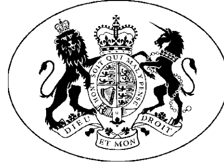

EMPLOYMENT TRIBUNALS

Claimant: Mr Alexandru Bucur

Respondent: The Soho Sandwich Company Ltd

Heard at: Watford Employment Tribunal
On: 12 May 2023

Before: Judge Bartlett sitting alone

Representation:

Claimant: Ms Bucur
Respondent: Ms Dola Ajibade

RESERVED JUDGMENT

1. The claimant's claims for unlawful deductions from wages under s23 of the Employment Rights Act 1996 fail.

2. The claimant's claims under the Working Time Regulations 1998 fail.

3. The claimant is awarded £1929 in respect of the respondent's failure to provide a Statement of Initial Employment Terms in accordance with s1 of the Employment Rights Act 1996.

Reasons

The Hearing

4. The hearing was scheduled to take place in person. On 11 May 2023, the day before the hearing, the respondent's representative made an application to attend the hearing via CVP or for the hearing to be converted to CVP because she was unable to attend the Tribunal building due to a train strike. The claimant objected.

5. I decided that it was in the interest of the overriding objective to allow Ms Ajibade to attend via CVP and everyone else to attend at the hearing centre. I considered that, at this late stage, an alternative representative could not fairly be found and a refusal to allow CVP attendance would risk the adjournment of the hearing which was not in the interests of the overriding objective.

Background

6. The claimant has been employed by the respondents since 1 October 2008 as production manager. He remains employed by the respondent. He was paid by the hour until July 2011 and from August 2011 he was paid a fixed salary.

7. The claimant submitted his ET1 on 22 August 2022. His ACAS certificate states that early conciliation started and ended on 22 August 2022.

The Bundle

8. The bundle had not been agreed by the start of the hearing. The claimant complained that the respondent had sent it to him rather than agreed the bundle with him. As a result the claimant sought to add approximately 60 pages (which they had inserted at the end in a copy of the bundle) which had been sent to the tribunal and the respondent.

9. In the interests of pragmatism, the respondent agreed to all the documents except for two being included in the bundle. The two it did not accept were:

   9.1. the respondent's response in relation to a claim brought by Ms Petroi, the claimant's mother-in-law, on the basis that it was not relevant to this claim;

   9.2. a transcript of a discussion between the claimant and Mr Silverston of the respondent which the claimant had covertly recorded. The respondent had not been provided with a copy of the recording and the transcript had only been added to the bundle the night before.

10. I decided to exclude those two documents from the bundle for the following reasons:

10.1. The ET3 in relation to Ms Petroi's claim. This was not relevant to the claimant's claim. In Ms Petroi's claim the respondent disputed the contractual term relating to her holiday entitlement, however in this claim there was no dispute about the contractual term;

10.2. the transcript of the recording. I briefly read this document. I accepted the claimant's claim that he had the audio recording that could be heard in front of the tribunal today and it ran on to just in excess of 2 ½ minutes. I found that the document was not relevant. The claimant has been employed by the respondent for some years, over the past few years there has been considerable discussion about the holidays. The respondent does not dispute that in 2022 there was some communications about holidays that stated that the claimant had 24 days holiday per year. However, the respondent changed its position after a couple of months in 2022 and has adopted a position much more in alignment with the claimant in various respects. The covert recording was not relevant to the issues I had to decide. Further, I consider the circumstances of not providing the audio clip and only providing the transcript the day before the hearing created some unfairness. Given all the other issues that we needed to address at the hearing, it was not in the interests of justice to spend further time on this item which I considered irrelevant.

Strike out application

11. On 11 May 2023, the day before the hearing, the claimant applied for the respondent's response to be struck out. The grounds for the application were based on the respondent's failure to comply with case management orders such as disclosure, bundle preparation and witness statement preparation.

12. I accept that the respondent had failed to comply with the Tribunal Orders however by the time of the hearing, the bundle had been prepared and witness statements exchanged. I gave consideration to r37 of the Employment Tribunal Rules of Procedure 2013. I understand that the respondent's failures were frustrating and confusing to the claimant however I do not consider that Strike Out is appropriate in this case as a fair hearing can take place.

The Evidence

13. The Tribunal heard oral evidence from:

13.1. The claimant;
13.2. Ms Petroi adopted her witness statement but was not asked any other questions;
13.3. Mrs Mahmood, the respondent's HR Director.

The Issues

14. A very long time was spent discussing the issues and disputed facts. This was time consuming and, at times, confusing.

15. The case appeared to be a claim of Unlawful Deductions from Wages pursuant to s23 of the Employment Rights Act 1996. However, at the hearing Ms Bucur stated that the claimant also claimed a breach of the Working Time Regulations 1996 as less than statutory holiday had been given and a failure to provide a Statement of Initial Employment Particulars pursuant to s1(a) of the ERA. This was as a result of concerns I raised about time limits applying to unlawful deductions from wages claims.

16. In a letter dated 15 December 2022 EJ Lewis set out "*that the claimant brings a claim for unlawful deductions from wages. He claims that his contract gives rights in respect of bank holidays worked to (1) double pay and (2) a day of the in lieu*".

17. The claimant's ET1 is very brief. On the face of it makes an unlawful deduction from wages claim as it states "*for the whole of my employment I was not being paid correctly for worked bank holidays*".

18. I find that is also makes a claim under the Working Time Regulations 1998 as it states "*not being offered days in lieu [of bank holidays]*". This identifies that there is a claim that the claimant was not able to take his holiday entitlement.

19. The ET1 also sets out "*I did not have a copy of my contract till the above date*". I consider that this is a claim of a failure to provide a Statement of Initial Employment Particulars.

20. The respondent did not raise an objection to these 3 issues being taken as the issues in the case.

21. I also sought to clarify with the parties what the factual claims were. This was not set out in any of the documents and it took a disproportionate amount of the hearing. At points Ms Bucur seemed to go back on what had previously been agreed.

22. The factual basis of the claimant's claim is as follows:

    22.1. contractually the claimant was entitled to 28 days holiday per annum. If he worked a bank holiday he was entitled to a day in lieu;

    22.2. in 2022 the claimant took 33 days holiday. There was no dispute about the holiday in this year;

    22.3. in 2021 the claimant took 29 days holiday. He claimed that contractually he was entitled to 3 further days holiday;

    22.4. it is accepted that his statutory holiday entitlement was 28 days;

    22.5. in the years before 2021 he had taken 24 days holiday;

    22.6. the claimant only became aware around 26/27 May 2021 that he was not been correctly paid holidays according to his employment contract. He only became aware at this time because though he had signed an employment contract some years earlier he was not given a copy of that contract and did not know what it said. It was only around

May 2021 when the company had purported to change holiday entitlement that he asked for a copy of his contract and became aware of his contractual entitlement.

23. From the above, the claimant's claims can be summarised as follows:

    23.1. the claimant is not making a claim for failure to provide the statutory minimum holiday in 2021 and 2022. This is because on his own account he took the statutory minimum holiday if not more;

    23.2. the claimant's claim in respect of 2021 is based on a failure to comply with the contractual term;

    23.3. the claimant's claim in respect of the years preceding 2021 is based on both a failure to provide the statutory holiday entitlement and a failure to comply with the contractual term.

24. The respondent's position was as follows:

    24.1. the claimant took 33 days holiday in 2022;

    24.2. the claimant took 31 days holiday in 2021. At the hearing Mrs Mahmood, in the interest of resolving the dispute, was prepared to agree that the claimant had worked Christmas Day and Boxing Day 2020 when it had been said previously he had not.

Facts not in dispute

25. There was no disagreement about the contractual term relating to holiday which is as follows:

    "Your holiday year begins on 1st January and ends on 31st December each year, during which you will receive a paid holiday entitlement of 5.6 weeks inclusive of public/bank holidays. In your first holiday near your entitlement will be proportionate to the amount of time left in the holiday year… Due to the nature of our business you may be required to work on any of the public/bank holidays listed below, and it is a condition of your employment that you will work on these days when required to do so. If you are required to work on any of these days you will be paid at double time and given an alternative day in lieu. The date when a day off in lieu is to be taken is to be mutually agreed with us…"

26. The claimant's position is that in 2022 he took all of his contractual holiday which is 32 days. As a result the claimant's claim that he was not given holiday in lieu of bank holidays must fail factually. On his own account he took 32 days so even if he worked some bank holidays he must have been given them in lieu otherwise he would not have be able to take 32 days holiday.

27. As the claimant also accepts that he took 29 days holiday in 2021 he accepts that in both 2022 and 2021 he took his statutory holiday entitlement and therefore his claim under the Working Time Regulations in this respect must fail.

Finding of Facts

28. I make the following findings of fact:

    28.1. The claimant was paid on the last Friday of the month;

    28.2. The claimant was entitled to 32 days contractual holiday per year. This is because the claimant worked more than 5 days per week. This was the claimant's evidence and I accept it. It was not challenged though the respondent alleged that the claimant was only entitled to 28 days and they gave him 4 days extra in light of the value they attached to him and as gesture of goodwill. I do not accept the respondent's position, in 2021 they tried to pay him less holiday however when his contract was located they agreed to pay 32 days. Though they did not accept this was not contractual, I find that it is. The statutory minimum holiday he is entitled to is 28 days because there is a lower statutory cap which disadvantages those working more than 5 full time days per week;

    28.3. The claimant claims that he was given his first contract of employment on 18 September 2013. This contract is in the bundle and the respondent does not dispute that this is the relevant contract.

29. Further findings of fact are set out in the reasons below.

Unlawful Deductions from Wages s23 Employment Rights Act 1996 (the "ERA")

Double Pay

30. The claimant's claim has several parts:

    30.1. if the claimant worked a bank holiday he was to be paid double pay;

    30.2. if the claimant worked a bank holiday he was paid his normal monthly salary for that month and in addition, for each and any bank holiday worked, £112.18;

    30.3. the claimant agreed that £112.18 was his day rate;

    30.4. he claimed that if he worked a bank holiday he should be paid **his normal salary plus two times £112.18**.

31. The respondent does not dispute that the claimant is entitled to double pay for bank holidays worked. The respondent asserts that the claimant was paid correctly for the bank holidays worked which is his normal monthly salary plus £112.18 for each and any bank holiday worked.

32. The dispute between the parties is therefore was the claimant paid double pay? The amount paid is not disputed. The claimant asserts that he was only paid single pay if he was paid an additional £112.18 for a bank holiday he worked.

33. I find that the claimant is mistaken. The claimant worked a bank holiday and was paid his normal salary and an additional one day's pay of £112.18. I find that this is double pay. This is evident of the face of it. The claimant's normal salary includes the payment for bank holidays worked in his holiday entitlement this effectively gives him normal pay for the bank holiday. The extra day rate he receives on top of it makes it double pay.

Payment in lieu

34. I asked Ms Bucur if the real complaint concerned failing to have a day off in lieu for a bank holiday and she said it was not. Even if the claimant's complaint was that he had not been given a day off in lieu, he cannot bring this as an unlawful deduction from wages because a day off in lieu does not satisfy the definition of wages.

35. As a result of the above the claimant's claim for unlawful deduction from wages must fail.

Failure to provide holiday

36. It has long been established that statutory holiday claims can be brought as an unlawful deductions from wages claim in certain circumstances.

37. The claimant did not take annual leave which was unpaid or paid at a lesser rate as a result of my findings above and therefore his claim under unlawful deductions from wages fails in respect of untaken holiday. A claim that he did not take holiday because he did not know about it does not fall within an Unlawful Deductions from Wages Act claim.

Working Time Regulations 1998 (the "WTR")

38. All parties agreed that the WTR protect the statutory minimum holiday that an employee is entitled to which is 28 days including bank holidays.

39. Ms Burcur agreed that the claimant took more than 28 days holiday in 2022 and 2021. Therefore, I find, the claimant's claim under the working Time regulations in respect of 2022 and 2021 must fail.

40. He claims that he was only aware of and only took 24 days holiday in 2020 and preceding years. I have made findings on this below.

41. The WTR provide for two different types of leave. Reg 13 provides for 4.8 weeks of leave which is 20 days and Regulation 13A(2)(e) provides for additional leave in the amount of 1.6 days which is 8 days. In a number of cases such as *Dominguez C-282/10* and *Neidel C-337/10* the ECJ has made it clear that the Working Time Directive is concerned with the minimum holiday entitlement which is 20 days and there is no requirement to be derived from the WTD for additional leave beyond that which is leave under Reg 13A.

Time Limits

42. The claimant's argument is that he did not become aware of his entitlement to a statutory minimum period of holiday until 26/27 May 2022. Therefore, the time limit should only start to run from the period from which he was aware he had entitlement. Ms Burcur relied on Smith v Pimlico Plumbers Ltd 2022 I.C.R 818 and King v Sash Window Workshop and anor 2018 ICR 693, ECJ.

43. Smith v Pimlico Plumbers Ltd [2022] I.C.R. 818 sets out that holiday leave continues to accrue during employment. Therefore, I consider that the claimant is able to exercise the right to any accrued holiday from previous years at any time when he is employed. As such he still has and had on 22 August 2022 the right to exercise it. On this analysis his claims are in time.

44. Further, the CJEU in *Max-Planck-Gesellschaft zur Förderung der Wissenschaften e.V. v Shimizu* C-684/16, *[2019] 1 CMLR 1233* and The Sash Window Workshop Ltd and another v King - [2018] IRLR 142 and the Court of Appeal in Smith v Pimlico Plumbers have made it clear that what a claimant is bleeding is a single composite right to paid annual leave. This is right it existed at the time the claimant made his claim to the employment tribunal and therefore it is in time.

45. If I am wrong in the above, I have also considered the time limit issue below.

46. Regulation 30(2)(a) sets out:

> *"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 or leave 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;*
> *(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."*

47. This means that I must consider whether or not it was reasonably practicable for a complaint to be presented in the three month period.

48. The claimant's witness statement sets out that on 26 May 2022 he became aware that if he worked a bank holiday he would get double pay and an alternative day in lieu. This is not the same as becoming aware of the minimum statutory entitlement. The claimant's witness statement states that it was around March 2022 when the respondent purported to make changes to his holiday entitlement from 24 days that he started asking questions. It was the response from HR on 26 May 22 when he became aware of what his contract said. I am prepared to accept that it is around this stage that the claimant had started to investigate what his holiday was and that around the end of May 2022 is when he became aware that he was entitled to a statutory minimum holiday.

49. The respondent's position is that the claimant was aware of what contract said about holiday and it was for him to ask to take holiday, whether that was holiday in lieu for working a bank holiday or what could otherwise be considered as normal or basic holiday.

Reasonably Practicable

50. This is a complaint relating to a failure to enable the claimant to take annual leave in respect of 2020 and preceding years. t. I consider that it was not reasonably practicable for the complaint to be presented within the three month time limit because the claimant was not aware of his rights at that stage. As is made clear by the Court of Appeal in Dedman v British Building and Engineering Appliances Ltd 1974 ICR 53, CA mere ignorance of rights is not sufficient and I must consider the circumstances in which the claimant was not aware of his rights.

51. The claimant stated that in 2013 he signed an employment contract. He stated that he did not keep a copy of it. He had a poor level of English, it did not understand what it said and he was not given a copy of it.

52. I find that the claimant is Romanian and his wife is Romanian. He was able to communicate reasonably well at the hearing without an interpreter but needed an interpreter at times. I recognise that the hearing was 10 years later than 2013 and somebody's English language proficiency is likely to be much better after 10 years living and working in the country. I also accept that the claimant's ability to understand written English is limited. Further, the claimant took holiday. He was not in a situation where he took no holiday or asked for holiday and was refused it. This might have alerted him to the fact that he was not being paid his full entitlement but he had no such alert. Further, the claimant has identified the trigger why he became aware of his rights when he did and that was when the company purported to reduce his holiday entitlement. The company later changed its position and there was no disagreement at the hearing about holiday taken in 2022. It is for these reasons that I consider it was not reasonably practicable for the complaint to be presented within the three month time limit.

Within a reasonable time

53. Therefore, I must consider whether the complaint was nevertheless presented within a reasonable time. I recognise that there is a strong public interest in claims being brought in a timely manner and the general principle that litigation should be progressed efficiently and without delay as expressed in Nolan v Balfour Beatty Engineering Services EAT 0109/11.

54. I accept it was around 26 May 2022 the claimant became aware of his contractual holiday rights and that he then started to investigate all of his holiday rights. His claim form was submitted on 22 August 2022. Taking into account the claimant's situation which included lack of English, that he is a foreign national who although he has lived in England for some time was not aware of and could not be expected to have the same awareness as British citizens of the basics of holiday entitlements and bank holidays in the United Kingdom, his limited English and the lack of information before made

that he is well educated, I conclude that his claim was presented within a reasonable time.

Case law on the WTR

55. Regulation 13(1) WTR sets out:

"(1) Subject to paragraphs (5) and (7), a worker is entitled in each leave year to a period of leave determined in accordance with paragraph (2)."

56. I have given consideration to Smith v Pimlico Plumbers Ltd [2022] I.C.R. 818 the head node of which sets out the following:

"the right to paid annual leave was a particularly important health and safety right guaranteed by Directive 2003/88 and could not be subject to any precondition that the worker had to request annual leave and be refused it, or take unpaid leave, or ask the employer to recognise the right to paid annual leave and be refused; that the right to annual leave and to a payment on that account were two aspects of a single composite right"

57. It goes on to state:

…Para [70] The CJEU stated that member states must not make the very existence of that right . . subject to any preconditions whatsoever: Stringer: see para 34. In other words, there can be no precondition that the worker must request annual leave and be refused it; or take unpaid leave. Nor, I infer, could there be any precondition that the worker must first ask the employer to recognise the right to paid annual leave, and be refused it."

[para 71] Thirdly and significantly, the CJEU regarded it as clear from established case law that the right to annual leave and to a payment on that account are two aspects of a single right: see para 35. In other words, there are not two distinct legal entitlements, no matter how the domestic regulations are drafted: there is a single, composite legal entitlement to paid annual leave…

[para 79]… The fundamental principle which followed from these considerations is that where paid annual leave rights are not exercised over a number of consecutive reference periods because the employer disputed the right and refused to remunerate leave, rules or practices preventing the worker from carrying over and accumulating the leave until termination are precluded by the WTD. These considerations and the principles they articulate apply equally to Mr Smith's case…

[para 84] In Kreuziger (and in Shimizu), the CJEU repeated the points made in King. Further, it emphasised that, since the worker is to be regarded as the weaker party in the employment relationship, that position of weakness might mean that he or she is dissuaded from explicitly claiming rights from

the employer especially where that might expose him to detrimental treatment, so that any practice or omission which might potentially deter a worker from taking annual leave is equally incompatible with the purpose of the right to paid annual leave: see paras 48 and 49. The CJEU expressly referred here to deterring a worker from taking annual leave, but I cannot see any principled basis in the reasoning for limiting that broader principle to the factual context of that case. The court went on to hold that in those circumstances it was,

> "important to avoid a situation in which the burden of ensuring that the right to paid annual leave is actually exercised rests fully on the worker, while the employer may, as a result thereof, take free of the need to fulfill its own obligations by arguing that no application for paid annual leave was submitted by the worker": para 50.

The court therefore held that the burden was on the employer to show that it, exercised all due diligence in order to enable the worker actually to take the paid annual leave to which he is entitled and that the

> "loss of the right to such leave, and, in the event of the termination of the employment relationship, the corresponding absence of the payment of an allowance in lieu of annual leave not taken constitutes a failure to have regard, respectively, to article 7(1) and article 7(2) of Directive 2003/88: see paras 52 and 53. Again, the CJEU expressly referred to "annual leave not taken."

[para 89]…Since he could only lose the right to paid annual leave if he actually had the opportunity to exercise the right to paid annual leave under article 7(1) WTD Krreuziger at para 42; Shimizu at para 35), those rights accumulated and crystallised on termination."

58. The CJEU in King stated:

49. In that regard, in order to respond to those questions, it must be noted that the court has previously been called upon, inter alia, in Stringer v Revenue and Customs Comrs [2009] ICR 932, to rule on questions concerning a worker's right to paid annual leave which he was unable to exercise until termination of his employment relationship due to reasons beyond his control, specifically because of illness.

50. In the present case, it was indeed for reasons beyond his control that Mr King did not exercise his right to paid annual leave before his retirement. The court points out, in this respect, that even if Mr King could, at some point during his contractual relationship with his employer, have accepted a different contract providing for the right to paid annual leave, that is irrelevant in answering the present questions referred for a preliminary ruling. The court must take into consideration, in that regard, the e*mployment relationship as it existed and persisted, for whatever reason, until Mr King retired, without him having been able to exercise his right to paid annual leave.*

51. Thus, it must be noted, in the first place, that Directive 2003/88 does not allow member states either to exclude the existence of the right to paid annual leave or to provide for the right to paid annual leave of a worker, who was prevented from exercising that right, to be lost at the end of the reference period and/or of a carry-over period fixed by national law: Stringer, paras 47 and 48 and the case law cited.

52. Moreover, it is clear from the court's case law that a worker who has not been able, for reasons beyond his control, to exercise his right to paid annual leave before termination of the employment relationship is entitled to an allowance in lieu under article 7(2) of Directive 2003/88. The amount of that payment must be calculated so that the worker is put in a position comparable to that he would have been in had he exercised that right during his employment relationship: Stringer, para 61…

62. Against that background, as is clear from para 34 above, the very existence of the right to paid annual leave cannot be subject to any preconditions whatsoever, that right being conferred directly on the worker by Directive 2003/88. Thus, it is irrelevant whether or not, over the years, Mr King made requests for paid annual leave: Bollacke v K þ K Klaas & Kock BV & Co KG (Case C-118/13) [2014] ICR 828, paras 27—28.

63. It follows from the above that, unlike in a situation of accumulation of entitlement to paid annual leave by a worker who was unÞt for work due to sickness, an employer who does not allow a worker to exercise his right to paid annual leave must bear the consequences.

64. Third, in such circumstances, in the absence of any national statutory or collective provision establishing a limit to the carry-over of leave in accordance with the requirements of EU law (KHS AG v Schulte [2012] ICR D19 and Neidel v Stadt Frankfurt am Main (Case C-337/10) [2012] ICR 1201), the European Union system for the organisation of working time put in place by Directive 2003/88 may not be interpreted restrictively. Indeed, if it were to be accepted, in that context, that the worker's acquired entitlement to paid annual leave could be extinguished, that would amount to validating conduct by which an employer was unjustly enriched to the detriment of the very purpose of that Directive, which is that there should be due regard for workers health.

65. It follows from all the foregoing considerations that the answer to the second to fifth questions is that article 7 of Directive 2003/88 must be interpreted as precluding national provisions or practices that prevent a worker from carrying over and, where appropriate, accumulating, until termination of his employment relationship, paid annual leave rights not exercised in respect of several consecutive reference periods because his employer refused to remunerate that leave.

59. Harvey on Industrial Relations and employment law sets out the following:

"Consistent with the emphasis placed on the right as a particularly important health and safety right, the Court of Appeal endorsed the approach of the ECJ in the cases of Shimizu *and* Kreuziger *whereby the burden of proof in relation to the exercise of the right was placed on the employer. Therefore, it is now expressly a requirement of domestic law that the employer is required to set up and maintain a facility to enable paid leave to be taken, which may include the recognition and acceptance of worker status and rights in appropriate cases. If an employer disputes a worker's right to paid annual leave, refuses to remunerate the leave and thus fails to set up and maintain the required facility, it will have breached the right (at [82])."*

60. I consider that the line of authority from CJEU as explained in Smith v Pimlico Plumbers sets out that employers cannot rely on an employee not seeking to exercise their right to leave as the basis for the claimant not falling within Reg 30 WTR. This is made clear by paragraph 89 of Smith v Pimlico Plumbers. This is a situation where the employer did not provide the conditions for the employee to take the leave and the employer did not inform the claimant that he had leave to take. I consider that the CJEU and domestic authorities set out that there needs to be an effective domestic remedy for an employer's failure to afford an opportunity to take annual leave regardless of whether the claimant expressly requested it.

Amount of Leave

61. I have found that the respondent provided the claimant with the opportunity to take statutory leave in 2021 and 2022 and the claimant did take leave then.

62. The question is therefore whether the claimant's leave from previous years carried over or accrued.

63. In Smith v Pimlico Plumbers the Court of Appeal set out in appendix with updated and fully reinterpreted wording of parts of the WTR which include in relation to regulation 13 the following:

    (16) Where in any leave year an employer (i) fails to recognise a worker's right to paid annual leave and (ii) cannot show that it provides a facility for the taking of such leave, the worker shall be entitled to carry forward any leave which is taken but unpaid, and/or which is not taken, into subsequent leave years.

64. It did not make amendments to additional leave under regulation 13A.

65. I do not consider that the respondent disputes that the claimant was only paid for 24 days leave before 2021. Even if the respondent did dispute that, it has not provided evidence to support the contention that it paid more than 24 days of annual leave prior to 2021. I found the claimant to be open and honest. He did not argue the unarguable, conceded when he had been able to take his full holiday entitlement and he was knowledgeable about holidays worked, days worked, the dates of holidays and matters pertinent to some of the issues. I accept his evidence which has not been rebutted by the limited evidence from the respondent.

66. I have found that the claimant took 24 days of leave in all his holiday years which means that he has taken his entitlement under regulation 13 of the WTR. The claimant's claims in respect of additional leave under regulation 13A fail because the CJEU case law and the Court of Appeal have made it clear that the rights discussed above do not apply to the additional leave.

67. The claimant's claims under the WTR fail.

Statement of Initial Employment Terms s1 ERA

68. I accept the claimant's evidence that he was not given a statement of employment terms for some years after he started. I have therefore decided to make an award of 3 weeks basic pay which is 3x£643 = £1929

69. I repeat my findings above in relation to time limits.

No Breach of Contract Claim

70. For completeness, I record that because the claimant remains an employee of the respondent, he cannot bring a claim for breach of contract in the employment tribunal.

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Employment Judge **Bartlett**

Date_2 June 2023_________________

JUDGMENT SENT TO THE PARTIES ON

8 June 2023

GDJ
FOR THE TRIBUNAL OFFICE

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