



EMPLOYMENT TRIBUNALS

Claimant: Mr Jonathan Goodhand & others

Respondent: Felixstowe Dock and Railway Company

JUDGMENT ON RECONSIDERATION

1. The Reserved Judgment and Reasons were sent to the parties on the 20 January 2023. By letter of the 1 February 2023 the respondent made an application for reconsideration. Thompsons for the represented claimants responded on the 8 February 2023 and the respondent on the 9 February 2023. Although Thompsons letter has been considered it is an attempt to re – litigate the case of Mr. Fenn which is not the purpose of reconsideration. It is noted however that it accepts that there was a typographical error within the judgment in relation to Mr. Fenn.

2. In accordance with Rule 72 (1) of the Employment Tribunal Rules 2013 the judge's provisional view on the application were sent to the parties on the 14 February 2023. By letter of the 28 February 2023 Thompsons confirmed that the application could be determined without a hearing and that their clients did not wish to raise any further objections. No objections have been received from the unrepresented claimants.

3. The respondent replied on the 27 February 2023 also confirming that it was content for its application to be determined without a hearing. It abided by its response in its letter of the 9 February 2023.

First issue

4. The respondent submitted that although the hours of voluntary overtime of Mr. Fenn were correctly recorded in paragraph 82 of the judgment for the years 2018 – 2021 the average was incorrectly recorded at paragraph 259 as 56.5 shifts per year.

Conclusion on First Issue

5. The hours for Mr. Fenn were correctly stated at paragraph 82 of the Reasons but there is an arithmetical error at paragraph 259 in that his average for the years 2018 – 2021 was 41 shifts per year and not 56.5 shifts as stated. This should be corrected in the Reasons, and he should be removed from the list of Successful Test Claimants in relation to voluntary overtime. Amended Reasons are attached.

Second issue

6. The respondent stated in its application that at paragraph 259 of the Reasons the tribunal recorded the average number of voluntary overtime shifts worked per year by certain of the claimants and came to a conclusion at paragraph 261. The respondent invited the tribunal to 'clarify for which years/periods of time, the Successful Test Claimants worked with 'sufficient regularity' for such sums to be included within their normal pay'. In particular the tribunal was asked to clarify three issues.

Conclusions on Second Issue

7. This is a request for clarity rather than reconsideration, but the judge considers it would be in the interests of justice to provide this. Her answer to the 3 questions posed by the respondent is:

- (i) *'Is it the tribunal's finding that each of the Successful Test Claimants worked voluntary overtime shifts with sufficient regularity throughout the period between 2018 and 2021? If not, when did the period(s) start and end?*

It is the tribunal's finding that each of the Successful Test Claimant's worked voluntary overtime shifts with sufficient regularity based on the information provided about their overtime for the period between 2018 and 2021.

- (ii) *Is the effect of the tribunal's conclusion (issues of limitation aside) that holiday pay received in the first few months of 2018 should have included holiday pay, or does the tribunal accept that this would require an analysis of the regularity with which overtime was worked in the preceding 12 - month period (i.e. during 2017)?*

Taking into account the periods for which the claim for holiday pay was brought and the information contained at pages 3367 – 3393 of the bundle (section T) the tribunal considered it appropriate to determine the issue of regularity over a 4 year period (see paragraph 259). The effect of the tribunal's conclusion confirmed above (issues of limitation aside) is that holiday pay received in the first few months of 2018 should have included overtime pay. The 'reference period' for the calculation of that holiday pay would be the previous 12 months back from the calculation date.

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- (iii) *Is the effect of the tribunal's conclusion that the period of 'regularity' will only end when a four – year average drops below the average rate of one shift per week, or alternatively, does the tribunal accept that the only relevant reference period is the 12 months preceding the holiday date?*

Having concluded after assessment of the overtime they had worked in the years 2018 – 2021 that Bowers, Cable, Double, and Humphries had performed voluntary overtime with sufficient regularity for overtime pay to fall within normal remuneration the amount due in respect of holiday pay would be assessed by reference to the preceding 12-month reference period from the calculation date.

Employment Judge Laidler

Date: 17 March 2023

Judgment sent to the parties on

20 March 2023

For the Tribunal office