



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4107518/2019

Heard in Glasgow on 11 September 2019

Employment Judge C McManus

Mr W G Archibald

Claimant

Oakshaw Trinity Church

Respondent

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Employment Tribunal does not have jurisdiction to hear the claimant's claim for unpaid holiday pay under the Working Time Regulations 1998 or in terms of his contract of employment with the respondent, in circumstances where the employment relationship between the claimant and the respondent is continuing, and for that reason this claim is dismissed.

REASONS

1. This case was scheduled to proceed to a Final Hearing on 11 September 2019. In discussion at the outset of this hearing, it was confirmed to me that the respondent is correctly identified. I expressed concern as to whether the Employment Tribunal has jurisdiction to hear this claim, in circumstances where there is a continuing employment relationship between the claimant and the respondent.
2. In these preliminary discussions, the claimant confirmed to me that his position is that the respondent had increased his annual holiday entitlement from 20 days a year plus statutory holidays to 25 days a year plus statutory holidays. His position is that that agreement had come into effect, but that the respondent then sought to decrease that holiday entitlement.

3. I explained that payment in lieu of accrued but untaken holidays can only be made on termination of employment (Regulation 13A of the Working Time Regulations) and that in terms of those Regulations, the total statutory entitlement to annual leave is 28 days (including public holiday entitlement) (Regulation 13A(3) of the Working Time Regulations). I noted that the claimant's position may be that he has a contractual right to holidays in addition to the 28 days statutory entitlement. I explained that the Employment Tribunal only has jurisdiction to hear a claim arising from a breach of contract in circumstances where that contract has come to an end (Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994 Regulation 3(c)).
4. The claimant's son, who was with the claimant as moral support, mentioned the claimant's unhappiness at sums having been deducted from him. I noted from the ET1 that no claim had been made in respect of alleged unlawful deductions from wages. This was accepted. I explained that the Employment Tribunal may have jurisdiction to hear a complaint in respect of unlawful deductions from wages while the employment relationship continued, but that relevant time period for making such a claim would apply. I made it clear that in my role as Employment Judge I cannot give legal advice to either party.
5. Neither party wished to make any further submissions in respect of the issue of jurisdiction. In these circumstances I decided that the Employment Tribunal does not have jurisdiction to hear the claims currently before it between these parties. I gave the parties the opportunity to use the tribunal room to seek to come to a resolution between themselves on the matters in dispute between them.

**Ms C McManus
Employment Judge**

**11 September 2020
Date of Judgment**

Date sent to parties

12 September 2020