



EMPLOYMENT TRIBUNALS

Claimant: Mr A Robinson

Respondent: JJs Management Ltd

Heard at: Hull (by video) **On:** 5 September 2025

Before: Employment Judge Miller

Representation

Claimant: In person

Respondent: Ms Lewis – litigation consultant

JUDGMENT having been sent to the parties on 10 September 2025 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the Tribunal find provide the following:

REASONS

1. The claimant was engaged by the respondent as a waiter and from time to time undertook the assistant manager role. He started the role on 15 October 2022 and at that time he was 17. His birthday was on 12 October.
2. There was a conversation at the start of the claimant's employment between the claimant and Mr Graham the general manager when the claimant was appointed after a trial shift. I find that the claimant was offered in that conversation a rate of pay slightly above the national minimum wage as it applied from time to time and I find that there was no conversation at that time about holiday entitlement at all.
3. On the balance of probabilities Mr Graham, I find, did not tell the claimant that his hourly rate of pay included an element of rolled up holiday pay.
4. The claimant worked for the respondent for a few years. He took holidays as and when he needed them by adjusting his shifts which was the respondent's practice and the respondent was very flexible. At no point was the claimant paid any

holiday pay for being off work during that period. The claimant's wages continued to rise in accordance with the national minimum wage albeit that he was at all times paid above national minimum wage except for one period. I do not set out in these findings the various rates of pay that the claimant was entitled to. There is a schedule in the bundle about that and that is not disputed.

5. The claimant did tell Mr Graham on one occasion in July 2023 that he would be off for two weeks over summer and I prefer the claimant's evidence there was a brief discussion about the possibility of the respondent paying the claimant something like holiday pay at that point. The claimant's evidence was that Mr Graham said something to the effect of "we'll see if we can give you some money for what you would have been earning" to the effect of holiday pay. The claimant was at the time well thought of and Mr Scott had agreed to a pay rise because the claimant was a good worker. This is consistent with the suggestion that Mr Graham might have wanted to be accommodating to the claimant at the time.
6. Nothing came of this discussion however and the claimant did not chase it up. I accept his evidence that he was inexperienced in the world of work and did not know that holiday pay was a statutory right.
7. In September 2024 the claimant left to go to university but stayed on the respondent's books for the purposes of potential future holiday work and his last payment of wages was on 30 September 2024. When he returned in November 2024 to the area he spoke to Mr Scott about getting holiday pay. I prefer the claimant's evidence that Mr Scott said words to the effect that they did not pay holiday pay to part time workers or students. Mr Scott was candid in evidence that he was not well versed in employment law prior to the scaling up of his business, albeit that, he says, things are changing now.
8. The claimant sent an email explaining why he believed that he was entitled to holiday pay and seeking an agreement for payment of holiday pay. Mr Scott did not get a substantive reply to that email but suggested that the claimant go to ACAS which he did.
9. The claimant handed in his resignation and his employment ended on 25 November 2024. It is relevant to find that the claimant's sister, Amy, was also employed by the respondent and her employment ended at the same time. She was paid the national minimum wage only and was part of the claimant's complaint or grievance about holiday pay. The claimant's sister was paid a sum in lieu of untaken holiday at the end of her employment and the claimant was not.
10. Mr Scott said in his evidence that at all times the claimant's pay included an element of rolled up holiday pay at 12.07%, albeit that sometimes his total hourly rate was more than national minimum wage plus 12.07%, and that Amy's pay was not rolled up because she was on a different payroll system. I'm afraid I simply do not accept that evidence. It is wholly implausible having had regard to Mr Scott's evidence and the obvious similarity between the two sets of payslips.
11. I find as a fact that the sum agreed to be paid from time to time as the claimant's hourly rate of pay was not intended by the respondent to include an element of holiday pay. It was never communicated to the claimant that that was their intention. It was not identified on his payslips or anywhere else and was never communicated in any other way to the claimant or any of the other employees. I also find that the claimant was at no point given a written statement of terms of

his employment or any other contractual documents. There was no communication with the claimant about any aspects of the respondent's holiday practices or policies.

12. Mr Scott's evidence was that the respondent's holiday year ran in accordance with the financial year, effectively. However, although I accept that that was the respondent's accounting practice it was not communicated to its employees.
13. Those are my brief findings of fact. I turn now to the law and conclusions in this case.
14. This claim is brought as a claim of unauthorised deduction from wages under section 13 of the Employment Rights Act 1996 and that says that an employer must not make deductions from the wages of the worker employed by him unless the deduction is required or authorised to be made by statutory provision or a relevant provision of a worker's contract or the worker has previously signified in writing their agreement or consent to the making of the deductions.
15. Sub section 3 of section 13 says –

“Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.”
16. What that means in plain language is that I have to work out how much the claimant should have been paid and if he was paid less than that and there has consequently been a deduction I then go on to consider whether it was authorised or agreed. There is no suggestion in this case that there was an agreement to deduct wages. The matter in dispute is simply whether the claimant was due to be paid holiday pay at the end of his employment. Holiday pay is included as wages for the purposes of section 13 as Ms Lewis confirmed in her submissions.
17. When considering how much (if any) holiday pay the claimant should have been paid on the termination of his employment I refer to the Working Time Regulations 1998. Those provide, effectively, that on termination of employment an employee is entitled to be paid a payment in lieu of any accrued but untaken holiday in the leave year in which their employment ends.
18. If, for example, an employment ends halfway through their leave year and they haven't taken any holiday then they will be entitled to be paid for half of the leave that they would have had.
19. That is further expanded by a case called *The Sash Window Workshop Ltd and another v King* [2018] IRLR 142 which is case of the Court of Justice of the European Union which says that where an employee or a worker is prevented (by their employer or otherwise) from taking their holiday in any leave year then that holiday carries forward to the next year regardless of whether the employer agrees that or not.
20. In my judgment in this case the claimant was prevented from taking paid holiday throughout the course of his employment by the respondent's statement of their policy that they did not pay for holidays. Further, they did not as a fact roll it up in

their wages. That is, the claimant was not paid a sperate addition to his hourly rate in lieu of holiday pay.

21. It is also relevant to note at this point the case of Harpur Trust v Brazel [2022] UKSC 21 with is a case of the Supreme Court which says that the practice of rolling up holiday pay is not permitted in any event. Holiday pay has to be calculated and paid on each occasion that a worker takes holiday by applying the principles in the Working Time Regulations 1998 and the Employment Rights Act 1996. In summary, these says that the employer needs to look back 52 weeks previously to work out the worker's average weekly pay and then pay the employee that amount of money for the holiday that they take.
22. Ms Lewis did refer to a case Lyddon v Englefield Brickwork Ltd (2007) UKEAT/0301/07 which dealt with the principle of rolled up pay.
23. The principle was that although it is unlawful to roll up holiday pay, employers who roll up holiday pay in a clear and transparent way will be given credit for that. So if for example someone brings a claim saying they should have been given holiday pay, but the employer has transparently paid the rolled up holiday and everybody knows that that was agreed, the worker is not then to be able to be paid twice for the same thing.
24. However, the requirements of that, which are now reflected in the amended Working Time Regulations 1998, are effectively that it has to be clear, it has to be set out separately on the payslip and everybody has to know what is going on. Even, therefore, if I am wrong about the conversations at the beginning of the claimant's employment, the rolled up holiday pay manifestly has not been set out clearly and throughout the claimant's employment and the claimant did not even realise he was being paid rolled up holiday pay even if that was the respondent's intention.
25. This means that the claimant is entitled to be paid payment in lieu of untaken holiday for the entirety of his employment from 15 October 2022 up to the end of his employment on 25 November 2024.
26. The reason that I have not been able to come to a conclusion about how much that comes to, it is because I need to hear submissions about the impact of the amendments to the Working Time Regulations, and particularly to Regulation 13A.
27. Holiday pay under the Working Time Regulations is split into two types of holiday. There is one under Regulation 13 which derives from the European working time directive which is four weeks a year. There is a further 1.6 weeks paid holiday and another part under Regulation 13A of the Working Time Regulations 1998 which does not derive from European legislation. Under the European Union Withdrawal Act 2020 certain aspects of European law were retained in effect up to 31 December 2023, and different provisions apply after that.
28. Those provisions are extremely complicated and it is possible that the claimant's entitlement to holiday under the working time regulations 19987 will or may have changed for various years. I have not heard submissions about them and the parties have not had the time or opportunity to deal with it at this hearing. There will therefore be a further hearing to decide remedy.
29. I also note, although in the circumstances it does not affect my decision, that the claimant's leave year in my judgment ran from 15 October each year to 14

October each year. That is because in the absence of clear written agreement a leave year starts on the date on which the employee starts their work. This means that the final leave year of the claimant's employment started on 15 October 2024 in which it seems likely the claimant accrued little or no leave in his final leave year. That does not impact on his remedy because the leave from the previous year's summer leave was carried over under the *Sash Windows* principal. The only question remaining outstanding is how much.

30. Finally, I find that the respondent did fail to give the claimant a written statement of main terms of employment at any point prior to the proceedings starting and I therefore increase the compensatory award by the maximum of four weeks' wages.
31. I leave the decision as to how much that is until the remedy hearing because the calculation of wages also depends on the application of the Employment Rights Act 1996. Effectively the average wages in the 12 weeks leading up to the end of the claimant's employment.

Approved by Employment Judge Miller

Date: 6 October 2025

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