



EMPLOYMENT TRIBUNALS

Claimant: **Mr A O Forkuoh**

Respondent: **DRS Kent Limited**

Heard at: **London South by video** **On:** **11 September 2025**

Before: **Employment Judge Kight**

Representation

Claimant: In person, representing himself

Respondent: Ms M Buss, Recovery Operations Manager

RESERVED JUDGMENT

1. The complaint of breach of contract in respect of an alleged entitlement to additional holidays for working bank holidays is not well-founded and is dismissed.
2. The complaint for breach of Regulation 30(1) of the Working Time Regulations 1998 in relation to the right to take daily rest breaks is not well-founded and is dismissed.

REASONS

Introduction

1. Following a period of ACAS Early Conciliation between 12 March 2025 and 17 March 2025, by ET1 dated 17 March 2025 the claimant presented a claim about working 12-hour shifts without breaks and not receiving extra days off when he worked on bank holidays.
2. The respondent did not initially receive the ET1 owing to it having been incorrectly addressed and did not submit a response within the prescribed time limit. Following an application for an extension of time made on 5 July 2025 which included a completed ET3 and grounds of resistance, the application was granted, and the respondent's response was accepted.
3. The respondent submitted that the claimant's claims were insufficiently particularised, may have been presented outside of the statutory time limit and in any event, it was denied that the claimant was not allowed to take rest breaks

during his shifts and further denied that the claimant was entitled to receive extra days off when he worked on bank holidays.

4. The Tribunal received a bundle of documents from the claimant which included the claimant's contract, a 2-page witness statement, various payslips and emails and a record of the bank holidays "most likely worked" between 2023-2025. The documentation received from the respondent comprised of a witness statement from Ms Buss, a further copy of the claimant's contract, documents pertaining to the claimant's grievance, documents relating to the claimant's performance and management thereof, emails relating to holiday and breaks and excel spreadsheets recording holidays taken.
5. The Tribunal heard evidence from the claimant and from Ms Buss for the respondent. Both parties made oral closing submissions.

Issues

6. The issues the Tribunal was required to determine were as follows:

Breach of contract

1. Did the claimant have a contractual entitlement to receive an extra day of annual leave beyond his annual entitlement for each bank holiday he worked?
2. If so, did the claimant work on the bank holidays he claimed he had worked? Although not particularised in his claim form, the claimant told the tribunal at the hearing that he had worked and was therefore claiming in respect of the following bank holidays:
 - i. 28 August 2023
 - ii. 25 December 2023
 - iii. 26 December 2023
 - iv. 01 January 2024
 - v. 29 March 2024
 - vi. 06 May 2024
 - vii. 27 May 2024
 - viii. 01 January 2025
3. If so, was the claimant given an additional day of annual leave for each bank holiday worked in accordance with the relevant term of his contract?
4. If not, what loss did the claimant suffer?

Entitlement to rest breaks

5. Did the respondent refuse to permit the claimant to exercise his right to take rest breaks pursuant to the terms of his contract and/or **Regulation 12(1) of the Working Time Regulations 1998?**
6. If so, what amount of compensation would it be just and equitable to award in all the circumstances having regard to the employer's default in refusing to permit the worker to exercise his right, and any

loss sustained by the worker which is attributable to the matters complained of?

Findings of fact

7. The claimant was employed by the respondent as a call handler working in the respondent's control room from 7 March 2023 until 13 March 2025.
8. The respondent's business is a 24/7, 365-day a year vehicle recovery service. It considers itself to be akin to a "fourth emergency service".
9. Upon joining the respondent, the claimant received a contract of employment, via email, which set out the terms and conditions of his employment with the respondent. He worked a 12-hour shift on a 4-on 4-off shift pattern on rotation, 18:00-06:00.

10. In relation to breaks, the claimant's contract stated:

“5.9 *Breaks should be taken in line with guidance set out by Working Time Directive regulations: Recovery Driver 0-6 hrs = 15min break/ 6-9 hrs = 15 min break/9 hrs + = 15min break*

5.10 *The company allows drivers 60 minute break period during a 12 hour shift. It is the driver's responsibility to manage his breaks to ensure he complies with legislation, however, drivers must liaise with Control to ensure prior to beginning their break to ensure customer service and KPI's are not compromised”*

11. In relation to holidays, the claimant's contract included:

8 HOLIDAY ENTITLEMENT

8.1 *The employer's holiday year runs from 01 January to 31 December in each calendar year ("the holiday year").*

...

8.3 *Subject to clause 9, in each holiday year your holiday entitlement will be 19.5 working days' (pro rata) paid leave. This includes all National, Bank and Public Holidays.*

8.4 *Should an additional Bank Holiday be published above the usual 8, it will be at the company's discretion whether the business continues to trade on that day or should it be deemed that the business will cease trading on such a day, whether staff will receive an additional day's holiday. Notification as at the arrangements for these extraordinary Bank Holidays will be issued as soon as possible.*

8.5 *If your shift indicates it coincides with a bank holiday you will still be expected to attend and complete your duty. This includes, but is not limited to; Easter holidays, Christmas holiday and all other normal bank holiday periods. Failure to do so will result in loss of pay and may lead to disciplinary procedure.*

...

8.7 *Any unused holiday entitlement may not be carried over to any subsequent holiday year nor will any payment be made in respect of it.*

8.8 *If you start or leave your employment during a holiday year, your holiday entitlement in respect of that Company holiday year will be calculated on pro rata based on your yearly entitlement for each complete month of service.*

....

9 PUBLIC HOLIDAYS

Notwithstanding clause 8.4, the Employer reserves the right to require you to work on a public holiday. In such cases you shall be entitled to extra holiday equal to the period worked.

12. The claimant worked his shifts as one of a team of either two or three colleagues, at least one of whom was a controller. A controller could also fulfil the duties of a call handler. It was not necessarily the case that a call handler had been trained to fulfil the duties of a controller. Overall management of the team rested with the Recovery Operations Manager.

13. When the claimant started his employment the Recovery Operations Manager was a person called Jade. There was a period of months in 2023 when the role of Recovery Operations Manager was vacant. From 2 October 2023 Ms Buss was employed as the Recovery Operations Manager.

14. Initially the claimant worked on shifts with an employee called Sam who was the controller. Latterly he worked on shifts with a controller/team leader called Sara, but there were also times where other employees worked shifts with him. An APEX report for the claimant indicates that in 2024 the claimant also worked with another colleague, Charlotte, on three occasions as she reported that the claimant was not completing sign out sheets correctly on those shifts. From around September 2024 there were usually three people working the night shift.

15. During his employment the claimant was a smoker, and he took smoking breaks, as and when he wanted. After 23:00/00:00 was a quiet time in the control room and therefore there was ample opportunity for staff to take breaks provided there was someone in the control room to cover the phones. The respondent provided kitchen facilities for staff and Ms Buss in evidence expressed that her understanding of a break was *“being away from the work area, using the facilities, preparing something to eat, going off site, it could be any sort of break”*.

16. In terms of meal breaks, prior to 2024 the claimant went out to collect takeaway food, which he said would take a matter of minutes, and he would then eat it at his desk. He said from 2024 he ordered food in, unless there were three people on shift, when he understood he was able to go out, and again he would go out to get food but return and eat it at his desk. The claimant also spent time whilst in the control room doing his university work. This became a concern for the

respondent as it appeared that the claimant was doing this for longer periods than his break time and therefore, he was asked to sit at a different desk where his activities could be better monitored.

17. There was no set rota for breaks and nor was the claimant directed as to when to take his break when he was working a shift. Because of the need for the phones to be manned throughout the night due to the nature of the respondent's business, there needed to be one person available to answer the phones at any one time. This meant that a practice had developed of staff taking turns for breaks and of breaks being taken in segments, rather than for one hour at a time. However, there was no rule, written or unwritten, that an employee was not permitted to take a full hour break or that they were required to remain at their desk when they took their breaks. There was no evidence to suggest that segmented breaks did not include at least one break of 20+ minutes. In a subsequent investigation meeting, Control Room Manager, Mr Laker stated he understood that staff were entitled to a 30-minute break and that there was no requirement that staff remained at their desk or in the control room, provided there was cover.
18. The claimant's evidence was that he verbally raised the question of breaks with Sara numerous times and with his previous controller Sam. There is no documentary evidence before the Tribunal to support the claimant's assertion: no report of such a query on the APEX report and no documentation to suggest that prior to 2 March 2025, 11 days before the claimant's resignation, the claimant had raised any concerns about his breaks which managers had then sought advice upon. The claimant did not ever state on his timesheets that he had not had a break or had been refused a break during a shift and nor did he report it to Ms Buss (the respondent found the evidence of Ms Buss more credible than the claimant's assertion that he did once raise it with her at a performance meeting). On the balance of probabilities, the Tribunal finds that the claimant did not raise issues about not being allowed to take his breaks numerous times.
19. On 29 November 2024, the claimant sent an email to the respondent's HR department. It was in response to a reply to an earlier unknown query the claimant had raised about his holiday entitlement. That earlier query was not before the Tribunal in evidence. The claimant stated that he understood he was entitled to 19.5 working days of paid holiday per year including national, bank and public holidays. He wanted to know whether if he worked on a public holiday he was entitled to extra holiday time equal to the hours worked on that day. He also asked that if the extra holidays were already included in the 19.5 days, how that was calculated and reflected in his total allowance. On 3 December 2024, HR responded to say that holiday entitlement was based on the claimant's shift pattern. It did not address the claimant's queries specifically and so the claimant replied seeking further clarification. No evidence was given by either party as to whether there was any subsequent reply from HR.
20. On 2 March 2025, the claimant sent an email to Jamie Laker, Control Room Manager. The claimant asked whether he was still entitled to a one-hour break during his shift, as per his contract and whether he should be compensated with an extra day off each day he worked a bank holiday. Mr Laker replied, the following day to say he would "find this information out" and "response [sic] back". The Tribunal finds on the balance of probabilities that this was the first time the claimant raised any concern about breaks and that to the extent there

was now an issue with breaks, that it was a very recent issue, given that the query was whether the claimant was still entitled to the one-hour break.

21. The claimant did not, in evidence, point to any particular shift that he worked where he recalled specifically not being able to take a one-hour break. Nor could he point to any occasion where he had asked to take his break, or where he had asked to take a break away from his desk and it had been refused. His evidence was that he never took a one-hour break. The Tribunal does not consider the claimant's evidence on this to be credible given the lack of any documentation recording the claimant persistently raising that he was not being allowed to take one-hour lunch breaks, as one might expect there to be if this had been the case.

22. In terms of the claimant's annual leave, the claimant accepted that he took his full basic contractual entitlement each year and the respondent's records identified that the claimant took annual leave on the following days:

In 2023: 11, 12, 22, 28, 29 July; 15, 12, 28 August; 15, 18, 23 24 October; 8, 9, 16 November; 5, 11, 12, 13 December (16.5 days)

In 2024: 3, 28 May; 22, 23, 24, 25, 30, 31 August; 1, 2, 7, 8, 9, 10, 15, 16, 17, 18 September; 17 October, 18, 19 November (19 days)

In 2025: 16, 21 January; 7, 8 February (4 days).

23. The claimant resigned from his employment on 13 March 2025. His resignation came about because he called Ms Buss part way through a shift to ask whether he could leave early and Ms Buss said he could not, because the claimant had done the same thing the night before.

The Law

Rest Breaks

24. **Regulation 12(1) of the Working Time Regulations 1998 (WTR 1998)** provides that workers are entitled to a rest break if their daily working time is more than six hours. **Regulations 12(2) and 12(3) WTR 1998** provide that the terms and duration of the breaks can be set by workforce or collective agreement but where there is no such agreement then a rest break should be an uninterrupted period of at least 20 minutes away from their workstation.

25. In terms of enforcement of this entitlement, a worker has the right, pursuant to **Regulation 30(1)(a) WTR 1998** to complain to the Employment Tribunal where his employer has "*refused to permit him to exercise any right he has under (i)...regulation 12(1) ...*".

26. The question of what amounts to a refusal to permit a worker to take his or her rest break where a worker has not expressly asked to take a break and been refused one has been considered by the Employment Appeal Tribunal in several cases, more recently in **Grange v Abellio London Ltd [2017] ICR 287 EAT** in which HHJ Eady QC identified that there were conflicting decisions on the approach to be taken to rights to rest under the **WTR 1998** but as the regulations had been introduced to implement the Working Time Directive it

was appropriate to consider the language and purpose of the Working Time Directive in answering that question. At paragraph 43 it is stated:

"43...I consider it clear the WTD entitlement to a rest break is intended to be actively respected by employers. It is required not merely that employers permit the taking of rest breaks (in accordance with WTD provision) but – allowing that workers cannot be forced to take rest breaks – that they proactively ensure working arrangements allow for workers to take those breaks..."

27. Further guidance is given at paragraph 47:

"Adopting an approach that both allows for a common sense construction of Regulation 30(1), read together with Regulation 12(1), and still meets the purpose of the WTD, I consider the answer is thus to be found in the EAT's Judgment in Truslove: the employer has an obligation ("duty") to afford the worker the entitlement to take a rest break (paragraph 32 Truslove). That entitlement will be "refused" by the employer if it puts into place working arrangements that fail to allow the taking of 20 minute rest breaks (MacCartney). If, however, the employer has taken active steps to ensure working arrangements that enable the worker to take the requisite rest break, it will have met the obligation upon it: workers cannot be forced to take rest breaks but they are to be positively enabled to do so".

28. I was referred by the claimant to HMRC v Ainsworth [2009] UKHL 31 and the decision of the EAT in the case of Hughes v Corps of Commissionaires Management Ltd [2009] IRLR 112, which he understood to be authority for the propositions that workers are entitled to an uninterrupted rest break and that "smoking breaks do not count". The latter case was a case concerning a security guard whose employer claimed he was unable to take uninterrupted breaks and therefore that different provisions of the WTR (Regulation 24) should apply to him in respect of compensatory rest. It was not therefore of great relevance to the issues in this case, but nonetheless it did have some factual synergy in that it looked at what would happen if a break was interrupted.

29. It did however refer to the more relevant decision of the Court of Appeal in Gallagher v Alpha Catering Services Ltd (t/a Alpha Flight Service) [2004] EWCA Civ 1559 in which it is stated by Gibson LJ at paragraph 50:

"The worker is entitled under Regulation 12(1) to a rest break if his working time exceeds six hours, and he must know at the start of the rest break that it is such. To my mind a rest break is an uninterrupted period of at least 20 minutes which is neither a rest period nor working time and which the worker can use as he pleases".

Interpreting contractual terms in employment contracts

30. When interpreting the intention of express terms in contracts of employment the Tribunal must do so by interpreting the words of the contract in their grammatical and ordinary sense in the relevant context. It is impermissible for a court to depart from the clear wording of a contractual document absent an argument that it contains a mistake that should be rectified (Dean and Dean Solicitors (a firm) v Dionissious-Moussaoui [2011] EWCA Civ 1331 CA) or

that the parties had a common intention to mislead (*Snook v London and West Riding Investment Ltd [1967] 2 QB 786 CA*). In *Harlow v Artemis International Corporation Ltd [2008] IRLR 629, QBD* a case about whether a redundancy policy was contained in a staff handbook and constituted an express term of the claimant's employment contract, McCombe J commented, at paragraph 28:

"The fact of the matter is that employment contracts today...are designed to be read in an informal and common sense manner in the context of a relationship affecting ordinary people in their everyday lives."

31. The Tribunal should interpretate the relevant terms from the point of view of "a reasonable person having all the background knowledge which would reasonable have been available to the parties in the situation in which they were at the time of the contract" (see *Investors Compensation Scheme Ltd v West Bromwich Building Society (No.1) 1998 1 WLR 896, HL*).

Findings

32. In applying the law to the facts as found above, the Tribunal reaches the following conclusions.

What does the claimant's contract say about entitlement to additional holidays when a bank holiday is worked?

33. Although a little clumsy in its drafting and referencing, it is clear from reading clauses 8.3, 8.5 and 9 of the employment contract together, that clause 9 does not entitle the claimant to additional holidays beyond his annual entitlement. Rather what the contract does is say that:

- the claimant was entitled to a set number of days annual leave each year which includes bank holidays (clause 8.3);
- the respondent was entitled to require the claimant to work on bank holidays if they fell on his rostered days (clause 8.5); and
- if the claimant did work on a bank holiday he would be entitled to take another day off instead of that bank holiday day (clause 9).

34. The use of the words "extra holiday" in clause 9 does not mean holiday over and above the annual entitlement, but rather that the claimant could take another day he was otherwise rostered to work as holiday.

35. It is clear from the holiday records referred to at paragraph 21 above that when the claimant did work bank holidays he was provided with alternative dates on which he took annual leave instead of the bank holiday dates. This is because he took the entirety of his contractual entitlement each year.

36. In the circumstances there was therefore no breach of contract.

Did the respondent refuse to permit the claimant to take his rest breaks?

37. There is no evidence before the Tribunal to suggest that the claimant ever expressly asked to take his break and that request was refused. However, applying *Grange* the Tribunal must look beyond a simple express request and

refusal and consider whether there is evidence to suggest that the employer put in place working arrangements which failed to enable the claimant to take an uninterrupted period of 20 minutes break away from his workstation.

38. It is clear from the evidence that there was no issue with the claimant taking short smoking breaks away from his desk. It is also clear that although there was no set routine for taking breaks, when the claimant took breaks to eat a meal or to do university work (rather than short smoking breaks) that he spent a lot of them, or at least a large proportion of the “break” time at his desk.
39. However, there is no clear evidence that the claimant’s decision to spend his break time at his desk was because of the respondent’s working arrangements and therefore that the claimant was unable to take the break away from his desk or in fact the site if he had wanted to. Whenever the claimant was on shift there was always at least one other person working with him, a controller, who was able to cover the desk. There was also ample time during the quieter period after 00:00 each shift for the claimant to take a break or breaks totaling the one-hour contractual entitlement, including one uninterrupted break of 20 minutes. Although there is some evidence to suggest that the claimant only felt able to leave site when there were three staff on shift, there only being two people on shift appears to have been a historic situation and one which there is no reliable evidence of the claimant having raised any complaint about at the time.
40. In these circumstances therefore the Tribunal is satisfied that the claimant chose whether and when to take breaks, what to do on them and where to take them. There is no evidence to support his assertion that he was unable to take breaks which totaled one hour each shift. It was his choice to spend the time at his desk rather than leave site. The respondent had put in place sufficient arrangements to enable staff working shifts of 6 or more hours to take 20-minute uninterrupted rest breaks away from their workstation as required by the **WTR 1998** and it did not therefore refuse to permit the claimant to exercise his right to do so.

Conclusion

41. For the reasons explained in detail above, the claimant’s claims are not well-founded and are dismissed.

Approved by:

Employment Judge Kight

26 September 2025

JUDGMENT SENT TO THE PARTIES
ON

Shiraham Hassan

7 October 2025

FOR THE TRIBUNAL OFFICE

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/