



EMPLOYMENT TRIBUNALS

Claimant: Mr J Rosberg

Respondent: Private Equity Insights Ltd

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The Respondent's application for reconsideration is granted. The decision has been reconsidered but is not varied or revoked.

REASONS

1. The Respondent applied for a reconsideration of the judgment dated 2 February 2026 which was sent to the parties on 4 March 2026 ("the Judgment"). The grounds are set out in the application emailed to the Tribunal on 18 March 2026. Due to an administrative oversight, that was not passed to the Judge until 28 May 2026.
2. The Employment Tribunal Procedure Rules 2024 ("the Rules") provide at Rule 69 that an application for reconsideration under Rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties. The application was therefore received within the relevant time limit.
3. The grounds for reconsideration are only those set out in Rule 68, namely that it is necessary in the interests of justice to do so.
4. The grounds relied upon by the Respondent are these:
5. The question of whether the Claimant is deemed to have taken holiday in his notice period depends on whether there was a 'relevant agreement' in place disapplying regulations 15(1) – 15(4) of the Working Time Regulations 1998. Whilst the Judgment addresses the requirements of regulations 15(2) and 15(4), it does not address 15(5), which would render those requirements inapplicable.
6. The Respondent submits:

- a) The Respondent was entitled to require the Claimant to take accrued holiday during the notice period, without giving the notice required by regulation 15(4)
 - b) The Claimant would then have taken 8 days holiday (3 days before the notice period and 5 days during the notice period) against an accrued entitlement of 5.7 days
 - c) The outcome of the holiday pay claim and the Respondent's counter claim (for over-taken annual leave) would be materially different.
7. The Claimant opposes the application submitting that I had expressly dealt with clause 13.5 of the contract and concluded that this was insufficient to constitute a contracting out of the Regulation 15 notice requirements.
8. I accept that the Judgment should have been more specific with regard to whether the contractual clause amounted to an agreement to contract out of the Regulation 15 requirements, as permitted by Regulation 15(5). I had dealt with this implicitly, but I accept that my Judgment could have been clearer, and it could be read that this point was overlooked.
9. As noted in the Judgment, the contractual clause relied on by the Respondent stated:
- If either party has served notice to terminate the Employment, the Company may require the Employee to take any accrued but unused holiday entitlement during the notice period.*
10. This could amount to a 'relevant agreement' for the purpose of regulation 15(5) if it varied or excluded the Respondent's obligations under regulation 15(1) – 15(4). The question is whether this clause clearly stipulates the circumstances in which the Claimant was required to take holiday.
11. In the case of *Industrial and Commercial Maintenance Ltd v Briffa EAT 0215/08*, the EAT found that the employer's Regulation 15 obligations were varied by a clause which stated:
- If an individual gives or receives statutory notice and is not required to perform physical work during that period of notice, the employee shall be regarded as being on holiday during the period of notice.*
12. This was found to be a clear provision deeming the employee to be on holiday during the notice period.
13. That is different from the situation here. The contractual clause in question does not go as far as requiring the employee to take unused holiday during the notice period, let alone deeming those days to be taken as holiday, but says that the employee *may* be required to take accrued holiday. I do not find that the Claimant's contract went so far as to exclude Regulation 15 notice requirements, or to require leave to be taken on specified days, due to the obvious ambiguity in the contractual clause. The clause did not expressly, and cannot be deemed to have implicitly, contracted out of the requirements of Regulation 15(1) – 15(4).

14. This is because, it is clear from the clause that an employee *may* be required to take holiday. As the clause goes no further, it cannot amount to an agreement to disapply the earlier parts of Regulation 15. It is apparent that a further instruction requiring holiday to be taken is needed. In that event, Regulation 15 by default applies.
15. As such, my finding that the notice requirements set out in Regulation 15 applied, stands. It follows that so does my finding that the days the Claimant was required to take holiday were not specified in the email of 24 October 2024 (as is required by regulation 15(3)). He cannot have been required to take the entire week as holiday, as he did not have sufficient accrued annual leave. My finding therefore remains that the Claimant did not take holiday during his notice period. My decision as to the holiday pay claim and the counter-claim remains unchanged.
16. For completeness, I will say that even if I had accepted the Respondent's challenge in relation to disapplying the requirements regulation 15(1) – (4), the counter-claim is flawed, because the contractual clause relied on referred to *accrued but unused* holiday entitlement.

Employment Judge Bradford

26 June 2026