EMPLOYMENT TRIBUNALS

Claimant: Mr S Garnier

Respondent: Tudor Services Limited

Heard at: **Bristol** **On:** **23 August 2019**

Before: **Employment Judge Midgley**

Representation
Claimant: Mr P Wareing, counsel
Respondent: Miss S Hippisley, lay representative

JUDGMENT

1. The claimant's claim that the respondent made unlawful deductions to his wages pursuant to s.13 ERA 1996 is not well founded and is dismissed.

2. The claimant's claim for accrued but untaken holiday pay is not well founded and is dismissed.

REASONS

The claim

1. By a claim form presented on the 19 January 2019, the claimant brought claims of unlawful deduction of wages and accrued but unpaid holiday pay. The respondent defended the claims.

2. The dates on the ACAS certificate were as follows: date A 20 November 2018, date B 20 December 2018.

3. In his claim form the claimant sought a sum of £6000 in respect of unpaid wages including accrued but untaken annual leave. The particulars of claim, which had been drafted by the claimant's solicitors stated as follows:

'The claimant had agreed with the respondent that he would be paid £145 per

shift. The respondent paid the claimant £100 per shift in breach of this agreement. The claimant further took 20 days holidays and was similarly only paid £100 and no £145 per shirt [sic]

The claimant worked 204 days and is owed £5100 wages and £900 holiday pay… '

4. It will be noted that the claim was brought in respect of 204 days, which it was presumed equated to 204 shifts out of a possible total of 292 days in the period that the claimant was employed (27th November 2017 until 14 September 2018). However, the sum claimed by way of unpaid wages could not sensibly be calculated on that basis – the difference in pay was alleged to be £45, and a calculation of that shortfall against the 204 shifts did not equate the figure of £5100 claimed as wages (45×204 = £9,180).

5. The respondent entered a response on 19 February 2019. In its response, the respondent asserted that the claimant's rate of pay from the date of his appointment was £100 per shift together with a bonus of £20 per shift if all paperwork was correctly completed to a satisfactory standard, and an overnight allowance of £25 per night.

6. At paragraph 7 the respondent asserted that in September 2017 it became aware of changes in European law relating to foreign drivers requiring them to provide proof that they were paid the minimum wage. The respondent maintains that it subsequently appointed an agency, to which it explained the details of the claimant's salary (and that of other drivers) as set out in paragraph 5 above. In consequence a new contract was drawn up which incorporated all the elements of pay into a single payment. This contract was to be used when the claimant was driving in Europe.

7. The respondent asserted that while the claimant drove in Europe before April 2018, he did not drive in countries where the relevant paperwork was required. Once the claimant did work in the EU countries where the paperwork was required, the respondent duly applied for it and provided them to the claimant. The respondent maintains that throughout his employment the claimant did not raise a grievance or query his rate of pay at any stage.

The issues

8. In essence, therefore, the respondent maintained that there had been no variation to the claimant's rate of pay, that he had always been paid a daily rate of £100 with £25 an overnight allowance and a potential bonus of £20 equating to a total of £145. The claimant asserted that his contract had always been at a daily rate of £145.

9. The issues to be determined with therefore as follows:

   9.1. What were the terms of the claimant's contract of employment relating to wages? Was there a basic daily rate of £100 together with an overnight allowance of £25 per shift and a potential bonus of £20 per shift as the respondent alleged, or was there a basic daily rate £145 as the claimant alleged?

   9.2. If the terms were as argued for by the respondent, was there any variation to those terms?

9.3. If so, did the claimant accept the varied terms?

The hearing

10. The claimant had prepared a witness statement and a bundle of documents which it had provided to the respondent. The Tribunal was provided with a copy of the witness statement but not a copy of the bundle.

11. At the start of the hearing Mr Wareing informed the Judge that the bundle had been sent to the Tribunal. Efforts were therefore made to locate the bundle, but in the end they proved to be fruitless because the bundle had not in fact been sent to the Tribunal as suggested – when Mr Wareing obtained instructions from the solicitors acting for the claimant it was clarified that the bundle had been sent to Mr Wareing but a copy had not be provided for use by the Tribunal. Mr Wareing did not have a copy and was not in a position to provide one. In consequence, where the claimant sought to rely on a document from the claimant's bundle Mr Wareing provided the Judge with a copy from his bundle.

12. The documents passed to the Judge consisted of the following:-

12.1. Pages numbered 34 and 39 from the claimant's bundle containing:

12.1.1. An email from the claimant to Mark Hippisley dated 23 August 2018 timed at 15:01; and

12.1.2. an email chain between the claimant and Mr Hippisley commencing on 18 August 2018 and ending on 23 August 2018 at 1616.

12.2. A copy of the principal terms and conditions on paper headed with the respondent's letterhead which was sent to the claimant. This contained the terms and conditions the claimant relied upon to establish his claim for unlawful deduction of wages. The document is dated 29 November 2017 but is unsigned by the claimant.

13. The respondent had also prepared a bundle of documents, consisting of:

13.1. an outline of the case,

13.2. a witness statement of Mark Power-Hippisley,

13.3. a statement from Luke Power-Hippisley

13.4. a statement from James Cole

13.5. the job advertisement placed on Facebook,

13.6. the claimant's contract (unsigned)

13.7. the claimant's P 45

13.8. pay slips for the period 31 December 2017 to 31 March 2018 and 31 July 2018.

13.9. An email sent by Mark Hippisley to the claimant on 27 July 2018

attaching pay slips for April, May and June 2018 (the pay slips themselves were not available for the tribunal).

13.10. A bank statement showing payments of £1922.13 to the claimant from the respondent on 27 July, and a payment on 20 July from the respondent to the claimant of £1000.

13.11. A memo prepared by Mark Hippisley relation to a change in contract that was to be carried by all drivers who worked in Austria, Germany and France.

13.12. Copies of the documentation to be provided to the European authorities, and confirmation of the instruction of an agent in respect of those matters.

The conduct of Mr Wareing during the hearing.

14. There were two aspects of Mr Wareing's conduct during the hearing which caused the Employment Judge concern. At the outset of the hearing, Mr Wareing asked the Employment Judge what capacity Miss Hippisley was appearing in as representative. Given that Miss Hippisley shared the same name as Mr Hippisley, and her appearance suggested that she was likely to be his daughter (if she did not explain that directly to Mr Wareing before the hearing began), one would hope that Mr Wareing would have understood that she was appearing as a lay representative, without legal qualification.

15. If Mr Wareing did not understand that such representatives are permitted in the Tribunal, then that would reflect a serious lack of relevant knowledge of the Tribunal's rules of procedure. If Mr Wareing did understand that matter, that is suggestive that the comment was made to undermine and discomfort Miss Hippisley. Such a course would, quite likely, constitute a breach of Rule C7 of the BSB Code of Conduct for barristers, which provides "you must not make statements or ask questions merely to insult, humiliate or annoy a witness or any other person."

16. The Employment Judge was prepared to give Mr Wareing the benefit of the doubt in that instance.

17. However, following the conclusion of Miss Hippisley's cross examination of his client, during which the Employment Judge did not intervene to suggest that the matters were irrelevant or improperly put, Mr Wareing began his cross-examination by saying to the Judge words the effect of "I can assure you, Sir, that my cross examination will be relevant and concise, unlike the meandering nonsense you've just had to endure."

18. The Employment Judge was in no doubt that that comment contravened Rule C7 the BSB code of conduct, and therefore immediately reprimanded Mr Wareing in open court, informing him that any issue of relevance was a matter for the Judge, who had not intervened, and that his comments were rude, misplaced and offensive and would not be tolerated. The Employment Judge therefore required Mr Waring to offer an immediate apology to Miss Hippisley. He did so.

19. Fortunately, Mr Wareing's ill-judged conduct was not repeated. It is to be hoped that Mr Wareing will reflect upon these matters and ensure there is no

repetition in the future, particularly in his dealings with litigants in person and their representatives; it does not reflect well on him or help to promote the public's confidence in the Bar or the Tribunal service as a whole.

20. For the avoidance of doubt, the conduct of Mr Wareing as described above had no impact on the decision below.

The parties

21. The claimant was employed by the respondent as a long-distance lorry driver from 27 November 2017 until his resignation on 17 August 2018.

22. The respondent carried on business as a haulage contractor operating in the UK and in Europe. Mark Hippisley is a director of the Respondent, as is his son, Luke Power-Hippisley. The respondent's representative is Mr Hippisley's daughter.

The facts

23. I heard evidence from the claimant, and from Mr Luke Power-Hippisley and Mr Mark Hippisley for the respondent. I carefully considered the documents presented to me by the claimant, and the documents in the respondent's bundle. I read and considered the witness statements of the claimant and those of respondent, although I could give limited weight to the statement of Mr Cole as he did not attend the purposes of cross examination.

24. I made the following findings of fact on the balance of probabilities.

25. The respondent advertised for an LGV driver on Facebook. I was provided with a copy of the advertisement in the claimant's bundle. The parties agree that the stated wage was £120 per day.

26. In November 2017, the claimant applied for and was interviewed in respect of the role by Luke Power-Hippisley, together with other applicants. The issue of pay was discussed and I accept Mr Power-Hippisley's evidence that the rate of pay was clearly explained as being £120, which incorporated a basic rate of £100 a shift with a potential bonus of £20 for completing all the paperwork required in a timely and efficient manner, with an overnight allowance of £25 per night. (Although I have given almost no weight at all to the evidence of Mr Cole, I note that Mr Power-Hippiseley's evidence is consistent with the account Mr Cole provided of his interview in his signed statement. I reiterate that my finding is made on the basis of my acceptance of Mr Power-Hippisley's evidence in this regard, the view I reached is merely affirmed by the evidence of Mr Cole).

27. The claimant was appointed to the role and was provided with a copy of the respondent's standard terms and conditions of employment.

The terms of the contract

28. The claimant suggests that the contract that was provided to the claimant was the version which was contained in the claimant's bundle, which at clause 8 expresses the daily rate of pay as being £145. By clause 10 of that contract an overnight allowance would be paid in addition to the daily rate, although the clause does not specify what that sum would be.

29. The respondents argue that the contract that was provided was the version in the respondent's bundle at appendix 2. That contract, at clause 8, provides for a daily rate of pay of £100 with an additional £20 per day bonus for "completing all work as required by the company to a satisfactory standard…. This bonus can be withheld at any time at the discretion of the company.' Clause 10 is in identical terms to the clause in the contract relied upon by the claimant.

30. The respondent provided the claimant with pay slips throughout his employment; those for December 2017 to March 2018 were provided to the claimant at the end of each relevant pay period, those for April, May and June were provided later by email. Each of the pay slips identified three elements of pay: a daily rate, a bonus rate and an overnight allowance. The daily rate is consistently £100 and the bonus rate consistently £20.

31. There is no documentary evidence to demonstrate that the claimant raised any concerns about the terms on which he was employed or the payment of his salary between his appointment and 18 August 2018, when the claimant informed Mr Hippisley that he intended to resign, as set out below. The claimant alleges that he raised concerns verbally with Mr Hippisley directly; Mr Hippisley denies it, arguing that he accompanied the claimant on a trip to Barcelona in January 2018, but the claimant did not raise it then or at any other time. I consider that evidence in the Decision below.

32. In or about September 2017 the respondent became aware of a change in EU regulations which required drivers working in specific EU countries to carry documentation that demonstrated that the Working Time Directive was being complied with. This required there to be a straightforward explanation of the contract terms detailing the earnings of the driver. However, at that stage, the respondent's drivers were not going to the countries to which the change in law detailed above applied, namely Austria, France or Germany.

33. In April 2018 that situation changed, as the respondent's drivers were delivering to Germany, which was one of the countries effected. The respondent, therefore, sought advice from an agency to ensure that its contractual documentation was in the correct form for those drivers. I accepted Mr Hippisley's evidence on this issue as it was which was consistent with the contemporaneous documents, and I found Mr Hippisley to be a credible and honest witness. The contemporaneous documents consisted of the document at appendix 5 in the respondent's bundle of documents – a schedule produced by the agency instructed by the respondent - dated 2 April 2018, which records that the period of activity would begin on 2 April 2018 and would end on 1 October 2018, and which contains a schedule of the workers to be deployed, listing the claimant amongst two others (including Mr Cole).

34. The agency therefore prepared the necessary documentation for the affected drivers in German (a copy of which was provided to me in appendix 4 of the Respondent's bundle) and Mr Hippisley altered the standard terms of conditions of employment that had been given to the drivers on their appointment. The nature of the change was to clause 8 where he altered the daily rate from £100 to £145 and deleted the following wording:

> "and checked by the company on completion of a statutory monthly record

sheet. You can earn an additional £20 per day is a bonus payment for completing all work as required by the company to a satisfactory standard is pointed out to you at your induction. This bonus can be withheld at any time at the discretion of the company."

35. Regrettably, Mr Hippisley omitted to alter clause 10. Whilst clause 10 did not express any figure for an overnight expense, it is clear to me, and I accept Mr Hippisley's evidence in this regard, that the £145 daily rate was intended to incorporate the overnight allowance.

36. Mr Hippisley says that he provided the affected drivers with a folder containing a copy of the new contract, a copy of the German documentation and a copy of the memo which is contained in the respondent's bundle at appendix 5. The memo explained not only the reason for the altered contract but the method of calculation for the pay. I'm entirely satisfied that that memo is a genuine document and has not been produced solely for the purpose of this litigation. I reject Mr Wareing's suggestion in that regard.

37. The claimant says that he never received the folder or a different contract and makes no mention of receiving the document in German (appendix 4).

38. On 18 August 2018 at 10:30 approximately, the claimant emailed Mr Hippisley stating 'morning boss, I'm making you aware that as of Monday, 20 August, my notice of termination of employment with Tudor Services will take effect. As per my contract my last working day will be Friday, 14 September.'

39. There is no complaint about pay or underpayment anywhere on the face of that document.

40. Later, on 20 August 2018, the claimant sent a further email to Mr Hippisley. The salient parts of that email are as follows:

'*after reading my contract of employment and checking my pay slips it has come to light that since being employed by Tudor Services my wages have been paid wrong…*

On my pay slips it says 'overnight expenses' which broken down daily is £25 and a day rate of £120.

On my contract paragraph 8, it clearly states 'the pay rate for this post is a day rate of £145. Your pay will be calculated according to the number of days that you work.'

Paragraph 10, it clearly states 'in addition to your salary you will receive the following allowance, overnight allowance and out-of-pocket business expenses.…'

So, every day I have worked for Tudor Services I've been paid £25 less than agreed in the contract.

After considering my options I have contacted ACAS for some advice and I've been advised to bring it to your attention as this is 'unlawful payment of wages' and give you the opportunity to rectify this oversight.'

41. Again, nowhere within that email does the claimant suggest that he has

previously raised concerns about the terms of his contract, the content of his pay slips or the pay that he has received. Indeed, the terms of the first paragraph make plain that any concern in relation to those matters must have occurred after the email sent on 18 August. The claimant sought to explain the phrase 'it has come to light', by suggesting that the email was intended to be formal and that of itself provided the explanation for the language he used. I do not accept that explanation; in my view the plain English meaning of the language is that which is appropriate in this context.

42. On 23 August 2018, Mr Hippisley replied, providing a copy of the contract which is now contained in the respondent's bundle (i.e. that providing for a day rate of £100). The claimant replied to Mr Hippisley attaching a picture of a folder containing a contract (half of the first page of the contract was obscured).

43. The parties remained in dispute as to the terms of the contract and in consequence the matter proceeded to a hearing.

The Law

44. Section 13 of the Employment Rights Act 1996 ('the Act') provides as follows:

Right not to suffer unauthorised deductions.

(1) An employer shall not make a deduction from wages of a worker employed by him unless—

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

(2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—

(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

45. In so far as the claim for accrued but unpaid annual leave is concerned the Working Time Regulations 1998 ('the Regulations') provides follows:

13.— *Entitlement to annual leave*

(1) Subject to paragraphs (5) and (7), a worker is entitled in each leave year to a period of leave determined in accordance with paragraph (2).

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

(a) ….

(b) ….

(c) in any leave year beginning after 23rd November 1999, four weeks.

(3) A worker's leave year, for the purposes of this regulation, begins—

(a) on such date during the calendar year as may be provided for in a relevant agreement; or

(b) where there are no provisions of a relevant agreement which apply—

(i) ….

(ii) if the worker's employment begins after 1st October 1998, on the date on which that employment begins and each subsequent anniversary of that date.

(4) ….

(5) Where the date on which a worker's employment begins is later than the date on which (by virtue of a relevant agreement) his first leave year begins, the 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.

(6) Where by virtue of paragraph (2)(b) or (5) the period of leave to which a worker is entitled is or includes a proportion of a week, the proportion shall be determined in days and any fraction of a day shall be treated as a whole day.

(7) The entitlement conferred by paragraph (1) does not arise until a worker has been continuously employed for thirteen weeks.

(8) For the purposes of paragraph (7), a worker has been continuously employed for thirteen weeks if his relations with his employer have been governed by a contract during the whole or part of each of those weeks.

(9) Leave to which a worker is entitled under this regulation may be taken in instalments, but—

(a) it may only be taken in the leave year in respect of which it is due, and

(b) it may not be replaced by a payment in lieu except where the worker's employment is terminated.

46. Regulation 13A of the Regulations provides an additional entitlement to annual leave of 1.6 weeks, providing that the aggregate entitlement does not exceed eight maximum of 28 days (see regulation 13A(2)(d) and (3)).

47. Regulation 15 of the Regulations provides that a worker's employer may require the worker to take leave to which the work was entitled under regulation 13 of regulation 13A on particular days, by giving notice to the worker in accordance with paragraph 3. Paragraph 3 provides:

    (3) a notice under paragraph (1) or (2)

        a. may relate to all or part of the leave to which a worker is entitled the leave year;

        b. shall specify the days in which the leave is or (as the case may be) is not to be taken and, where leave on a particular day is to be in respect of any part of the day, its duration;

        and should be given to the….worker before the relevant date.

48. The courts have generally been reluctant to find that employees have consented to contractual changes in the absence of an express agreement to that effect. This is particularly so in the case of terms that do not have immediate effect. In Jones v Associated Tunnelling Co Ltd [1981] IRLR 477, EAT, the EAT took the view that implying an agreement to a variation of contract is a 'course which should be adopted with great caution'. It went on to state that 'if the variation relates to a matter which has immediate practical application (e.g. the rate of pay) and the employee continues to work without objection after effect has been given to the variation (e.g. his pay packet has been reduced) then obviously he may well be taken to have impliedly agreed. But where… the variation has no immediate practical effect the position is not the same.'

49. A similar line was taken by the EAT in Solectron Scotland Ltd v Roper and ors [2004] IRLR 4, EAT. In a paragraph that is worth quoting in full, Mr Justice Elias stated:

    'The fundamental question is this: is the employee's conduct, by continuing to work, only referable to his having accepted the new terms imposed by the employer? That may sometimes be the case. For example, if an employer varies the contractual terms by, for example, changing the wage or perhaps altering job duties and the employees go along with that without protest, then in those circumstances it may be possible to infer that they have by their conduct after a period of time accepted the change in terms and conditions. If they reject the change, they must either refuse to implement it or make it plain that by acceding to it, they are doing so without prejudice to their contractual rights. But sometimes the alleged variation does not require any response from the employee at all. In such a case if the employee does nothing, his conduct is entirely consistent with the original contract contuining; it is not only referable to his having accepted the new terms. Accordingly, he cannot be taken to have accepted the variation by conduct.'

50. However, continuing to work following a contractual pay cut will not always be treated as acceptance. Instead, the question of what inferences can be drawn depends on the particular circumstances of the case and the tribunal should have regard to the following principles (see Abrahall and ors v Nottingham City Council and anor [2018] ICR 1425, CA per Underhill LJ):-

    50.1. First, the inference must arise unequivocally — if the employee's conduct in continuing to work is reasonably capable of a different explanation, it cannot be treated as constituting acceptance of the new terms.

    50.2. Secondly, protest or objection at the collective level may be sufficient to negate any inference of acceptance.

    50.3. Thirdly, the suggestion in Solectron that, after a 'period of time', the employee may be taken to have accepted raises the difficulty of identifying precisely when that point has been reached on anything other than a fairly arbitrary basis. However, this difficulty does not mean that the question has to be answered once and for all at the point of implementation.

51. Where a proposed contractual variation is wholly to the employee's benefit, the courts may more readily infer acceptance from the fact that the employee has continued to discharge his or her contractual obligations (see Attrill and ors v Dresdner Kleinwort Ltd and anor [2012] IRLR 553, QBD, although it went on have regard to the same test approved in Khatri v Cooperatieve Centrale Raiffeisen-Boerenleenbank BA in the context of a change detrimental to the employee — i.e. whether an employee's continued discharge of his or her contractual obligations is 'only referable' to his or her acceptance of the purported variation). It will be noted, however, that acceptance of the new terms is still required and, in Attrill, the High Court was not persuaded that the employees' decision to continue to work was only referable to the contractual term relied upon.

52. Where there is a change in terms, there must also be consideration for the varied form of the contract.

Decision

Unlawful deduction of wages

53. What wages were, in the statutory language, "properly payable" to the claimant in accordance with the terms of the contract by which the claimant was appointed? There is a direct conflict of evidence as summarised in the factual findings above. I have resolved it as follows:-

54. I find that the pay slips are compelling evidence to support the respondent's account as to the actual terms of the contract that were agreed with the claimant and which were contained in the contract provided to him upon or shortly after his appointment. In addition, I found Mr Hippisley and Mr Power-Hippisley to be honest and credible witnesses. Their accounts were consistent with the contemporaneous documents and were plausible. In contrast, the claimant's account was inconsistent with all contemporaneous documents, including his own emails and was generally implausible and

unsatisfactory as detailed below.

55. The claimant seeks to explain (in paragraph 5 of his witness statement) that he challenged the respondent as to the reason why the day rate on the pay slips was shown as £100 and not as £145 (as he suggested was provided for in the contract he received days after his appointment). He says that Mr Hippisley dismissed his concerns and insisted that he was being paid correctly. When asked when those conversations occurred, Mr Hippisley was unable even to give a rough timescale.

56. In relation to that the Claimant's allegation that he raised his concerns with Mr Hippisley, I have had the benefit of seeing the series of email exchanges between the claimant and Mr Hippisley in August 2018 detailed in the findings above. There is nothing within them that is consistent with the claimant's account but rather I find that they demonstrate that he had not raised any issue at all and the discussions he suggests took place did not in fact occur. Mr Hippisley's evidence, which I accept, is that the contract contained in the respondent's bundle, which is dated 29 November 2017, was provided to the claimant upon his appointment.

57. I reject the claimant's evidence, therefore, both as to the initial terms of the contract by which he was employed, and the nature of the contract which he received reflecting those terms. This is not a case, in my view, where the claimant can have been mistaken as to which contract he received. He is clear and adamant that he only received one contract and makes no mention of a second contract at all. I have concluded on the balance of probabilities, that he was provided with two contracts, as Mr Hippisley described, and, therefore, that the claimant was not mistaken as to the terms of the contract by which he was appointed but rather has knowingly and deliberately been dishonest in an attempt to obtain money to which he was not entitled.

Was there a variation in the initial contract terms?

58. I find that the memo and the new contract were understood by the drivers in question not to alter their rate of pay, but only to alter the manner in which it was expressed in the contract. This was explained to them by Mr Hippisley and understood by them in those terms. The Claimant was provided with a copy of the new contract in or about April 2018 but continued to receive pay on the same basis as before without issue or complaint until after the termination of his employment in September 2018.

59. The claimant had neither signed nor returned either of the two contracts.

60. In those circumstances, the question is whether the claimant accepted the terms of the April contract by his conduct of continuing to work and accept pay as he did before. In my view, his conduct in continuing to work was not only referable to his acceptance of the terms of the new contract and the increased daily rate of pay. Rather I find that it is referable to the explanation given by Mr Hippisley, the prevailing circumstances of the change in the requirements of the German legislature and/or police services for documents expressing pay in a single figure and the continuation of the claimant's pay slips identifying that the calculation of his pay continued as per the initial contract.

61. The claimant's contractual terms relating to pay were not, I find, altered by the provision of the new contract in April 2018.

62. The claimant therefore received pay as per the initial contract, which were the sums properly payable to him in accordance with the terms of that contract. There was therefore no deduction of pay for the purposes of section 13 ERA 1996.

Holiday pay

63. The claimant's claim for holiday pay is predicated solely on the basis that his rate of pay should have been £145 a day, rather than £120 a day. There is no dispute, as I understand it, that the claimant received holiday pay in respect of each day of annual leave that he took, or where it was not taken but accrued, for each day of accrued but untaken annual leave.

64. In consequence, having found that the claimant was paid in accordance with his contractual terms (such that there was no unlawful deduction of wages) it follows as a matter of logic and law that the claimant's claim for accrued but untaken annual leave is not well founded and fails.

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Employment Judge Midgley

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Date 4 October 2019