Case No. 2401712/2022
Code V

EMPLOYMENT TRIBUNALS

Claimant: Mr Florian Condratof

Respondent: Securitas Security Services (UK) Ltd

Heard at: Remotely by CVP **On:** 19 August 2022

Before: Employment Judge Holmes

REPRESENTATION:

Claimant: In Person

Respondent: Ms J Young, Counsel

RESERVED JUDGMENT

It is the judgment of the Tribunal that:

1.The claimant's claim under reg. 15 of failure to allow him to take holiday contrary to reg.13/13A of the Working Time Regulations 1998 was presented out of time, and it was reasonably practicable for the claim to have been presented within time. This claim is dismissed.

2.The Tribunal, by consent, having considered that the claimant's application to the Tribunal was for a determination under s.11(2) of the Employment Rights Act 1996 of the terms of the particulars that should have been provided in the written statement of terms of employment under s.1 of that Act , the Tribunal determines the relevant particulars in relation to holiday entitlement to be that the claimant was entitled to holiday calculated in accordance with the Working Time Regulations 1998, and had no additional, contractual entitlement to 28 days holiday per annum. The particulars contained in the claimant's contract of employment dated 17 January 2020 are confirmed.

REASONS

1. The claimant was , and remains, employed by the Respondent. By a claim form presented on 4 March 2022 2022 he claimed holiday pay.

2. The essence of his claim is that he considers that he has, as he had previously had in prior employments, an entitlement to 28 days holiday per annum. He contends that this was a term of his contract of employment, which was originally a term of his employment when employed by Omni Payroll Services, and that it has remained a term of his contracts of employment , notwithstanding that his employment was transferred to the respondent in 2017 , and that he has subsequently transferred from London to Manchester, in January 2020 under a further contract of employment , which is his current contract.

3. The claimant is unrepresented, and English is not his first language, but he was perfectly capable of expressing himself , and understanding the proceedings.

4. The respondent was represented by Ms Young of counsel. All parties appeared by CVP. There was an agreed bundle. The claimant gave evidence, and called Kingsley Amah as his witness. He also adduced a witness statement from Farhan Faisal, which was taken as read. Michael Vaughan and Danielle Newbould gave evidence for the respondent. Any relevant statutory provisions not set out below are set out in the Annexe to this judgment.

The nature of the claims, and time limits.

5. At the outset of the hearing the Employment Judge explored with the claimant the type of claim he was making. On the claim form he had ticked the box for “holiday pay”. There are, the Employment Judge explained, two ways in which a claim for holiday pay can arise. One, (the most common) is where the employment has ended, but the worker has not used up his or her holiday entitlement, so they are entitled to a payment in lieu of untaken holiday at the end of their employment. That was not the case here. The other, is where a worker has actually taken holiday, but the employer has refused to pay the worker for that holiday. The claimant confirmed that was not the case here either, he had not taken any holiday and not been paid for it.

6. Rather, the claimant appeared to be complaining that his employers were not permitting him to take 28 days holiday per annum. He was asserting that this was his entitlement, but the respondent would not acknowledge this. The Employment Judge therefore explored with the claimant whether he was contending that he had sought to exercise his right to holiday, and that this had been refused. If so, that would be a complaint under reg. 30 that the respondent had refused him the exercise of his right to annual leave under reg. 13/13A. That appeared to be the type of claim he was actually trying to make.

7. The claimant had raised with the respondent in 2020 that he considered he was entitled to 28 days annual leave, which resulted in an outcome letter dated 27 October 2020 (page 95 of the bundle) which set out the respondent’s position that he did not have an entitlement to 28 days leave a year.

8. He again raised the issue with the respondent on 14 July 2021, and a grievance process was then followed. The claimant received the outcome on 10

September 2021, to the effect , again, that the respondent did not agree that the claimant was entitled to 28 days holiday a year. The claimant was advised of his right of appeal against the outcome, but he did not appeal.

9. That, it seemed to the Employment Judge , was therefore the point at which the claimant could say that the respondent was refusing to allow him to exercise his right to annual leave. He did not seek any specific leave, nor did he take any leave which the respondent would not then pay for, so he had no claim for holiday pay. To the extent that there was any refusal of the exercise of his rights under reg. 13/13A, however, that must have been the date of that refusal.

10. That , therefore, would be the date from which the time limit under reg.30 of 3 months would then run. Thereafter, the claimant initiated ACAS early conciliation on 28 November 2021, obtaining a certificate on 30 November 2021.

11. The relevant time limit under reg. 30 is set out in reg.30(2), which provides :

(2) Subject to regulation] 30B, an employment tribunal shall not consider a complaint under this regulation unless it is presented—

(a) before the end of the period of three months (or, in a case to which regulation 38(2) applies, six months) beginning with the date on which it is alleged that the exercise of the right should have been permitted (or in the case of a rest period or leave extending over more than one day, the date on which it should have been permitted to begin) or, as the case may be, the payment should have been made;

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three or, as the case may be, six months.

12. Whilst the claimant went to ACAS to commence early conciliation within that initial three month (reg. 38(2) does not apply) time limit, having obtained a certificate on 30 November 2021, he did not then present the claim until 4 March 2022. That makes the claim considerably out of time.

13. That meant that the Tribunal could only allow the claim to proceed if satisfied that it was not “reasonably practicable” for the claimant to have presented the claim within the initial three month time limit.

14. The Tribunal explored with the claimant why he delayed so long. He was clearly aware of the Tribunal process, and how to start it, as he went to ACAS in late November 2021. The next step of presenting the claim was an easy one to take, and the claimant could and should have taken it. He said he understood that there was a time limit.

15. In terms of an explanation for why he then delayed for a further 4 months, the claimant said that he did not want to go to "Court", he wanted to sort the issue out with his employers, but his managers did not want to. He thought he could raise it each year, and said that he will do so.

Discussion and ruling upon the time limit issue.

16. The Tribunal has had to consider whether the matters raised by the claimant amount to a lack of reasonable practicability. That is phrase that has been considered in a number of cases, many of which relate to claims of unfair dismissal, where the same test for extending time applies.

17. In terms of what a want of reasonable practicability means there have been a number of cases in the higher Tribunals and Courts. In paragraph 15 of the judgment of the EAT in ***Norbert Dentressangle Logistics Limited -v- Graham Hutton UKEAT S/0011/13,*** Langstaff , P, (as he was then) sets out a number of cases in which the meaning of this phrase is considered and he says this:

"There is no dispute before me as to general principles of law that are applicable, first though I should emphasise that every case in this area of all areas must necessarily depend upon its own particular facts. The question of what is reasonably practicable is explained in a number of authorities of which it is necessary only here to refer to paragraph 34 of ***Palmer and Saunders against Southend on Sea Borough Council 1984 IRLR****, a decision of the Court of Appeal [and he cites the composition of the Court of Appeal and then goes on to refer to paragraphs 34 and 35 of the judgment where Lord Justice May said this]*

"in the end much of the decided cases have been decisions on their own particular facts and must be regarded as such. However, we think that one can say that to construe the words reasonably practicable as the equivalent of reasonable is to take too favourable a view to the employee. On the other hand, reasonably practicable means than merely what is more than reasonably capably physically of being done. Perhaps to read the word practicable as the equivalent of feasible …….. and to ask colloquially at untramelled by too much logic was it reasonably feasible to present the claim to the Industrial Tribunal within the relevant three months is the best approach to the correct application of the relevant subsection."

What however is abundantly clear on all the authorities is that the answer to the relevant question is predominantly an issue of fact for the Industrial Tribunal and that it is seldom that an appeal from its decision will lie,.."

and he goes on to deal with the test to be applied on appeal. Langstaff, P. then goes on at paragraph 16 to cite Lady Smith's judgment in ***Asda Stores v Kauser UKEAT/0165/07*** where she said it was perhaps hard to discern how :

".. 'reasonably feasible' adds anything to 'reasonably practicable', since the word practicable means possible , and possible is a synonym for feasible. The short point seems to be that the Court has to be astute to underline the need to be aware that the relevant test is not simply a matter of what was possible but asking whether, on

the facts of the case as found, it was reasonable to expect that which was possible to be done to have been done"

and that , said Langstaff, P, is a useful insight.

18. Whereas, in certain, but limited, circumstances, pursuing internal procedures, such as an appeal may, but not necessarily will, be considered as amounting to a lack of reasonable practicability , in this case the claimant did not appeal the outcome of the grievance. Indeed there was no ongoing process, there was simply the claimant's hope that the matter would be resolved, coupled with his view (correct, as it happens) that he could simply raise the matter each year.

19. None of that amounts to a want of reasonable practicability, and the claimant's claim under reg. 30 that the respondent has refused to permit him to exercise his right to annual leave under reg. 13/13A of the Working Time Regulations 1998 was presented out of time, and there is no basis for the Tribunal extending the time for its presentation to 4 March 2022. It is dismissed.

An alternative basis for the determination of the claimant's complaint.

20. That could have been the end of the matter, as the claimant only made this one claim. Its dismissal, however, on this basis would mean that the Tribunal would not determine the merits, and the issue of whether the claimant does indeed have a leave entitlement of 28 days per year would not be determined. As the claimant says, however, he could bring another claim, on the same basis , this time doing so in time, by simply making the same request again in the next holiday year. It would clearly be in the interests of both parties , who have prepared for this hearing, that the issue be decided by the Tribunal, if that was possible.

21. It seemed to the Employment Judge that the claimant was asserting that he had a contractual right to 28 days annual leave per year. The respondent, however, contends that he does not have such a right, his entitlement being that which is provided for in his current contract of employment (pages 75 to 86 of the bundle) in these terms:

"HOLIDAY ENTITLEMENT: Average days worked in shift pattern x 5.6 weeks (based on average rostered shift pattern and average earnings (up to a maximum of 5 days) x 5.6 weeks)."

22. Whilst not expressed in any number of days, the claimant accepts that as a calculation , when applied to his working pattern, this produces an entitlement of 26.1 days annual leave.

23. The issues between the parties is thus a narrow one, does the claimant have a contractual right to 28 days annual leave, or does the contract of employment correctly set out his entitlement, which is basically that which he has under the Working Time Regulations 1998?

24. Under the Employment Rights Act 1996 ("the ERA") , s.1 requires an employer to provide a worker with a written statement of terms of employment, setting out certain specified matters. These include, at s.1(4)(d):

(i) entitlement to holidays, including public holidays, and holiday pay (the particulars given being sufficient to enable the worker's entitlement, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated),

25. The claimant's case is that the terms of his contract of employment do not reflect his true contractual entitlement, and hence do not satisfy s.1 of the ERA. Fortunately , a mechanism exists whereby a Tribunal can be asked to determine what particulars ought to be contained in a s.1 written statement. This procedure is under s.11 of the ERA, which provides :

11 References to employment tribunals

(1) (N/a – applies where no statement is provided at all)

(2) Where—

(a) a statement purporting to be a statement under section 1 or 4, or a pay statement or a standing statement of fixed deductions purporting to comply with section 8 or 9, has been given to a worker, and

(b) a question arises as to the particulars which ought to have been included or referred to in the statement so as to comply with the requirements of this Part, either the employer or the worker may require the question to be referred to and determined by an employment tribunal.

26. Upon such a reference, the Tribunal's powers are:

12 Determination of references

(1) (N/a – applies where no statement provided).

(2) On determining a reference under section 11(2) relating to a statement purporting to be a statement under section 1 or 4, an employment tribunal may—

(a) confirm the particulars as included or referred to in the statement given by the employer,

(b) amend those particulars, or

(c) substitute other particulars for them,

as the tribunal may determine to be appropriate; and the statement shall be deemed to have been given by the employer to the worker in accordance with the decision of the tribunal.

27. The Employment Judge raised with the parties the possibility of dealing with the claimant's claim to the Tribunal in this manner. Both parties agreed that the Tribunal should so proceed, and it accordingly did so.

Determination – the Facts.

28. Having heard the evidence , read the documents , and considered the submissions , the Tribunal finds the following relevant facts:

28.1 The claimant was employed from 8 June 2015 by Omni Payroll Services under an undated contract of employment, or more accurately, a written statement of particulars (pages 31 to 35 of the bundle), in which the terms as to holiday entitlement were :

*"**7. Holidays***

You are entitled to 28 days holiday per year.

This includes public holidays.

Your holiday year begins on: 1st April

Ordinarily, unused entitlement may not be carried forward to the next holiday year."

28.2 Further, by an email dated 6 May 2015 from Stephen Hill to the claimant and his colleagues, a management reply to an enquiry raised as to holiday entitlement confirmed that the entitlement was to 28 days holiday per year (page 30 of the bundle).

28.3 This employment was subsequent to the claimant's previous employment , since July 2102 with another company. He was employed at an Amazon site in the London area, LHR10, the contract for which was transferred to Omni in 2015.

28.4 Thereafter, there was a further TUPE transfer of the claimant's contract of employment to the respondent in 2017. On 19 February 2017 (page 48 of the bundle) the respondent sent the claimant a new contract of employment , showing

his start date as 23 January 2017, but acknowledging his continuity of service from July 2012 . The claimant continued to work at the same Amazon site as previously.

28.5 That new contract of employment is at pages 49 to 58 of the bundle. It was signed and dated by the claimant on 7 March 2017. On page 1 the document contains this clause:

"The terms set out in this contract supersedes (sic) ***any current or previous contract, including any of the related terms held within the contract or related handbooks."***

28.6 The provisions as to holiday are at para. 1.10:

"Average days worked in shift pattern x 5.6 weeks (based on average rostered shift pattern and average earnings (up to a maximum of 5 days) x 5.6 weeks)."

And , at Clause 6:

"The Company's holiday year runs between 1 st January and 31stl December. If your employment starts or finishes part way through the holiday year, your holiday entitlement during that year shall be calculated on a pro-rata basis only for full months worked. If you work part-time or shifts you will receive a pro-rata entitlement based on the number of hours or days for which you have worked on average over the previous 12 weeks.

Holiday entitlement for each holiday year Is 5.6 weeks; this Includes Bank and/or Public holidays.

Holiday pay is calculated by means of the average hourly pay averaged over the previous 12 week payment period.

Holiday entitlement will accrue based on the average number of working hours or days over the previous 17 weeks.

Unused holiday entitlement cannot be carried forward and will not be reimbursed, so you will be required to use your entire holiday entitlement during the holiday year.

Requests for holiday must be submitted in writing at least 28 days in advance. Usually you will not be able to take more than 2 weeks' consecutive holiday.

Holidays can only be taken in full days unless there are exceptional circumstances. Holidays will only be granted in line with the needs of the business and may be allocated by the company with prior written notification.

Should you leave employment having taken more holiday than you are entitled to in the current holiday year the Company reserves the right to deduct the overpaid holiday pay from your final salary.

In a similar way, should you leave employment with accrued holiday owing the amount owing will be added to your final pay and will be calculated on full months worked in the leave year.

Holiday dates must be agreed In writing in advance. The Company may require you to take holiday on specific days which will be notified to you.

You will not accrue annual leave entitlement where you have been on unauthorised absence."

28.7 Despite this apparent change, the claimant continued to take 28 days annual leave whilst employed by the respondent under this contract.

28.8 On 7 November 2018 (page 59 of the bundle) the respondent issued the claimant with a further contract of employment (pages 61 to 71 of the bundle) with effect from 1 October 2018. It contains the same clause as to it superseding any current or previous contract or handbook, and the same terms as to holiday entitlement as were contained in the previous contract of employment referred to in paras. 28.5 to 28.6 above. The claimant electronically signed the document, and the respondent signed and dated it 7 November 2018. The claimant continued to live in Middlesex, and work at the Amazon warehouse in the London area. His job title in this contract was site – based officer.

28.9 Some time in 2018 (it is not clear when) the claimant took a month of holiday, to get married. This would have put him over his holiday entitlement for the year, and by how much would depend upon whether he was entitled to 26 or 28 days annual leave. He raised this with Gabriella De Castro Martins (Operations Support), and she put him back onto 28 days. This is not documented, but the Tribunal accepts the claimant's evidence on this point. Similarly, in 2019 the holiday entitlement was put at 26 days, but the claimant queried this again, and it was restored to 28 days.

28.9 In November 2019 the claimant expressed interest in working at a new Amazon site in the Manchester area. He applied for the role of Supervisor, but was

unsuccessful. He was, however, offered the role of Team Leader (see pages 72 and 73 of the bundle) which he accepted.

28.10 The claimant was provided with a further contract of employment (pages 75 to 86 of the bundle) . He signed it, electronically, and it took effect from 20 January 2020. His place of work was now Amazon MAN11, his job title was Team Leader. The contract contains the same clause as to it superseding any current or previous contract or handbook, and the same terms as to holiday entitlement as were contained in the previous contract of employment referred to in paras. 28.5 to 28.6 above, save that the clause relating to holiday was now Clause 5.

28.11 The claimant in or about July 2020 noticed on the "portal" used for booking shifts and leave, that his entitlement was only shown as 26 days (examples are at pages 165 and 166 of the bundle, but this is not apparent from these documents), and he therefore questioned why he had not got the 28 days which he considered was his entitlement. Craig Morse, Supervisor, responded to this query by email to the claimant and his colleagues in Manchester on 27 June 2020 (page 89 of the bundle) saying that Michael Vaughan had looked into the holiday entitlement of the claimant and others who worked 3 days, 3 nights and 3 off, and whilst they had been on 28 days, this had been changed to 26 days in line with the respondent's policy.

28.12 The claimant then on 8 July 2020 raised a grievance (pages 90 and 91 of the bundle) in which he questioned why he had been entitled to 28 days leave when working at Amazon LHR10, but when he moved up to Manchester this had been cut to 26 days. He also questioned why those working the same shift patterns in London were still getting 28 days, as were workers in Cambridge and Scotland. He made the point that as they were all working the same shifts on the same contacts , they should all get the same.

28.13 Michael Vaughan , the Deputy Branch Manager at the time, dealt with the claimant's grievance. He met with him on 26 October 2020. The notes of the meeting are at pages 92 to 94 of the bundle. The claimant raised some questions , and said he would try to find out why London Amazon staff got more holiday.

28.14 Michael Vaughan provided the claimant with an outcome letter on 27 October 2020 (page 95 of the bundle). He explained how he had looked into the questions raised by the claimant. He explained the reasons why relief officers on a 48 hour contract got 48 hours, this was based on them working 5 days per week. Everyone who worked the claimant's shift pattern got 26.1 days, which was correct on the calculations. He could not comment on the London branch. He had contacted the London branch, and was awaiting a response. He advised the claimant of his right of appeal. The claimant did not appeal.

28.15 Nothing more appears to have been heard about the matter until 9 July 2021 when the claimant sent an email (page 97 of the bundle) to HR Admin. The claimant, however, contends, and contended in this email, that he had seen sending emails but they had been ignored. He raised the same issues, questioning again why Manchester and London staff were being treated differently.

28.16 The claimant received a reply to the effect that his previous email had been forwarded to Michael Vaughan, and on 14 July 2021 the claimant replied to say that he was the person who had reduced his holiday, and heard his grievance. He therefore wanted this grievance dealt with by someone else. Miranda Guzman of HR responded on 15 July 2021 and asked the claimant to out the points of his grievance in writing for it to be considered (page 96 of the bundle).

28.17 The claimant's grievance was dealt with as a new grievance, and Danielle Newbould , Deputy Branch Manager was assigned to hear it. She wrote to the claimant on 13 August 2021 to inform him of the arrangements. A Teams grievance meeting was held on 20 August 2021. The notes of the meeting are at pages 100 to 105 of the bundle.

28.18 In the meeting the claimant reiterated the points that he had previously made, and the difference between the way in which the London and Manchester staff were treated. He asked if he would get an extra two days if he now moved back to London. The outcome he wanted was that his two days holiday were restored. Danielle Newbould agreed to make some further enquiries and then provide the claimant with an outcome

28.19 She did so by letter of 10 September 2021 (pages 104 to 105 of the bundle). In rejecting his grievance , Danielle Newbould recorded how the claimant 's holiday entitlement was correctly calculated in accordance with his shift pattern, and on the basis that his average working week was 4.67 days. She referred to the London site apparently having a different entitlement, but said that this was an error, which had been raised with London.

28.20 In relation to the extra days that London staff were given, she explained how there had been some employees whose employments had been transferred under TUPE, and this led to some having difference terms and conditions as to holiday, sickness and other matters, so not everyone was on the same contract.

28.21 She ended by advising the claimant of his right of appeal. The claimant did not appeal.

28.22 the Tribunal accepts, for it was not challenged, that employees working at Amazon LHR10 on the same shift pattern as the claimant were (and may still be) entitled to 28 days holiday per year.

29. Those, then , are the relevant facts. This was not a case in which there was any real factual dispute.

30.The parties made their submissions, largely repeating the arguments that had been well rehearsed in the evidence. The respondent's position was that the terms of the claimant's contracts had been clear. There had been three, all of which had the same terms as to holiday entitlement. The claimant had never had an entitlement to 28 days with the respondent. When he came to Manchester this was a new contract, whatever the previous position. The claimant had a new role, in a new location,. He had not been the subject of any TUPE transfer. The new contract was clear, and there was no entitlement to 28 days.

31. The claimant asked again why , when they did the same work on the same shift patterns, the London staff got 28 days but he (and his Manchester colleagues) only got 26 days. Surely there had to be consistency. He just wanted everyone to be on the same footing. If 26 days was right, then that should be the position in respect of London too. He would accept that. Why had he actually been allowed 28 days, in 2018 and 2019, when he had questioned this ? He was not on a new contract in Manchester, the terms were just the same as the previous ones. If the company had made a mistake in respect of the London staff, why had this not been corrected?

Discussion and finding.

32. The issue here is a narrow one. Does the claimant have a contractual entitlement to 28 days holiday, or is his entitlement limited to a number of days calculated in accordance with the formula set out at para.1.10 of his current contract of employment? He accepts that if it is the latter, the respondent has correctly calculated his entitlement.

33. The starting point, as ever, must be the document itself, in this instance the contract of employment at pages 75 to 86 of the bundle, which is stated to start on 20 January 2020 , bears an electronic signature from the claimant, undated , and a signature on behalf the respondent , dated 17 January 2020. The terms as to holiday are set out on the first page at para. 1.10. They do not make any reference to an entitlement of 28 days , but contain a formula for the calculation of holiday entitlement. Those terms, along with those set out in clause 5 of this contract, are in virtually identical terms to those set out in the previous two contracts that had been issued to the claimant since his employment transferred to the respondent under a TUPE transfer in early 2017.

34. Under the terms of the claimant's employment with the transferor Omni Payroll Services (pages 31 to 41 of the bundle) it is clear that the claimant , under that contract , did have a contractual entitlement to 28 days annual leave. When, therefore, the claimant's contract of employment was transferred to the respondent that entitlement also transferred. To the extent , therefore , that the first two contracts of employment issued to the claimant following that transfer set out a differing entitlement , this would in fact amount to an attempt to impose a unilateral variation of the terms of the claimant's employment contract upon which his employment was transferred to the respondent .

35. In practice, however, it seems that the claimant successfully maintained his entitlement to 28 days annual leave whilst he remained at the London site. He successfully challenged any reduction below 28 days, and the realisation that this remained his entitlement may well have been the explanation for this. It may also, as Danielle Newbould observed , explain why staff working the same shifts as the claimant at the London site have , it seems, retained a 28 day holiday entitlement.

306. All that , however, whilst of some historic significance, and understandably influential upon the claimant's view of his entitlement, is beside the point, when one considers that upon his transfer to Manchester the claimant did indeed enter into a new contract of employment. The Tribunal accepts , and can understand why, that the claimant does not regard this as a new contract. He points out the many obvious similarities in the terms of his previous two contracts with the respondent. That contracts may contain similar or identical terms does not make them the same. In this case there were two fundamental changes to the claimant's employment. The first was its location, from London to Manchester, and the second was the claimant's job title , which changed from site-based operative, to Team Leader. As the claimant was moving sites, his employment in Manchester could no longer be considered as continuation of the contract of employment that he had with Omni, and which was transferred to the respondent, when it took over the contract to provide services at the Amazon London site. The site at Manchester was a new site, the claimant was, whilst retaining his continuity of employment , starting a new role as a Team Leader.

37. Consequently, as is stated on the first page of the contract , this contract did indeed supersede all previous contracts. That statement , it is appreciated also appears on the previous two contracts, but its effects in those two documents were legally limited by the operation of the TUPE provisions. No such limitation, however, can apply in the case of this new contract, which must be read as it is expressly written. That, of course, means that there is no contractual entitlement to 28 days of annual leave, and the provisions at para. 1.10 on the first page as to the calculation of holiday entitlement are correct, and the claimant's argument for a contractual entitlement of 28 days fails. That this may produce regional discrepancies, and be seen as some form of "discrimination" (though not in any form of which a complaint can be made to an Employment Tribunal) between sites cannot affect the decision. The Tribunal can only determine what the provisions of a contract are, it cannot determine whether they are fair.

38. The Tribunal accordingly determines the reference under s.11(2) of the ERA 1996 by confirming the particulars provided by the respondent in the contract of employment dated 17 January 2020 as correct.

3. The Tribunal appreciates that this will be disappointing for the claimant , but at least the issue has now been considered and determined.

Employment Judge Holmes
Dated : 31 August 2022

RESERVED JUDGMENT SENT TO
THE PARTIES ON 9 SEPTEMBER 2022

FOR THE TRIBUNAL OFFICE

ANNEXE – THE RELEVANT STATUTORY PROVISIONS

Working Time Regulations 1998

13 Entitlement to annual leave

(1) Subject to paragraph (5), a worker is entitled to four weeks' annual leave in each leave year.

13A Entitlement to additional annual leave

(1) Subject to regulation 26A and paragraphs (3) and (5), a worker is entitled in each leave year to a period of additional leave determined in accordance with paragraph (2).

(2) The period of additional leave to which a worker is entitled under paragraph (1) is—

(a) to (d) N/a

(e) in any leave year beginning on or after 1st April 2009, 1.6 weeks.

(3) The aggregate entitlement provided for in paragraph (2) and regulation 13(1) is subject to a maximum of 28 days.

(4) A worker's leave year begins for the purposes of this regulation on the same date as the worker's leave year begins for the purposes of regulation 13.

(5) Where the date on which a worker's employment begins is later than the date on which his first leave year begins, the additional leave to which he is entitled in that leave year is a proportion of the period applicable under paragraph (2) equal to the proportion of that leave year remaining on the date on which his employment begins.

30 Remedies

(1) A worker may present a complaint to an employment tribunal that his employer

(a) has refused to permit him to exercise any right he has under—

(i) regulation 10(1) or (2), 11(1), (2) or (3), 12(1) or (4), 13 or 13A;

(2) Subject to [regulation] 30B, an employment tribunal shall not consider a complaint under this regulation unless it is presented—

(a) before the end of the period of three months (or, in a case to which regulation 38(2) applies, six months) beginning with the date on which it is alleged that the

exercise of the right should have been permitted (or in the case of a rest period or leave extending over more than one day, the date on which it should have been permitted to begin) or, as the case may be, the payment should have been made;

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three or, as the case may be, six months.

Employment Rights Act 1996

1 Statement of initial employment particulars

(1) Where a worker begins employment with an employer, the employer shall give to the worker a written statement of particulars of employment.(2) Subject to sections 2(2) to (4)—

(a) the particulars required by subsections (3) and (4) must be included in a single document; and

(b) the statement must be given not later than the beginning of the employment.

(3) The statement shall contain particulars of—

(a) the names of the employer and worker,

(b) the date when the employment began, and

(c) in the case of a statement given to an employee, the date on which the employee's period of continuous employment began (taking into account any employment with a previous employer which counts towards that period).

(4) The statement shall also contain particulars, as at a specified date not more than seven days before the statement (or the instalment of a statement given under section 2(4) containing them) is given, of—

(a) the scale or rate of remuneration or the method of calculating remuneration,

(b) the intervals at which remuneration is paid (that is, weekly, monthly or other specified intervals),

(c) any terms and conditions relating to hours of work including any terms and conditions relating to—

(i) normal working hours,
(ii) the days of the week the worker is required to work, and
(iii) whether or not such hours or days may be variable, and if they may be how they vary or how that variation is to be determined,

(d) any terms and conditions relating to any of the following—

(i) entitlement to holidays, including public holidays, and holiday pay (the particulars given being sufficient to enable the worker's entitlement, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated),

(ii) incapacity for work due to sickness or injury, including any provision for sick pay, …
