seemed reluctant to respond to the question. She answered by referring to an occasion when she said she had asked him if everything was alright, and (she said) he had said yes. I preferred the claimant's evidence that Ms Allison did not, after her emails on 12 October 2022, specifically raise the issue of consecutive rest, about which the claimant had complained.

Relevant Law

11. The Working Time Directive 2003/88/EC (WTD) was adopted in 1993 as a health and safety measure. The domestic implementation, the Working Time Regulations 1998 (WTR) came into effect in 1998. Under the WTR, workers are entitled in certain circumstances to rest breaks and rest periods of a duration prescribed by the regulations.
12. There are restrictions on contracting out of the rights under the WTR. Any agreement is void in so far as it purports to exclude or limit the operation of the respective legislation unless specified stringent conditions are satisfied (Reg 35).
13. Those parts of the WTR which are of most relevance to the issues are reproduced:

Reg 2: Interpretation

...

- 25 *"worker" means an individual who has entered into or works under (or, where the employment has ceased, worked under)—*
- (a) a contract of employment; or*
 - (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or*
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customer of any profession or business undertaking carried on by the individual;

Reg 10: Daily rest

5 (1) *A worker is entitled to a rest period of not less than eleven consecutive hours in each 24-hour period during which he works for his employer.*

...

(3)

Reg 22: Shift workers

10 (1) *Subject to regulation 24 –*

(a) *regulation 10(1) does not apply in relation to a shift worker when he changes shift and cannot take a daily rest period between the end of one shift and the start of the next one;*

15 (b) *paragraphs (1) and (2) of regulation 11 do not apply in relation to a shift worker when he changes shift and cannot take a weekly rest period between the end of one shift and the start of the next one; and*

20 (c) *neither regulation 10(1) nor paragraphs (1) and (2) of regulation 11 apply to workers engaged in activities involving periods of work split up over the day, as may be the case for cleaning staff.*

(2) *For the purposes of this regulation -*

25 *“shift worker” means any worker whose work schedule is part of shift work; and*

30 *“shift work” means any method of organizing work in shifts whereby workers succeed each other at the same work stations according to a certain pattern, including a rotating pattern, and which may be continuous or discontinuous, entailing the need for workers to work at different times over a given period of days or weeks.*

Reg 24: Compensatory rest

24. Where the application of any provision of these Regulations is excluded by regulation 21 or 22 ... and a worker is accordingly

required by his employer to work during a period which would otherwise be a rest period or rest break -

(a) his employer shall wherever possible allow him to take an equivalent period of compensatory rest; and

5 *(b) 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.*

10 **Reg 30: Remedies**

(1) A worker may present a complaint to an employment tribunal that his employer –

(a) has refused to permit him to exercise any right he has under –

15 *(i) regulation 10(1) or (2)*

(ii) regulation 24, in so far as it applies where regulation 10(1)... is modified or excluded;

...

20 *(2) Subject to regulation 30B, an employment tribunal shall not consider a complaint under this regulation unless it is presented -*

(a) 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 in the case of a rest period ... extending over more than one day, the date on which it should have been permitted to begin) or, as the case may be, the payment should have been made;

25 *(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three ... months.*

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...
(3) Where an employment tribunal finds a complaint under paragraph (1)(a) well-founded, the tribunal -

35 *(a) shall make a declaration to that effect; and*

(b) *may make an award of compensation to be paid by the employer to the worker.*

(4) *The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances, having regard to –*

(a) *the employer's default in refusing to permit the worker to exercise his right, and*

(b) *any loss sustained by the worker which is attributable to the matters complained of.*

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14. The WTR also provides that workers have a minimum entitlement to 5.6 weeks' annual leave per annum (R13 et seq) and that they are entitled to a weekly rest period of 24 hours' uninterrupted rest in each seven-day period (R11). Further, where a worker's daily working time is more than six hours, he is entitled to a rest break of 20 minutes (R12).

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Caselaw

15. The following case is cited in this judgment.

- **Network Rail Infrastructure Ltd v D Crawford** [2019] EWCA Civ 269

20 **Submissions**

16. The claimant and Mr Sutton respectively gave oral submissions. To avoid repetition and in the interests of brevity, I do not summarize these here, but set out their arguments in turn, within the framework of the list of issues which provides the structure for the following discussion and decision.

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Discussion and Decision

When did the respondent afford the claimant less than eleven consecutive hours' rest and how much consecutive rest was afforded on these occasions?

30 17. It was not disputed by the respondent that it routinely afforded the claimant fewer than eleven consecutive hours' rest in a 24 hour period. I

have found it to be proved that the claimant was not afforded eleven consecutive hours' rest before he began work for the respondent on the following dates:

3, 4, 5, 6, 10, 11, 13, 19, 20, 25, 30 Sep 2021

5 1, 2, 6, 9, 10, 16, 17, 23 and 24 October 2021

18. In each case, the claimant was afforded 9.5 hours' consecutive rest in the relevant 24 hour period by the respondent.

Was the claimant at the material time engaged in activities involving periods of work split up over the day?

- 10 19. The claimant argued in his submissions that R22(1)(c) did not operate to disapply R10(1) of the WTR in his circumstances. He said that the respondent was seeking to 'hide behind' the notion of a shift worker. His argument centred upon the definition of 'shift worker' and 'shift work' found in R22(2). He claimed he was not engaged in shift work because
- 15 his work was not organized in shifts whereby "workers succeed each other at the same workstations according to a certain pattern, including a rotating pattern". The requirement for the shift workers to succeed each other was, he said, fundamental to the definition of shift work. Nobody succeeded him at his workstation, and he succeeded nobody when he
- 20 began his working hours. The word 'shifts' was used colloquially in the catering sector, in the claimant's submission, and the patterns of work employed there did not fit the technical legal definition in the WTR. Likewise, whether the respondent used the term 'shift' or 'service' was not relevant.

- 25 20. Mr Sutton submitted that the definition of shift worker in R22(2) was indeed satisfied. The claimant and other workers employed in the kitchen worked at different times. He said that, by the claimant's own admission, he worked to a rota and, therefore, said Mr Sutton, had a rotating pattern. On that basis, R10(1) was disappplied (subject to the satisfaction
- 30 of R24, dealing with compensatory rest).

21. I agree with the claimant that he does not satisfy the definition of a "shift worker" as defined in R22(2). There was no evidence that he and his

colleagues worked in shifts whereby they succeeded each other at the same workstation according to a pattern, including a rotating pattern. Rather, the claimant's workstation (i.e. the kitchen) closed between breakfast and dinner service and closed again overnight, between dinner and breakfast.

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22. Unfortunately for the claimant, this does not assist his cause. The term "shift worker" does not appear in R22(1)(c), on which the respondent relies. It is found only in R22(1)(a) and (b). R22(1)(c), on the other hand, disapplies R10(1) to "workers engaged in activities involving periods work split up over the day, as the case may be for cleaning staff." The parliamentary draughtsman could have, but specifically chose not to use the defined term 'shift worker' in this limb of R22. It is clear, therefore, that this limb is intended to cover workers who may or may not fall within the scope of the term defined in R22(2) but whose activities are nonetheless split up over the day.

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23. The example given in the sub paragraph is cleaning staff. Like staff in the catering industry their working time may often be split up across the day, but it will not necessarily be the case that when they clock off, they will be succeeded by other cleaners during the hours they are absent. Rather, it can be the cyclical nature of the activity which results in the working pattern being split up over the day.

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24. The claimant pointed out that R22 has the umbrella heading: "Shift workers". Nevertheless, I consider R22(1)(c) is tolerably clear and the heading does not cast any troubling doubt on its interpretation. R22(1)(c) is not limited to shift workers as defined, but, irrespective of that definition, describes a category of workers for whom R10(1) will be disapplied, subject to R24. In the present case, there is can be little doubt that the claimant falls into this category. He was engaged in activities which involved periods of work split up over the day.

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30 *Where the claimant was not afforded eleven consecutive hours rest in any 24-hour period, did the respondent, wherever possible, allow him to take an equivalent period of compensatory rest?*

25. The claimant submits that he was not afforded compensatory rest. He argues that he often worked 61 or 62 hours per week. He suggested that this was 50% more than he was contracted to do. He questioned whether it was possible for someone working those weekly hours to be receiving compensatory rest. He said that over the eight week period, he went without compensatory rest on 20 separate occasions. He referred to the guidance on the UK Government's website which gives an example of 11 consecutive hours' rest being an 8 pm finish followed by a 7 am start. He recognized that the guidance was not authoritative "in the eyes of the law" but suggested it indicated the spirit of the law.
26. Mr Sutton submitted that the claimant had received compensatory rest of an equivalent period so as to satisfy the requirements of R24(1). He said that the claimant had, between 5 September and 24 October, been given four days of rest additional to the minimum 24 hours per week required by the WTR. He also referred to four days' holiday. These, he said were additional to the statutory minimum rest required under the WTR, and so must be construed as compensatory rest. Mr Sutton also relied on mornings off given to the claimant on 14 days. On these occasions, he said, the minimum 11 consecutive hours was extended to 16 hours.
27. Mr Sutton cited **Network Rail Infrastructure Ltd v Crawford** with regard to the interpretation of 'compensatory rest. He referred to the dicta of Lord Justice Underhill:
- ... the description of compensatory rest required under regulation 24(a) as "equivalent" cannot be intended to import the identical obligation that would have applied under regulation 12. Rather the intention must be that the rest afforded to the worker should have the same value in terms of contributing to his or her well-being.
28. Mr Sutton said that it was not the purpose of compensatory rest to provide the number of hours needed for compliance with R10(1) but to ensure that the claimant's wellbeing was protected in the same way as if R10(1) had applied. He suggested that the structure of the respondent's operation was such that people were allowed to choose their hours. If

they were at work, it was, he said, because they considered themselves fit to be so. Mr Sutton pointed out the claimant did not submit a sick note until the last date of his employment. The claimant responded that his sick note was the culmination of previous weeks of inadequate rest.

5 29. The respondent relies on sub paragraph (a) only and expressly does not
rely upon sub paragraph (b). The respondent led no evidence of any
particular occasions when it was said to have been impossible to allow
the claimant to take an equivalent period of compensatory rest. My
approach is, therefore, to consider the 19 occasions on which the
10 claimant was afforded 9.5 as opposed to 11 hours' consecutive rest, and
whether he was allowed to take an equivalent period of compensatory
rest so as to compensate those deficits.

30. In determining whether he was allowed to take compensatory rest, I
exclude consideration of the provision of the minimum weekly 24-hour
15 rest period. I also exclude consideration of the days taken as accrued
annual leave to which he had a statutory right under the WTR. I don't
accept that the provision of the minimum leave and weekly rest periods
prescribed elsewhere in the WTR can be relied upon to satisfy those
requirements while at the same time doubling as 'compensatory rest' for
20 R10(1) deficits. I also reject Mr Sutton's suggestion that the claimant
could, in any meaningful way, 'choose his own working hours'. The
claimant was expected to attend for work in accordance with the rota
prepared by the Head Chef.

31. On the other hand, I am unpersuaded by the claimant's proposition that
25 the sheer number of hours he was working on a weekly basis in and of
itself renders impossible provision for compensatory rest within his
working pattern. He submitted that he was working more than he was
contracted to do. His contract stipulated, however, that his hours may
vary according to the needs of the business, and he had opted out of the
30 48-hour cap on the working week.

32. The WTR was adopted as a health and safety measure. The emphasis
in the **Network Rail** case is on the contribution of the compensatory rest
to the worker's well being and its equivalence in that respect to the

disapplied right. With that in mind, I consider there must be some temporal proximity between the allowance of the compensatory rest and the date of the deficit in the continuous rest prescribed by R10(1). Providing compensatory rest weeks or months after the deficit occurs is unlikely to have the same value in contributing to a worker's wellbeing.

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33. In each of the weeks commencing 19 September, 3, 10 and 17 October 2021, the claimant had two days off. In these weeks, he therefore had an extra 24 continuous hours' rest over and above the weekly rest period prescribed by R11 of WTR.

10 34. In the week commencing 19 September, the claimant's 'extra' day off was on 23 September. In that week, he did not get 11 hours' consecutive rest on 19, 20 and 25 September. I accept that the 24 consecutive hours' 'extra' period of rest on 23 September compensated for the 1.5 hour deficit in continuous rest experienced on three other dates that week.
15 This period was more than equivalent in terms of the number of hours. It occurred within a few days of the dates on which there was a R10(1) deficit. It might reasonably be regarded as offering an equivalent contribution to the claimant's wellbeing. Applying the same reasoning to the other weeks in which two days' off were granted, I similarly find that
20 the claimant was afforded equivalent compensatory rest for the R10(1) deficits which occurred on 6, 9, 10, 16, 17, 23 and 24 October 2021. Ten of the 19 deficit days were, therefore, compensated by rest periods which took the form of a second day off within the week in which those deficits occurred.

25 35. R10(1) deficits occurred additionally in the weeks commencing 29 August, 5 September, 12 September and 26 September 2021. In these weeks, only one day off was given (the weekly minimum). The claimant was, however, given mornings off during those weeks as follows:

Week commencing (2021)	Deficit days (<11 hours' consecutive rest before breakfast service)	Mornings off (16 consecutive hours' rest before breakfast service)
w/c 29 Aug	3 and 4 Sep	
w/c 5 Sep	6 and 10 Sep	5, 7, 8, 11 Sep
w/c 12 Sep	13 Sep	14 & 16 Sep
w/c 26 Sep	30 Sep, 1 & 2 Oct	26, 27 Sep

36. In the weeks commencing 5, 12 and 26 September I am satisfied that the number of days when the claimant was afforded 16 consecutive hours of rest because of mornings off were sufficient to offer equivalence in compensatory rest to the days of R10(1) deficits which occurred in those same weeks. Each morning off allowed an additional 5 consecutive hours' rest over and above the minimum 11. These periods were, therefore, more than equivalent in terms of the number of hours of deficit in the weeks they were granted. They were given, in each case, within a few days of the dates on which there was a R10(1) deficit. They can reasonably be regarded as affording an equivalent contribution to the claimant's wellbeing.
37. The only remaining dates on which the claimant experienced a Reg 10(1) deficit and for which a compensatory rest period has not, so far, been identified are 3 and 4 September 2021. They fall in the week commencing 29 August 2021. In that week, the claimant had been on annual leave on 3 days (29, 30 and 31 August). He had his weekly day off on 1 September 2021. Although I don't consider his annual leave or weekly minimum rest day can be properly regarded as compensatory rest, they do explain a lack of opportunity within that particular calendar week for compensatory rest to be built in. In the following week, however, the claimant was given four mornings off on 5, 7, 8 and 11 September. The mornings off on 5 and 7 September were sufficiently proximate in time to the deficits on 3 and 4 September to compensate

the claimant for the shortfall in those rest periods. The mornings off on 8 and 11 September were likewise adequate and sufficiently temporally proximate to compensate for the deficit dates on 6 and 10 September 2021.

5 38. I therefore find that, in granting mornings off and 'extra' days off which, when they occurred, exceeded the minimum requirements of the WTR R10(1) and R11, the respondent allowed the claimant to take equivalent periods of compensatory rest for the purposes of Regulation 24(a). Accordingly, by operation of Regulation 22(1)(c), R10(1) of the WTR did
10 not apply to the claimant during the period of his claim.

39. In light of this finding, it is unnecessary to consider the remaining questions listed in paragraph 5 above.

Conclusion

15 40. On some 19 occasions between 29 August and 24 October 2021, the claimant was not afforded 11 consecutive hours' rest between completing the dinner service and beginning work on the breakfast service the next morning. The claimant was, however, afforded equivalent periods of compensatory rest in respect of each such occasion. As he was engaged in activities which involved periods of work
20 split up over the day, R10(1) of the WTR did not apply to him in the circumstances. The complaint is not well founded and does not succeed.

25 **Employment Judge: L Murphy**
Date of Judgment: 17 March 2022
Entered in register: 12 April 2022
and copied to parties