EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4105561/2016

Hearing Held at Dundee on 21 March 2017

Employment Judge: I McFatridge
Members: Mrs W Canning
Mrs A Shanahan

Mr Barry Allison — **Claimant**
Represented by:
In person

Angus Council — **Respondents**
Represented by:
Ms Jones
Solicitor

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous Judgment of the Tribunal is that the claimant's claim that the respondents failed to give him a rest period in contravention of the Working Time Regulations 1998 does not succeed. The claim is dismissed.

REASONS

1. The claimant submitted a claim to the Tribunal in which he claimed that his entitlement to a rest period of not less than 11 consecutive hours in each 24 hour period during which he worked for his employer had been infringed by the respondents. He narrated that on Friday 8 July 2016, following his normal working day, he was called out to work at 11.58pm that night. His position was that by reason of that he did not receive 11 consecutive hours of rest in breach of the provisions of Regulation 10(1) of the said Regulations. The respondents submitted a response in which they denied the claim. In advance of the hearing both parties produced a joint statement of facts which was of considerable assistance to the Tribunal and undoubtedly shortened the amount of time required for the hearing. At the hearing itself neither party led evidence but instead made full and detailed submissions for which the Tribunal is grateful. For reference purposes I have simply set out the agreed statement of facts below. It will be noted that although the sole issue to be determined by the Tribunal was whether, on the basis of the facts set out in Section 11, the claimant's rights under the Working Time Regulations had been infringed for the period in question, the agreed facts go somewhat beyond those required to determine that specific issue but set out valuable context and background to the issue which the Tribunal found of assistance.

Agreed Factual Background

2. The Claimant has been employed by the Respondent as a solicitor since 2 June 2008. He remains employed by the Respondent.

3. The Claimant is employed to work Monday to Friday 8.45am to 5pm, albeit the Respondent operates a flexi-time scheme and, therefore, the Claimant may choose to start and/or finish earlier or later, subject to the exigencies of the service.

4. As part of his role, the Claimant is required to participate in an out of hours rota in connection with an application being made by the Respondent for a child protection order ("the Rota"). The frequency of the Rota which, although not prescribed, is currently determined by the number of solicitor employees required to participate, at present, once every 14 weeks (with special arrangements over the Christmas

and New Year period) . The requirement to participate in the Rota is set out in the Job Outline (dated 29 June 2007) and a Person Specification (dated January 2008) which apply to the Claimant's role as solicitor. The terms of the Claimant's contract of employment are required to comply with employment law, including the Working Time Regulations 1998 (the "Regulations"). The Respondent provides general guidance on the Regulations in its Personnel Advisory Bulletin No 45. When it is the Claimant's turn on the Rota, he is required to be available 5pm to 8.45am for 7 days (Friday from 5pm one week to Friday at 8.45am the following week). This is the same for every solicitor employee when on the Rota.

5. The work activity covered by the Rota is undertaken by a combination of social workers and solicitors. There is no equivalent out-of-hours rota for the social workers employed by the Respondent. Social work cover out of hours is provided to the Respondent, as well as Dundee City Council, by a separate social work service located in Dundee. The Respondent provides that service with the contact details of the solicitor on-call each week with the instruction that, for a child for which the Respondent is the responsible authority, the solicitor is to be contacted in relation to child protection matters arising over the period of on call.

6. The Claimant is entitled to the daily and weekly rest periods under Regulations 10 and 11 respectively of the Regulations, and rest breaks under Regulation 12 of the Regulations. An employer is required to ensure a worker can take their rest. The circumstances in which rest periods and rest breaks can be interrupted by work in accordance with the Regulations are set out as exceptions to a worker's entitlement to rest in Part III of the Regulations. The work activity under the Rota does not fall under any of these exceptions.

7. Regulation 10(1) of the Regulations provides "A Worker is entitled to a rest period of not less than 11 consecutive hours in each 24 hour period during which he works for his employer."

8. If an employee is called out between 5pm and 9.45pm and the call-out is complete by 9.45pm, there are 11 consecutive hours before the employee starts work at 8.45am the next morning (i.e. 9.45pm to 8.45am). In addition, if an employee is

called out between 4am and 8.45am, there are 11 consecutive hours prior to the call-out (i.e. 5pm to 4am).

9. The Claimant questioned whether the Rota arrangements comply with the Regulations in an e-mail to his line manager, Anne Garness, Principal Solicitor, dated 28 May 2015. Correspondence over the following three months did not resolve the issue, and at the Respondent's invitation, the Claimant raised a grievance by e-mail to the Respondent's Head of Legal and Democratic Services, Sheona Hunter, dated 28 August 2015 ("the First Grievance").

10. The First Grievance was heard on 3 February 2016 and was not upheld. The Respondent's reasons for not upholding the First Grievance were explained to the Claimant in the decision letter dated 17 February 2016. The Claimant appealed by e-mail dated 25 February 2016 ("the First Appeal"). The First Appeal was heard on 12 April 2016 and was not upheld. The Respondent's reasons for not upholding the First Appeal were explained to the Claimant in the decision letter dated 20 April 2016.

11. The Claimant disputed the First Appeal outcome and intimated to the Respondent his intention to take a complaint to the Employment Tribunal. In response, the Respondent took further legal advice, and removed the Claimant from the Rota pending its receipt. On 2 June 2016, at a meeting between the Claimant and Sheona Hunter, the Respondent asserted that the legal advice they received was that the Rota complies with the Regulations. The Respondent returned the Claimant to the Rota on Friday 8 July 2016, and that night the Claimant was called out to work at 11:58pm.

12. The Claimant raised a grievance regarding the call-out on Friday, 8 July 2016 by e-mails dated 28 July 2016 to Anne Garness and 3 August 2016 to Mark Armstrong, Strategic Director, Resources ("the Second Grievance"). The Second Grievance was heard on 29 August 2016 and was not upheld. The Respondent's reasons for not upholding the Second Grievance were explained to the Claimant in the decision letter dated 31 August 2016. The Claimant appealed by email dated 9 September 2016 ("the Second Appeal"). The Second Appeal was heard on

13 October 2016 and was not upheld. The Respondent's decision was intimated to the Claimant verbally that day and the reasons for the decision were thereafter confirmed to the Claimant by letter dated 17 October 2016.

13. In relation to the call-out on 8 July 2016, the Claimant commenced on the Rota at 5pm on Friday 8 July 2016. The Claimant finished his turn on the Rota at 8.45am on Friday 15 July. There were no further call-outs that week. The Claimant's working hours prior to and after the call-out on 8 July 2016 were as follows:

Date	Hours of Work
Thursday 7 July	8.49am – 11.57am
Friday 8 July	9.34am – 5.57pm then called out at 11.58pm for 30 minutes
Saturday 9 July	-
Sunday 10 July	-
Monday 11 July	9.33am – 5.46pm

14. On 8 July 2016, the Respondent's practice was that, if a call-out takes place during a daily rest break, the employee should begin their daily rest break afresh when the call-out ends, i.e. the employee should attend work when 11 consecutive hours of daily rest expires. This arrangement was confirmed to employees participating in the Rota (including the Claimant) by email dated 2 June 2016 from Sheona Hunter.

Issues

15. It was agreed by both parties that the sole issue which could be determined by the Tribunal in terms of Section 30(1)(a) of the Working Time Regulations was whether the respondents had refused to permit the claimant to exercise any right he had under Regulation 10(1). Parties were agreed therefore that, formally, the Tribunal required to focus on the period of 7, 8, 9 July 2016 and determine whether on those days the respondents had refused to permit the claimant to exercise his right under Regulation 10(1) to a rest period. The claimant confirmed that if the Tribunal was with him in his interpretation of Regulation 10(1) then he was seeking a

declaration from the Tribunal to this effect. He was not seeking compensation although in those circumstances it would have been a matter for the Tribunal's discretion as to whether or not he should be reimbursed the Tribunal fee which he required to pay. Whilst the Tribunal's task was limited to this extent it was clear to us from the submissions made that both parties saw this as an opportunity to obtain a ruling which would be of assistance to them for the future in determining whether or not the rota arrangements presently operated by the respondents comply with the Working Time Regulations. The Tribunal, whilst noting this view wish to confirm that the decision we have made relates solely to the issue which was before us. While both parties took us through the relevant law and indeed made detailed submissions in relation to this matter we have only summarised the main points which were relevant to our decision below. The fact that a specific point is not mentioned does not mean that we did not take it into consideration.

Claimant's Submissions

16. The claimant began by setting out the background. The Working Time Regulations are the UK implementation of the Working Time Directive 2003 which codified the provisions of the earlier 1993 Working Time Directive. We were referred to the recitals to the Working Time Directive and note that article 3 of the 2003 directives states

> *"Member States shall take the measure if necessary to ensure that every worker is entitled to a minimum daily rest period of 11 consecutive hours per 24-hour period."*

He also referred to the centrality of concept of rest being delineated in units of time and that it is clear from the preamble that the overriding purpose of the regulations is the protection of workers' health and safety. He referred to the recent case of ***Federación de Servicios Privados del sindicato Comisiones Obreras v Tyco Integrated Security SL and others*** being a judgment of the European Court dated 10 September 2015. It states

"Moreover, it is important, first of all, to point out that the aim of the latter directive is to lay down minimum requirements intended to improve the living and working conditions of workers through an approximation of the provisions of national law, in particular, those governing working times. That harmonisation at EU level in relation to the organisation of working time is intended to guarantee better protection of the safety and health of workers by ensuring that they are entitled to minimum rest periods – particularly daily and weekly – and adequate breaks and by setting the maximum average duration of the working week at 48 hours, which is expressly stated to encompass overtime ….

24 The various requirements laid down in that directive concerning maximum working time and minimum rest periods constitute rules of EU social law of particular importance from which every worker must benefit as a minimum requirement necessary to ensure protection of his safety and health …."

17. We were referred to the terms of Regulation 10(1). It states

"A worker is entitled to a rest period of not less than eleven consecutive hours in each 24 hour period during which he works for his employer."

With regard to the specific interpretation which is to be placed on Regulation 10(1) he referred to the dictionary definition of each as being

"Every one of two or more people or things identified separately".

He also referred to part of the Judgment of the Supreme Court in the case of ***Russell and others v Transocean International Resources Ltd and others [2011] UKSC57***. This states

"The periods that it has identified must be taken in themselves to meet the objects stated in the preamble. The plain indication of its wording is that the exercise that must be carried out is simply one of counting up the relevant hours, days or seven day periods and ensuring that the

worker is not required to work during these periods. For example conditions off-shore varies from installation to installation and from time to time. Equality of the rest that can be enjoyed will vary. It may be disturbed by the noise and vibration that are part and parcel of off-shore operations. But so long as the worker is given not less than 11 consecutive hours each day which is not working time the requirements of article 3 will have been satisfied."

He noted that his normal working hours were 8.45am until 5.00pm. He considered that the start of daily work at 8.45am each day started the clock for the daily rest period. His normal working day finishes at 5.00pm and therefore his normal daily rest period would commence at 5.00pm and continue until 8.45am the following day. His view was that the entitlement in terms of 10.1 was to a rest period beginning at 5.00pm and ending 11 hours later at 4.00am. He referred to government guidance on the GOV.UK website (pages 108-111). He also referred to the case of Landeshauptstadt Kiel v Jaeger (Case C-151/02) [2004] ICR 1528 and in particular the statement in paragraph 95 which states

"In order to ensure the effective protection of the safety and health of the worker, provision must as a general rule be made for a period of work regularly to alternate with a rest period. In order to be able to rest effectively, the worker must be able to remove himself from his working environment for a specific number of hours which must not only be consecutive but must also directly follow a period of work in order to enable him to relax and dispel the fatigue caused by the performance of his duties. That requirement appears all the more necessary where, by way of exception to the general rule, normal daily working time is extended by completion of a period of on-call duty."

Furthermore in paragraph 97 it is stated

"…. As a general rule, to accord such periods of rest only at other times not directly linked with the period of work extended owing to the completion of overtime does not adequately take into account the need to observe the general principles of protection of the safety and health of

workers which constitute the foundation of the Community regime for organisation of working time."

The claimant's belief was that his call out at 11.58 on 8 July would fall within his rest period no matter how it was calculated. He was entitled to 11 hours' rest. If he was correct then this was due to happen between 5.00pm on 8 July and 4.00am on 9 July. 11.58 is within this period. Conversely if one were to look at it the other way then in order for him to commence an 11 hour rest break and complete this in time for his normal start time at work the next morning of 8.45 his rest period would have to start at 9.45. Either way a call out at 11.58 was within the rest period. He confirmed his primary submission however was that the rest period must begin at 5.00pm when his day's work came to an end. He then referred to a number of cases in the European Court which dealt with the issue of whether time on call was working time. He confirmed that he accepted that time spent on the on-call rota but not called out was not working time for the purposes of the Regulations. Working time began when he was called out and ended when work associated with the call out had been completed. He did however confirm that his understanding of the four cases was that it was clearly established that working time and rest periods were mutually exclusive. A period of time could be one or the other but could not be both. His view was that one could take from these cases the proposition that one could not be called to work during a rest period.

18. He referred to what he termed the various exceptions which are contained in the Working Time Regulations at Regulation 20-23. It was his position that none of the exceptions applied in his case. It was therefore his view that the concept of "compensatory rest" did not arise. Compensatory rest is provided for in Regulation 24 but can only apply if one of the exceptions in Regulations 20-23 applies.

19. The claimant referred to the respondents' argument that he was required to be on the on-call rota in his contract. He confirmed that he did agree to go on the on-call rota but this was at a period prior to him checking on the legal position. His position was that no matter what it said in his contract it was not permissible for him to contract out any of the rights granted to him by virtue of the Working Time Regulations.

20. He referred to the EAT cases of ***Grange v Abellio London Limited UKEAT/0130/16*** and the Court of Appeal case of ***Gallagher and others v Alpha Catering Services Ltd [2005] ICR 673***. Both of these were cases in relation to the obligation to provide rest breaks contained in Regulation 12 of the Working Time Regulations 1998. It was the claimant's view that the views expressed in those two cases should be extended by analogy to the daily rest period. In particular, it was his view that one could take from the ***Grange*** case the proposition that an employer must be pro-active in ensuring that rest breaks are taken and from the ***Gallagher*** case that it is necessary for an employee to know in advance when his rest period is. He believed that with regard to the daily rest break in Regulation 10 an employee is entitled to know when it is in advance. It is not possible to retrospectively say that such and such a period of time was the daily rest break just as in the ***Gallagher*** case it was not possible for the employer to look back retrospectively and say that there was a 20 minute period during which the claimant was not called upon to do any specific work and that should count as his rest break. It was also his view that the daily rest period should be uninterrupted which meant that the respondents could not interrupt it by calling him out. He referred to the joint statement of facts and noted that currently there are 14 solicitors who are on the out of hours child protection rota and the obligation to be on-call is currently an obligation to be permanently on-call one week in 14. It was his view that during that week he was entitled to five periods of daily rest plus one weekly rest period of 24 hours which meant that there was a total of 90 hours in the week when he could not be called out.

21. He referred to the detail of the grievance process and the various stages through which he had gone. He noted that the respondents had provided him with copies of the legal advice which they had received albeit he only received a copy of the Council's opinion from Brian Napier at a later stage. He pointed out that his first grievance was about the actual rota itself and accepted that the Tribunal had no power to rule that the rota *per se* was illegal. The second grievance was about the specific call out on 8 July. He repeated his view that Mr Napier refers to his obligation in terms of his contract that is irrelevant to the question of whether or not his rights under the Working Time Regulations are being infringed. He referred to

the e-mail which had been sent out by the respondents on 2 July (pages 77-78). It was his view that following this rota risked an employee being denied his daily rest period and his position was that this was precisely what had occurred on 8 July. It was his position that it was not possible for the respondents to call him out whenever they wished and then retrospectively look back and identify a rest period which he did not know he was having at the time.

Respondents' Submissions

22. The respondents sought dismissal of the claim. They confirmed that the only relevant issue was whether the claimant's attendance at a call out at 11.58pm on 8 July 2016 resulted in the claimant being denied his right in terms of Regulation 10(1). Ms Jones set out the sections of the joint statement of facts which she considered to be relevant. Her key submission was that there was no failure to provide 11 consecutive hours of rest in the 24 hour period in which the claimant worked for the respondents on 8 July for the following reasons.

- Prior to starting work on 8 July 2016 the claimant had just short of 22 consecutive hours of rest having finished work on 7 July 2016 at 11.57am.
- On 8 July the claimant worked from 9.34 to 5.57 and he was then called out at 11.58 for approximately 30 minutes.
- After completion of the call out the claimant did not attend work again until 9.33 on Monday 11 July 2016. Accordingly he received approximately 57 consecutive hours of rest between the call out ending and restarting work on Monday 11 July 2016.

It was the respondents' position that these 57 hours of rest provided the claimant included his daily rest break in terms of Regulation 10(1). She pointed out that the key difference between the parties was in relation to the matter of when the 24 hour period applied. The claimant's position was that the 24 hour period in which he must receive 11 consecutive hours of daily rest commenced when he started work. Accordingly the claimant's position was that because he did not have 11 consecutive hours' rest between 9.34am on Friday 8 July 2016 and 9.34am on Saturday 9 July 2016 the terms of Regulation 10(1) were not met. The

respondents disputed that this was the correct interpretation. The respondents' view was that there was no requirement for the 24 hour period to start at the time an employee started work. The respondents contended that if the regulation intended to refer to a worker's working day or a specific starting point (e.g. midnight) then the regulations would have been drafted as such. Other parts of the regulations do refer to a "day" being defined as a period from midnight to midnight. The respondents' position was that the 24 hour period was not fixed in this way and indeed during submissions referred to this as a "rolling 24 hour period". The respondents' contention was that in each 24 hour period the claimant worked for the respondents on or around 8 July he had 11 consecutive hours' rest. He had had 11 consecutive hours' rest in the 24 hour period before starting work on 8 July and an excess of 11 hours' rest after completion of the call out on 8 July 2016. The respondents noted that they had sought advice on the correct position from Counsel and referred to the Counsel's opinion which they had received. They also referred extensively to a paragraph in Harvey on working time (paragraph 115) which was lodged (page 304).

23. The respondents' position was that the claimant was wrong in using cases which dealt with the issue of rest breaks under Regulation 12 as being of relevance in determining the issue in this case which was in respect of a rest period under Regulation 10. The claimant was simply incorrect in stating that Regulation 10 gave him a right to a fixed rest period of 11 hours which he knew in advance was a rest period and during which the Respondents were not permitted to contact him. The respondents' representative stated that to forbid employers to contact an employee during a fixed daily rest period of 11 hours would lead to an impractical result and impose far too high a burden on employers.

24. The respondents' position was that following the matter being raised by the claimant they had spent some considerable time and effort researching the position. They were quite clear that the situation in this case did not amount to circumstances which fell within the terms of Regulation 20, 21, 22 of the Working Time Regulations. They accepted that in this case there was no collective agreement or workforce agreement regulating the position so Regulation 23 had no application. Accordingly, they were in agreement with the claimant that the

concept of "compensatory rest" as defined in Regulation 24 had no application in this case.

25. The respondents' position was that if Regulations 20-23 had applied (which they did not) then if the claimant was called out all they would need to do in order to comply with their obligation would be to allow the claimant an extension of his rest period equal to the length of time the call out had lasted. They were however quite clear that they were not entitled to do this which was why the rota instructions stated that if an employee was called out then instead of simply adding to his rest period the length of time the call out had taken the employee was entitled to a completely fresh rest period of at least 11 hours. This was clearly set out in the e-mail of 2 July and in accordance with the advice the respondents had received.

Discussion and Decision

26. The Tribunal's view was that the decision in this case turned on a fairly narrow point of construction. There was considerable agreement between the parties as to the parts of the regulations which did not have any application in this case. For the avoidance of doubt the Tribunal was perfectly satisfied that there was no question of the claimant having contracted out of his rights under the Working Time Regulations in terms of Regulation 35. We were satisfied that there was no collective agreement or workforce agreement modifying the effects of Regulation 10(1) in respect of the claimant. We were also satisfied that, on the basis of the information before us, that the situation did not fall within one of what were described by the claimant as the exceptions in Regulation 20, 21 or 22. There was no question here of the claimant having been granted compensatory leave.

27. What the Tribunal had to do was determine whether or not the claimant's right under Regulation 10(1) had been infringed or not.

28. Whilst we admired the claimant's industry in bringing before the Tribunal all of the relevant case law we did not find this of particular assistance since it appears to us that there has not yet been a reported case on this specific point.

29. The claimant's view was that the cases which have been heard in relation to rest breaks under Regulation 12 were applicable. The Tribunal did not agree with this. To take the ***Gallagher*** case as an example, in that case the employees claimed that they were being denied their right to rest breaks. The employer's position was *inter alia* that they were entitled to go back retrospectively and look at the working day and if they could identify a period when the employees in this particular case had not been called upon to do work then that fulfilled their obligation to provide rest breaks. The court in the ***Gallagher*** cases decided that this was not acceptable and the Tribunal completely agrees with that position in respect of rest breaks. The Tribunal did however accept the respondents' contention that the position is different in respect of the daily rest period. The obligation is expressed differently and the purpose is different. The purpose of Regulation 12 is that employees are given a short break away from their desk and in order for the regulation to be effective an employee requires to know in advance when the break is and have the period of the rest break sufficiently differentiated from other periods when they are at work, but perhaps not involved in a particular task. Regulation 12 also says that the rest break must be uninterrupted.

30. The Tribunal believed that the position in respect of the daily rest break is different. Unlike the 20 minute rest period there is no qualitative reason why an employee needs to know in advance that his daily rest period is starting. The rationale behind granting the daily rest period of 11 hours is completely different from the rationale behind granting a 20 minute rest break. The Tribunal did not accept therefore the claimant's assertion that he required to know in advance when the daily rest period began. In the view of the Tribunal this would place too high a burden on employees since the result of this would be that, as the claimant indicated, employers would be prohibited from contacting their employees at all for a period of 11 hours after they have stopped work. This would be a highly unusual position and the Tribunal would only be prepared to accept this if it was clearly stated within the terms of Regulation 10 and it is not. We entirely agreed with the respondents' agent that in the modern workplace it would have an impractical result if the regulations were entitled in the way that the Claimant suggested. If the daily rest period is fixed and must take place immediately after the employee ceases work then there is a period of eleven hours where the employer cannot contact the

employee. If this were the result intended then the regulations ought to have clearly stated this.

31. The Tribunal's view is that so far as the daily rest period is concerned the employer is entitled to do what the employer in ***Gallagher*** was not permitted to do in that the employer is entitled to retrospectively look back and check whether or not the claimant has had a rest period of not less than 11 consecutive hours in each 24 hour period during which he works for his employer. That is not to say that this must be left to chance but that provided the employee's right under Regulation 10 is respected the issue of when the 24 hours starts and stops can be looked at flexibly. In the course of a normal working week which by law must be not more than 48 hours this will usually be something which is fairly easy to accommodate.

32. With regard to when the 24 hour period starts and stops we note that the regulations are silent. A moment's thought is enough to show that whichever starting time is chosen for the 24 hour period can have an effect on whether or not an 11 hour break can be accommodated. For example, in a normal 9-5 working day it would be possible, by saying that the 24 hours starts at midnight to engineer a situation where the employee never receives their right to 11 hours' consecutive rest. During the period from midnight to 9am he only receives nine hours' rest and he then only receives seven hours' rest in the remaining period up to the next midnight. The Tribunal's view was that if the regulations were meant to impose any fixed time when the 24 hours started and stopped then the regulations would have had to say so. Looking at the present case the Tribunal accepted the respondents' argument that there was no magic in the 24 hour period beginning at 9.34 on 8 July and ending at 9.34 on Saturday 9 July. The fact of the matter is that if one were to take for example a 24 hour period beginning at 6.00pm on Thursday 7 July that would be a 24 hour period during which the claimant worked. The claimant would have worked between 9.34 and 5.00pm on 8 July. During that period he would have been at work for approximately seven and a half hours and he would have had over 11 hours' rest. This rest would have been prior to his work but we do not see that as being a particular issue. The protection against weekly working or working hours which are too long overall is contained elsewhere in the Regulations. The claimant then works for a total of 30 minutes in the next 24 hour

period from 6.00pm on Friday until 6.00pm on Saturday. Following his 30 minutes' work he has a rest period which is in excess of 11 consecutive hours.

33. It can readily be seen that going back to look at a particular date there will be a number of possible 24 hour periods which fall within the definition contained in Regulation 10 as being a 24 hour period in which the claimant has worked. Depending on which arbitrary point is chosen there will be some of these where the claimant has had 11 consecutive hours of rest in the 24 and others where he has not. The view of the Tribunal was that where, as here, the respondents are able to point to any 24 hour period which comes within the terms of Regulation 10 and in which the claimant has had 11 consecutive hours of rest while still being a 24 hour period in which he was at work then the terms of Regulation 10 have been complied with.

34. The Tribunal's decision is therefore that the respondents did not refuse to permit the Claimant to exercise his right to a daily rest period in respect of the work he did on 8 and 8/9 July 2016. Although both parties agreed that the decision which the Tribunal required to make in this case referred only to this narrow question it is clear that both parties sought to extrapolate from our ruling an answer as to whether or not the respondents' rota is compliant in general terms with the Working Time Regulations. It is not for us to speculate however we should say that the solution adopted by the respondents would appear to work in respect of circumstances where an employee is called out for one relatively short period of time after the end of a normal working day. It would not however cover a situation where an employee was subject to multiple call outs. It is clear that if, for example, an employee was subject to repeated call outs at six hourly intervals over the course of a weekend then no matter what 24 hour period was chosen the terms of Regulation 10(1) would not be met. It may well be however that this is something which does not ever happen in practice. In any event it is not for us to speculate but simply to rule that on the basis of the narrow question before us the claimant's claim does not succeed and is therefore dismissed.

35. We would like to thank the parties for the work they did in agreeing a joint statement of facts and for the high quality of their submissions to the Tribunal which were of considerable assistance to us.

Employment Judge: Ian McFatridge
Date of Judgment: 24 March 2017
Entered in register: 24 March 2017
and copied to parties