



EMPLOYMENT TRIBUNALS

Claimant: Miss C Kuster
Respondent: AP Moller Singapore Pte Ltd
Heard at: East London Hearing Centre (remotely by video)
On: 25 October 2022
Before: Employment Judge Hook

Representation

Claimant: In person
Respondent: Mr Greaves, counsel

JUDGMENT having been sent to the parties on 28 October 2022 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Background

1. The claimant brought a claim in relation to her entitlement to paid holiday.
2. Her claim was issued on 12 April 2022. The background to the claim is that the claimant serves as an officer aboard ships carrying cargo or sailing for other commercial purposes between international ports. The respondent company, which employs the claimant, will arrange for the claimant to fly out from the UK, where she lives, to a port where she joins a ship and serves as a member of its crew for a period of time before returning home.
3. The claimant has a permanent contract of employment, and her contract provides for a certain number of days paid holiday.
4. Her ET1 describes that in August 2021 she was notified that her next assignment was to join a ship, *Rio De Janeiro*, at Singapore. At that time the Covid pandemic was still a considerable concern and she was instructed by the respondent to quarantine at home for 14 days (4-18 October 2021) before going to Singapore. She was served with a notice called a 'Stay Home Notice' which instructed her not only to quarantine in her own home but also to isolate within her home from other members of her household.

Loss and restoration of holiday

5. The claimant's October payslip indicated to her that the respondent had treated the quarantine period as a usage of paid holiday. The claimant objected to this. She took the view that she was quarantining at her employer's request and was significantly curtailing her own life for the furtherance of the company's needs and interests so it could not be properly regarded as holiday.
6. She expressed her concerns to the respondent, who she refers to as Maersk in her ET1, and they agreed that the days should not be treated as a usage of holiday days. They would be classed as "neutral days" which the claimant is familiar with as a day which is not holiday, is paid but from which further holiday allowance does not accrue. The claimant considered this to be the correct position.
7. The claimant was caused alarm when on 23 December 2021 she received an email from one of the respondent's staff saying, in effect, that the decision to credit the holiday days back to the claimant was done "*prematurely and before all relevant issues were reviewed.*" The email went on, "*if my above leaves you wondering if you will lose your days again that is not my intention. My recommendation right now is that you both trust the process – as I am sure you know some times the best action is to let time work.*"
8. The email was sent to both the claimant and another officer serving with the claimant who was in a similar position, hence the reference to "both" in the email.
9. The claimant has heard nothing further and as of the date of the hearing (25 October 2025) the holiday days have remained credited to the claimant in a way she considers is correct.

Issue of the claim

10. The claimant issued her claim in April 2022 after returning to the UK on 21 February 2022. She says she could not issue a claim sooner as the internet connection while serving at sea is poor.
11. The claimant told the Tribunal she is concerned that at some future point the respondent may change its mind (as possibly foreshadowed by the email of 23 December 2021) and re-deduct holiday days from her in respect of the October 2021 quarantine period. She is also concerned that if the pandemic level grows again such that restrictions of that kind are put in place once more she might be deprived of holiday days in relation to a future quarantine.

Remedy sought by the claimant

12. The Tribunal asked the claimant to clarify what remedy she is seeking. She was not seeking a financial remedy. She was asking the Tribunal for a

declaration that the initial deduction of her holiday was unlawful and that a future deduction of her holiday would also be unlawful.

The respondent's submissions

13. The respondent submitted that the claim was out of time or in the alternative it disclosed no proper cause of action and the remedy sought is not a remedy the Tribunal can grant.
14. The respondent submitted that the claim issued on 12 April 2022 it was out of time if the act complained of was before 7 January 2022 (taking account of the period 6-8 April between notification to ACAS and issue by ACAS of a certificate). Clearly, the initial deduction of the holiday was prior to 7 January 2022.
15. This submission requires the Tribunal to consider whether it was reasonably practicable to bring a claim in time. Relevant to that point would be the extent to which the claimant could realistically file a claim while at sea.
16. The respondent further submits that an act has not occurred on which a claim could properly be found.
17. Claims are often brought to the Tribunal where someone has unlawfully been refused by their employer the opportunity to take days of paid holidays and the Tribunal is asked to correct that past event, usually by ordering the employer to pay an amount of money to the wronged employee. That is not the case here.
18. The claimant was notified her holidays were used by the quarantine requirement. But the claimant accepts that was corrected by her employer. It is unfortunate that on 23 December 2021 she was given the impression matters might change again but they have not in fact changed. She remains in the position regarding holiday days that she was in before the quarantine was counted as holiday.
19. The Tribunal therefore accepts the submission of the respondent that the claimant's claim is not well founded because it does not disclose a proper cause of action. It does not disclose an unlawful loss to her that requires correction by the Tribunal.
20. The Tribunal also accepts the submission of the respondent that the Tribunal has no power to make a declaration now that a future event (for example, the respondent in future deducting holidays from the claimant) would be unlawful. The remedies that the Employment Tribunal can use are summarised in Employment Tribunal Remedies Handbook 2022-23¹ and no such remedy (a declaration about a future event such as depletion of holiday that has not yet occurred) appears therein.
21. The respondent's counsel properly reminded the Tribunal that in courts that can give declaratory relief, such as the High Court, the circumstances in which such a remedy will be used are very limited and are usually based on

¹ B. Gray and others, Bath Publishing 2022.

a highly specific identification of a proposed act or omission to which the declaration refers.

22. The Employment Tribunal's role is to correct unlawful acts or omissions that have occurred rather than to pre-empt what might happen in future, the full context of which is inherently not fully knowable at present.
23. If the claimant is deprived of her entitlement to holiday or holiday pay in future then she has the option to bring an a claim to the Tribunal if and when that happens. Her claim brought presently is not well founded and must be dismissed.
24. The Tribunal expresses no view on whether a future claim brought by the claimant will be well founded or not. The Tribunal can only judge that when and if a claim is brought.

Jurisdiction

25. In relation to the present claim, it should be noted that the respondent raised an additional objection to the claim. The respondent contended that the respondent, based in Singapore, lacks significant connection to the UK and there was no basis on which the Employment Tribunal in England & Wales could have jurisdiction.
26. The claimant contended that there is a sufficient connection and the Tribunal could properly be said to have jurisdiction.
27. In light of the claim being unfounded for the reasons given (lack of a proper cause of action an inability to grant the remedy sought) the Tribunal did not go onto hear submissions about the jurisdiction point and makes no ruling on this point.
28. If the claimant brings a future claim against the respondent then the jurisdiction issue is likely to be a point that will need to be addressed by the parties.

Conclusion

29. As stated in the Tribunal's judgment, the claimant's claim in, relation to holiday pay, is not well founded and is dismissed.

**Employment Judge Hook
Dated: 30 November 2022**