



EMPLOYMENT TRIBUNALS

Claimant: Mr R Buenafe

Respondent: Bruton Concierge Services Limited

Heard at: London Central (remotely by CVP)
On: 25 August 2021

Before: Employment Judge Heath

Representation

Claimant: In person

Respondent: Mr W Lane (solicitor)

JUDGMENT

1. The name of the Respondent is Bruton Concierge Services Limited.
2. The claimant's claim is clarified as being one under regulation 30(1)(a)(i) Working Time Regulations 1998, namely that the employer had refused to permit him to exercise a right to annual leave under regulations 13 or 13A.
3. The respondent did not refuse the claimant to exercise such right and the claimant's claim under paragraph 2 above is dismissed.

REASONS

Introduction

1. The claimant brings a claim in respect of how the respondent treats his entitlement to annual leave in respect of bank holiday (to put things neutrally, at this stage).

The issues

2. At the outset of the hearing I took some time to clarify with the claimant what he wanted from the tribunal. He was clear that he did not want money, but wanted clarity about the fact that he says that he is entitled to 28 days on his contract of employment and that his employer was not honouring this in how it treated bank holidays.
3. I explained to the parties that the tribunal's scope was limited to

entertaining three types of claims in respect of annual leave.

- a. Breach of contract claims. I explained that the claimant could not bring such a claim as he was still employed by the respondent.
 - b. Claims under the Working Time Regulations 1998 (WTR).
 - c. Claims for unlawful deductions from wages under the Employment Rights Act 1996 in respect of defined sums of money. Again, it was clear, as the claimant was explicit that he was not claiming money, that he was not bringing such a claim.
4. The “best fit” claim for what the claimant was telling me was a claim under regulation 30(1)(a)(i) WTR that the employer had refused to permit him to exercise a right to annual leave under regulations 13 or 13A. Essentially what the claimant was saying was that his contract of employment set out in entitlement to 20 days annual leave plus the usual bank holidays. He says that the respondent wrongly would not give him a day off in lieu if a bank holiday fell outside the days that he worked on his shift pattern. It appeared, again as the claimant was not claiming money, that this could not be a claim under regulation 30(1)(b).

The facts

5. The claimant began employment with the respondent on 30 January 2020. He was employed as a night concierge working a 4-on-4-off shift pattern. His contract of employment, at clause 6.1, set out that he was “*entitled to 20 days paid holiday during each holiday year. In addition you are entitled to take the usual public holidays in England and Wales*”. The respondent’s holiday year was a calendar year.
6. On 14 February 2020 the claimant emailed a junior employee, Mr Lendrum, for confirmation about his holiday entitlement. Mr Lendrum wrote “*I can confirm that this means you are entitled to 20 days holiday as well as the usual public holidays in England and Wales. So yes it would be 28 days overall including bank holidays*”.
7. The claimant generally chose to work bank holidays and received a day off in lieu and was paid at an enhanced rate.
8. On 23 October 2020 the claimant emailed Mr Hamilton and Mr Proctor with further queries about his holiday entitlement. Mr Proctor emailed back to say “*You are entitled to 20 days holiday. In addition to this you are entitled to take the usual public holidays in England and Wales [which he set out] Should you work on one of the above public holidays then I am happy for you to take this day as annual leave. [Mr Lendrum] is correct in that you have 28 days holiday per year and this includes public holidays.*”
9. On 8 November 2020 the claimant sought further clarification. He pointed out that if he can only take annual leave on the Bank Holiday days that he works then his entitlement would not add up to the 28 days entitlement. He gave the example that if he only worked on five bank holidays he could take five days annual leave, which meant that he would only use 25 days of the 28 days annual leave that he was entitled to. He pointed out that if a bank holiday lands on his day off it could not be considered for annual

leave as he was already off on that day. He went on to point out that this did not make sense and would apply regardless of his working pattern and pointed out his experience with previous employment.

The law

10. Regulations 13 and 13A WTR set out a combined entitlement to 5.6 weeks (which is 28 days) annual leave. Regulation 30(1)(a)(i) provides that a worker may present a complaint to an employment tribunal that his employer has refused to permit him to exercise any right he has under regulation 13 or 13A.

Conclusions

11. At the beginning of the hearing I clarified to the parties that I could not consider claims for breach of contract or for unlawful deduction from wages. It is also clear that there is no scope under the WTR for me to adjudicate on the meaning of the claimant's contract and make the sort of declaration about its terms he was seeking. I was constrained to adjudicating on the remedies set out under regulation 30 WTR, and it seemed that 30(1)(a)(i) most closely resembled what the claimant was claiming.
12. Under regulation 30(1)(a)(i) WTR I can only consider whether the employer has refused to permit the worker to exercise his entitlement under regulations 13 and 13A, and not to any entitlement they may have to annual leave under their contracts of employment.
13. Given the claimants 4-on-4-off shift pattern his entitlement to annual leave under the WTR is correctly set out in the respondents Grounds of Resistance at paragraph 19, namely rounded up to 20 days including bank holidays. I stress that this is the WTR entitlement and not the contractual one.
14. The claimant is not asserting that he has not been allowed to take that entitlement. He is essentially asking me to adjudicate on the meaning of his contract. This is something I cannot do.
15. In the circumstances all I can find is that the respondent has not refused to permit the claimant to exercise any right that he has under the WTR. Accordingly I dismiss the claim.
16. I told the parties that I had toyed with the idea of expressing a view about the actual contractual dispute between them. On balance I decided that this would not be helpful, and could indeed muddy the waters in any further discussions they have about holiday entitlements under contract.

Employment Judge **Heath**

25 August 2021

JUDGMENT & REASONS SENT TO THE PARTIES ON
25/08/2021.

FOR THE TRIBUNAL OFFICE