



# EMPLOYMENT TRIBUNALS

**Claimant:** Dr D Rogers

**Respondent:** TSM Systems Limited

**Heard at:** Croydon (via CVP) **On:** 3 October 2025

**Before:** Employment Judge Leith

## **Representation**

**Claimant:** In person

**Respondent:** Mr Leigh (Director)

**JUDGMENT** having been sent to the parties on 14 October 2025 and written reasons having been requested in accordance with Rule 60(4) of the Employment Tribunals Rules of Procedure 2024, the following reasons are provided:

## REASONS

1. The Claimant claims failure to pay accrued but untaken annual leave on termination, failure to provide a written statement of terms, and failure to provide written pay statements.
2. The Respondent made a counter-claim. It appeared that the counter-claim had been accepted by the Tribunal. However as the Claimant had not made a complaint of breach of contract under the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994, I explained to the parties that it appeared that the Tribunal had no jurisdiction to consider the counter-claim. Having given the parties the opportunity to address me on the point, and there being nothing which persuaded me that the Tribunal had jurisdiction, I therefore struck the counter-claim out.
3. I discussed the remaining issues with the parties. In respect of the holiday pay claim, it was common ground that the Claimant had not been paid any annual leave on termination of his employment. It was common ground also that:

- 3.1. The Claimant was not given a written contract of employment when his employment commenced, and was first given a written contract of employment in May 2024 (albeit that he refused to sign it at that point).
  - 3.2. The Claimant's employment commenced on 1 July 2022 and ended on 5 July 2024.
  - 3.3. During the latter part of his employment, the Claimant's gross pay was £6,000 per month.
4. There was a considerable level of dispute about how much annual leave the Claimant had taken in previous leave years, and it appeared that the parties had collated a significant amount of evidence on the point. In the interests of proportionality, I therefore indicated that I would decide, as a preliminary point, whether there was any basis on which the Claimant could carry over annual leave from one year to the next (alongside considering the other complaints). If I decided that the Claimant did have any right to carry over annual leave from previous years, I explained that I would then hear and consider the evidence on what leave had been taken within those years.
5. I therefore heard evidence from the Claimant and from Mr Leigh on whether the Claimant had any right to carry over annual leave from previous years into his final leave year (as well as on the complaints regarding the statement of terms and pay statements). Both gave their evidence by way of pre-prepared witness statements, on which they were cross-examined.
6. I then heard submission from both.

The relevant law

Holiday pay

7. Regulation 13 of the Working Time Regulations 1998 provides that workers are entitled to four weeks of paid annual leave per year. Regulation 13A provides for an additional entitlement of 1.6 weeks of paid annual leave per year.
8. For the purpose of both regulations 13 and 13A, the leave year starts on the anniversary of the first day of the worker's employment, unless a relevant agreement provides otherwise.
9. Regulation 13(9) provides that there is no general right to carry over leave under that regulation into a future leave year. That is subject to an exception in regulation 13(10) which related to the COVID-19 pandemic, which is not relevant in this case. It is subject also to exceptions set out in European jurisprudence where a worker has been unable to take annual leave within the year it was accrued due to, for example, prolonged ill health, or because they were prevented from doing so by their employer failing to recognise their right to paid annual leave (*King v Sash Window Workshop* [2018] ICR 693).

10. Regulation 13A(7) provides that a relevant agreement may provide for leave under regulation 13A to be carried forward into the following leave year (although it provides no general right to do so).
11. Regulation 14 applies where a worker's employment terminates during the course of the leave year. Regulation 14(2) provides that, where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave. The method for calculating the payment is set out in regulation 14(3):

“(3) The payment due under paragraph (2) shall be –

- (a) Such sum as may be provided for the purposes of this regulation in a relevant agreement; or
- (b) where there are no provisions of a relevant agreement which apply, a sum equal to the amount that would be due to the worker under regulation 16 in respect of a period of leave determined according to the formula

$$(A \times B) - C$$

Where –

A is the period of leave to which the worker is entitled and regulation 13 and regulation 13A

B is the proportion of the worker's leave year which expired before the termination date, and

C is the period of leave taken by the worker between the start of the leave year and the termination date.”

12. The definition of “relevant agreement” is set out in regulation 2 as follows:

“‘relevant agreement’, in relation to a worker, means a workforce agreement which applies to him, any provision of a collective agreement which forms part of a contract between him and his employer, or any other agreement in writing which is legally enforceable as between the worker and his employer”

13. Regulation 16 sets out the calculation of the payment due in respect of a period of leave. It provides that a week's pay is calculated in accordance with the provisions in sections 221-224 Employment Rights Act 1996, with some modifications. There is no statutory cap on a week's pay for this purpose.

#### Failure to provide written statement of terms

14. Section 38 of the Employment Act 2002 provides that where a Tribunal finds in favour of an employee in a complaint set out within the schedule, and the Tribunal finds that the employer has failed to provide the employee with a written statement of employment particulars (and that failure was continuing when the proceedings were begun), the Tribunal must award the employee

an additional two weeks' pay, unless there are exceptional circumstances which would make that unjust or inequitable, and may, if it considers it just and equitable in all the circumstances, order the employer to pay an additional four weeks' pay. The schedule includes to complaints under the Working Time Regulations 1998.

#### Written statement of pay

15. Section 8 of the Employment Rights Act 1996 provides that employees have the right to an itemised statement of pay, which must be given to the employee at or before the time at which any payment of wages or salary is made.
16. Section 11 provides the right to make a complaint to the Tribunal about a failure to provide a written statement of pay. Section 12 provides that, where a Tribunal finds that an employer failed to give a pay statement in accordance with section 8, the Tribunal shall make a declaration to that effect.
17. Section 12(4) provides that where the Tribunal finds that any unnotified deductions have been made during the period of 13 weeks immediately preceding the date of the application for the reference, the Tribunal may order the employer to pay a sum not exceeding the aggregate of the unnotified deductions so made.

#### Findings

18. The Claimant was employed by Respondent from 1 July 2022. He also became a statutory Director of the Respondent (and a shareholder).
19. When the Claimant's employment commenced, the Respondent employed one other employee. He left around a year after the Claimant's employment commenced, and for the second year of the Claimant's employment he was the only employee of the Respondent (although there were some self-employed contractors engaged from time to time).
20. The Claimant was, effectively, the senior employee within the business. He had near-daily contact with Mr Leigh, a fellow director (who was not, however, an employee).
21. The Claimant was not given a contract of employment at the start of his employment. In May 2024, the Claimant was given a contract of employment, although he did not agree with its terms, and therefore did not sign it.
22. For the last year of his employment, the Claimant was paid a salary of £72k per year (£6k per month). The Claimant did not take any statutory leave (such as paternity leave or shared parental leave) during his employment. Nor did he have any periods of extended sickness absence.

23. In the early part of his employment, the Claimant received payslips from Mr Leigh. The Claimant's evidence was that the last payslip he received was for July 2023, and he received no payslips thereafter until his final one, in July 2024. Mr Leigh's evidence was that he had understood that the Respondent's accountants were providing payslips directly to the Claimant, although he was not in a position to gainsay the Claimant's evidence that no payslips had been received by him.
24. The Claimant's evidence was that he never took annual leave during his employment. Mr Leigh's evidence was that he understood that the Claimant did take annual leave, although he did not monitor it in any way.
25. The Claimant resigned from the Respondent's employment. His employment terminated on 5 July 2024. He was not paid for any accrued but untaken annual leave on termination.
26. The claim was presented on 9 November 2024 (following a period of early conciliation)

#### Conclusions

##### Accrued but untaken annual leave

27. Because the Claimant was not presented with a contract of employment at the start of his employment, there can have been no contractual terms regarding his holiday. His leave year therefore ran from the date that his employment commenced, so from 1 July to 30 June.
28. There was no point at which the Claimant was on either sick leave or statutory leave which prevented him from taking some or all of the annual leave to which he was entitled.
29. Nor was this a case such as *King v Sash Window Workshop*, where the Claimant was economically prevented from taking leave by only being paid for the hours he worked or by the Respondent not recognising that he was an employee. The Claimant was paid a salary. There was no dispute about his status. He was in a senior position. There was a marked lack of curiosity on the part of Mr Leigh as to when the Claimant was taking his leave, but I do not consider that there was any barrier preventing the Claimant from exercising the right to take paid annual leave.
30. I therefore conclude that there was no basis under the Working Time Regulations for the Claimant to have been able to carry forward annual leave from previous leave years into his final leave year. Nor, in the absence of a written contract, can there have been any contractual right to do so.
31. Having reached that conclusion, it follows that the Claimant's only entitlement to annual leave on termination was to the annual leave he had

accrued within his final leave year. I do not need to hear any evidence regarding what leave the Claimant had taken in previous leave years, as any accrued but untaken leave in previous years would have been lost as it could not be carried over.

32. The Claimant's employment ended five days into a new leave year. His entitlement was the statutory entitlement. His daily rate of pay was £276.92.

33. The Claimant had therefore accrued 0.38 days leave  $((5/365) \times 28)$ . At his daily rate, that gives a total of **£105.23**.

Failure to provide a written statement of terms

34. Because the Claimant was provided with a contract of employment before his employment ended (and therefore before this claim was presented), there is no jurisdiction for the Tribunal to award an additional sum for breach of the requirement to provide a written statement of employment terms.

Failure to provide written statements of pay

35. I accept the Claimant's evidence that he did not receive any payslips between August 2023 and June 2024. Mr Leigh made the point that in his position, the Claimant ought to have been able to raise any issue with a lack of payslips. I certainly see the force in that. But ultimately, the Respondent, as the corporate body employing the Claimant, was obliged to provide the Claimant with written payslips. I find that they did not do so between August 2023 and June 2024. I make a declaration to that extent.

36. The period of 13 weeks before the claim was presented started on 10 August 2024. The Claimant had no entitlement to pay or to payslips on or after 10 August 2024, as his employment ended on 5 July 2024. So there are no payments to the Claimant in respect of which the Tribunal could consider making an award for unnotified deductions (and in the circumstances, for exactly the point that Mr Leigh raised, I would have taken some persuading to make such an award in any event).

Approved by:

Employment Judge Leith

Date: 17 November 2025

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Sent to Parties.  
19 November 2025