



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr R Bridge

**Respondent:** Youth Justice Board

**Heard at:** Leeds by CVP

**On:** 9 January and 14 April 2023

**Before:** Employment Judge Maidment

## Representation

**Claimant:** In person

**Respondent:** Miss R Mellor, Counsel

**JUDGMENT** having been sent to the parties on 17 April 2023 and written reasons having been requested by the claimant in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## REASONS

### Issues and evidence

1. The final hearing in this matter commenced on 9 January 2023. That hearing was adjourned in circumstances where the issue of accrued holiday pay was impossible to determine on the evidence available, not least in circumstances where the claimant was not in possession of the 502 page bundle of relevant documentation. The sole claim pursued is indeed for a payment in respect of accrued but untaken holiday entitlement as at the termination of the claimant's employment with effect from 19 June 2022. The tribunal gave directions regarding the preparation by the respondent firstly of a schedule of holidays accrued and taken in the 2021 and 2022 holiday years and for the claimant to provide a counter schedule identifying where he disputed the respondent's records and/or calculation.

2. When the hearing recommenced on 14 April 2023, a schedule had been provided by the respondent upon which the claimant had commented. Effectively, witness statements had been exchanged between the parties.
3. From these, the tribunal was able, in discussion with the parties, to identify and agree where the remaining dispute lay.
4. The respondent had calculated that the claimant's total remaining annual leave for the leave year 2021/2022 was 18.5 hours, which was to be carried over to the subsequent holiday year. The claimant's case is that an additional 27.75 hours ought to be added to that figure, giving a carryover of 46.25 hours. The claimant maintains that 9.25 hours, recorded on each of 10 and 11 March 2022 as annual leave, ought to have been regarded as time off in lieu, on the basis of the claimant having accrued flexi-time hours which were used to take time off on those days. In addition to those 18.5 hours, the claimant maintains that a further 9.25 hours of flexi-time were taken in the period from 22 – 31 March 2022, but had been (wrongly) deducted from the claimant's annual leave.
5. There was then a dispute as to the number of holiday hours which were accrued from the commencement of the 2022/2023 holiday year on 1 April 2022 up to the termination of the claimant's employment on 19 June 2022. The respondent calculates entitlement on a pro rata basis to be to 57 hours of paid holiday in that holiday year. The claimant maintains agrees with that calculation in respect of ordinary annual leave but says that to this should be added 37 hours representing the bank holidays/privilege days which fell within that period, namely 15 and 18 April, 2 May and 2 and 3 June 2022.
6. As well as considering relevant documents from the aforementioned bundle, the tribunal heard witness evidence from the claimant and then from Ms Karis Oram, Director of Business Intelligence and Insights of the respondent.
7. Having considered all relevant evidence, the tribunal makes the factual findings set out below.

## **Facts**

8. The claimant was a full-time employee of the respondent working a 37 hour week. The claimant worked, however, compressed hours such that his full-time working hours were worked over 4 rather than 5 days each week. Monday was his designated non-working day and on the other days he worked 9.25 hours. The claimant had the ability at times to swap his non-working day.
9. The respondent operated distinct and separate arrangements allowing for working flexi-time and compressed hours. Compressed hours involved

working fewer days each week but for longer hours enabling employees to work the full-time hours but with additional days off. Flexi-time allowed individuals to start early or finish later and for them to take time off in lieu if they had worked additional hours, beyond their contractual requirement.

10. The respondent operated an annual leave policy and guidance applicable to all employees. This governed the claimant's contractual arrangements. It provided for an annual leave year from 1 April. Employees with less than 5 years' service at the claimant's grade were entitled to 25 days of annual leave, statutory bank holidays and 1 privilege day.
11. In accordance with paragraph 4.1 of the policy: "Employees working compressed hours, that is full-time hours in less than five days, will receive the same amount of annual leave as an employee that works a "normal" five day full-time week. However annual leave will normally be expressed in hours, for the purposes of calculating entitlements."
12. Pursuant to paragraph 5 dealing with public holidays and privilege days it was stated: "Employees who work reduced or compressed hours will be entitled to a proportionate amount of time off for public and privilege holidays, according to their FTE, and this time will be added to their annual leave entitlement to give a total leave entitlement in hours." It was explained that this calculation involved converting the full-time public and privilege holiday entitlement into hours.
13. The policy continued: "Where a public or privilege holiday falls on a day where an employee on reduced or compressed hours would normally have worked, that employee must book that time off as annual leave (as it has been built into their total leave entitlement) and the record should show a subtraction of the number of hours for that day from their Total Leave Entitlement. They do not need to book Bank Holidays or privilege days which fall on days of the week that they would not normally work..... For example, if the employee described above works on Monday to Thursday they would book as annual leave all Bank Holidays and Privilege days that fall on Monday, Tuesday, Wednesday and Thursday during the leave year."
14. All annual leave requests had to be recorded on an annual leave form and authorised by line managers. Employees had the ability to request a carryover of some of their annual leave entitlement from one leave year and take it during the next. This was subject to more senior management approval. On leaving employment, employees were entitled to a proportion of their annual leave calculated from the beginning of the leave year to the last day of service. Outstanding leave had to be taken before the last day of service in the case of a resignation unless the employee had been specifically prevented from taking it. In the case of a dismissal, a payment would be made in respect of any accrued but untaken leave.

15. The claimant was to take 9, 10 and 11 March 2022 off as annual leave. He swapped his non-working day from a Monday to a Wednesday during the week commencing Monday 7 March, so that the anticipation was that Thursday 10 and Friday 11 March would be days of annual leave. The claimant's case is that these days were, however, taken off as time off in lieu, as a result of a balance of flexi-time hours owed to the claimant for hours worked beyond his contractual requirement.
16. The claimant emailed his line manager Ms Oram on 4 March saying that he was going to take 3 days leave at the end of the following week at short notice although this would in fact be 2 days of leave as he would be switching his non-working day. Ms Oram replied saying that in this instance his leave was approved. Nowhere in this correspondence, did the claimant raise the issue of flexi-time and Ms Oram did not indicate that the time off would be deducted from any balance of time off in lieu.
17. The claimant had had an arrangement with a previous line manager that he could work additional hours and take a balance of excess hours off as time off in lieu. This had never been formalised. The claimant did work at times in excess of his basic contractual hours. The claimant did not suggest that there was any email evidence of additional hours worked to be counted as flexitime or any record of any particular number of hours built up or taken as time off in lieu. The claimant's position was that that was not necessary in circumstances of mutual trust.
18. Ms Oram had only recently taken over line management responsibility for the claimant. She was unaware of any informal arrangement of the type described by the claimant. Nor was this brought to her attention by the claimant.
19. The tribunal has seen an email from Ms Oram to the claimant on 21 April 2022 asking if he had a previous agreement with her predecessor as her understanding was that employees working compressed hours could not also work flexi-time, mainly for health and wellbeing purposes as regards the length of their working days. She referred to him not having shared a flexi-time sheet with her and her needing to see one. No such sheet was in existence and the claimant did not provide a record of accrued flexi-time before he left his employment.
20. As referred to, there was also a disagreement regarding whether the claimant was still owed 9.25 hours in respect of an additional day he said he had asked to be considered as flexi-time/time off in lieu in the period from 22 – 31 March 2022. The claimant was unable to say which day within that period had been designated as time off in lieu/ flexi-time. He could not say indeed whether it was the whole of a single day or hours taken piecemeal

during the period. When asked why, if he had built up significant accrued flexi-time, he did not take more off as time off in lieu during the period, he said that he was trying to be reasonable. When questioned as to who he had asked about the taking of those hours as flexi-time, he said that it was Ms Oram, but he had no recollection whatsoever of any conversation with her. Ms Oram was adamant that the claimant had never asked for any time within this period to be regarded as time off in lieu of flexi-time worked until after the event and when he was seeking to justify his claim for outstanding entitlements after the termination of his employment. Her evidence is accepted in all the foregoing circumstances.

21. As regards holiday accrued in the holiday year commencing 1 April 2023, the claimant's position was that the respondent's system of accrual was unfair. The respondent applied the formula set out in the policies referred to above. Leave entitlement was to 25 days of annual leave plus 9 bank holidays and a privilege day. That gave an entitlement, expressed in hours, of 259 hours of paid leave in that holiday year. As the claimant worked 2.63 months of the holiday year, his entitlement as at the termination of his employment was to 57 hours.
22. On this basis the claimant was paid on the termination of his employment in respect of 75 hours of accrued leave (18.5 hours carried over plus 57 hours accrued in the current year).

### **Conclusions**

23. The claimant's claim relates to his holiday entitlement. That must be determined in accordance with what was contractually agreed between the parties, subject to any relevant principles deriving from the Working Time Regulations 1998. The question is not what was fair or reasonable, but the claimant's legal entitlement.
24. The claimant relies on an arrangement of trust between him and his employer, a public body and part of the Ministry of Justice. Such an employer does not ordinarily operate in such matters on the basis of trust, but in accordance with rules and procedures, not least given its position as a custodian of public money.
25. The claimant maintains that he took 2 days on 10 and 11 March as flexi leave, but there is no evidence of that. The claimant's correspondence with Ms Oram does not support his contention. There is no record anywhere in possession of either the claimant or the respondent of flexi-time accrued at all and certainly not as applied as time off in lieu.
26. The evidence is in fact of the claimant on 4 March applying for 3 days leave the following week. Viewed objectively that was an application for annual leave, not time off in lieu using flexi-time hours.

27. The claimant then says that he asked for 9.25 hours of flexi-time leave for the period from 21 March to 31 March. Ms Oram denies that the claimant asked her before that relevant period and the tribunal has accepted her evidence. The tribunal cannot accept that the claimant did allocate those hours as flexi-time. If so, he would have done so with reference to a specific period of leave between those dates. He would have had to say which day or days that flexi-time leave was being applied to.
28. The tribunal therefore concludes that the claimant's carryover into the 2022/2023 holiday year was limited to 18.5 hours, as indeed was added to his leave entitlement by the respondent.
29. The claimant was then, the tribunal concludes, entitled to a total of 75.5 hours of leave in the subsequent leave year.
30. The respondent clearly in its policies sets out how holiday is calculated for employees working compressed hours. It is done on the basis of a calculation of ordinary leave hours and bank holiday leave hours to give a total number of hours in the year. An employee may then take some paid leave on a bank holiday or not depending on his/her working pattern, but, regardless of that, in a holiday year, will receive his/her full entitlement. That is the contractual position and it defeats the claimant's claim. The calculation of his leave already includes a pro rata entitlement to bank holidays.
31. The claimant may argue that it is an unfair system, but again the issue is not one of fairness. However, the tribunal would comment that the pro-rata principle adopted by the respondent is common amongst employers and designed to achieve fairness, including for those with irregular/atypical working patterns so that the right to bank holidays is not dependent on or down to the luck or bad luck of the employee's exact working days. It is to ensure that the employee who does not work on Mondays, for instance, still benefits pro rata from the bank holidays which habitually fall on such day.
32. The claimant's complaints therefore must fail and are dismissed. He has received a payment in respect of his full accrued holiday entitlement.

Employment Judge Maidment

Date 17 May 2023

JUDGMENT SENT TO THE PARTIES ON

25 May 2023

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FOR THE TRIBUNAL OFFICE

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