



IN THE EMPLOYMENT TRIBUNAL (SCOTLAND) AT EDINBURGH

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Judgment of the Employment Tribunal in Case No: 4104468/2022 Heard at  
Edinburgh on the 24<sup>th</sup> of October 2022, on the Cloud Based Video Platform

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Employment Judge J G d'Inverno

Mr O Mate Langlah

Claimant  
In Person

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Sasse Limited

Respondent  
Represented by:  
Mr A Pincott  
Representative

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that the claimant's claim is  
dismissed.

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**Employment Judge: J G d'Inverno**  
**Date of Judgment: 27 October 2022**  
**Entered in register: 31 October 2022**  
**and copied to parties**

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40 I confirm that this is my Judgment in the case of Mate Langlah v Sasse  
Limited and that I have signed the Judgment by electronic signature.

ETZA(WR)

**REASONS**

1. This case called for Final Hearing on the Cloud Based Video Platform, at Edinburgh, on 24<sup>th</sup> October 2022.
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2. The claimant appeared in person. The Respondent Company was represented by Mr Pincott.
3. In the course of Case Management Discussion, conducted at the outset of the Hearing, parties confirmed and the Tribunal recorded the following matters as agreed and binding upon the Tribunal for the purposes of the Hearing.
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**The Issues requiring Determination at Hearing**

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- (a) Whether, in the period 31<sup>st</sup> October 2015 up to and including the Effective Date of Termination of his employment from the 1<sup>st</sup> of May 2022, the claimant had a contractual right to be paid at an overtime rate, of *“time and a half”*, for hours worked by him in addition to his normal scheduled hours.
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- (b) Let it be assumed that the claimant established such a contractual right to an overtime rate, in what sum if any. as at the Effective Date of Termination of his employment, was the claimant entitled to be compensated in respect of such overtime rate not paid for hours worked by him during that period.
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- (c) Whether in the period 31<sup>st</sup> October 2015 to 1<sup>st</sup> May 2022 the claimant had a contractual right to paid annual leave in excess of the applicable maximum statutory entitlement under the Working Time Regulations, and if so in what terms and in what amount.
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(d) Let it be assumed that the claimant established such contractual right, which is denied by the respondent, in what sum, if any, was the claimant entitled, as at the Effective Date of Termination of his employment, 1<sup>st</sup> May 2022, to be compensated in respect of accrued but untaken contractual right to additional paid annual leave, in the holiday years 2015, 2016, 2017, 2018 and 2019; and standing the dates of the claims advanced;

io Jurisdiction

(e) Whether the claimant has Title to Present and the Tribunal has Jurisdiction to Consider some or all of his complaints.

15 Matters which were the Subject of Agreement

(f) In the period 2019 up to and including 1<sup>st</sup> May 2022 the claimant's gross hourly rate of pay increased from £8.91 per hour to £9.50 per hour and then to £9.90 per hour (as at 1<sup>st</sup> May 2022).

(g) That by pay slip dated 8<sup>th</sup> of July 2022 the respondent made a residual payment to the claimant in respect of 359.25 hours of paid annual leave entitlement accrued but untaken as at the Effective Date of Termination of his employment. That payment included, under the temporary Covid Regulations, payment in respect of the accumulated amounts of accrued but untaken paid annual leave from years 2020, 2021 and 2022, all of which were remunerated at the gross rate of £9.90 per hour, and amounted to a gross payment under that advice slip of £3,556.58 of holiday pay.

(h) The respondent asserts and the claimant concedes that in respect of the holiday years 2020, 2021 and 2022 the claimant has received, from the respondent, all sums due to him in respect both of his contractual and his statutory entitlement to paid annual leave.

(i) The claimant's contractual entitlement to paid annual leave was 20 days per annum.

#### 10 Sources of Oral and Documentary Evidence

4. The claimant gave evidence on his own behalf. For the respondent the Tribunal heard evidence from Miss Angela Sellers-Jones, the respondent's Head of Human Resources and from Miss Laura Duncan, the respondent's Payroll Administrator. The respondent lodged two bundles of documents respectively extending to some 51 and 14 pages including copies of the claimant's pay slips from the 7<sup>th</sup> of May 2021 up to and including the last pay slip issued on 8<sup>th</sup> July 2022 together with a Schedule showing the number of accrued but untaken hours of annual leave on the part of the claimant, and the sums and the amounts of holiday pay made to him in lieu thereof, in the holiday years 2016 to 2022 inclusive and to some of which reference was made in the course of evidence and submission.

5. Each party addressed the Tribunal in submission.

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#### Findings in Fact

6. On the evidence presented and on the submissions made, the Tribunal makes the following essential Findings in Fact restricted to those necessary for the determination of the issues.

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7. The claimant's contractual entitlement to paid annual leave in the period 2016 to 2022 inclusive was 20 days per year.

8. In the period 2016 to 2022 the claimant, although working a part-time shift pattern of 3 days on and 3 days off, worked a substantial number of additional hours, that is hours in excess of his normally contracted for hours. The claimant worked part-time irregular hours.
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9. In the holiday years 2016 to 2022, inclusive, the claimant received his whole statutory entitlement to paid annual leave which failing holiday pay in lieu of any accrued but untaken entitlement.
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10. The claimant's entitlement was calculated both as 12.07% of his hours worked and by taking 5.6 x his average number of hours worked per week.
11. The claimant's entitlement was also calculated using the government's holiday pay calculator which latter calculator brought out a sum due to the claimant less than that actually paid, to him, by the respondents.
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12. Prior to and after 31<sup>st</sup> October 2015, the date of the claimant's TUPE transfer to the respondent's employment, and up to and including the 1<sup>st</sup> of May 2022, the claimant had no contractual entitlement to be paid at an overtime rate for any hours worked in excess of his normal scheduled and contracted for hours. His contractual entitlement for payment in respect of such additional hours worked by him was at his normal hourly rate.
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13. In the same period the claimant had no contractual entitlement to receive additional paid annual leave over and above his statutory entitlement.
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14. As at the date of first presenting his initiating Application ET1 to the Employment Tribunal, the claimant had received all sums due to him and to which he was entitled in respect of wages arising from his employment with the respondent.
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15. As at the same date, the claimant had received compensation in respect of all accrued but as yet untaken paid annual leave entitlement, which had been due to him, both under contract and under statute, as at the Effective Date of Termination of his employment 1<sup>st</sup> May 2022.

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16. Shortly after his TUPE transfer to the respondents, on 31<sup>st</sup> October 2015, the claimant raised with respective Managers his asserted entitlement to request for, additional holiday pay and to an overtime rate. The respondent's Managers advised the claimant, at that time and in response to those requests, that he had no entitlement to either. Notwithstanding the respondents making clear their position, the claimant continued to work for them up to and including the Effective Date of Termination of his employment by resignation.

## 15 Submissions

17. In submission, the claimant reiterated his assertion that the respondents were under some obligation in law to make payment to him of additional sums, in amounts which he was unable to specify, both in relation to the application of what he considered should have been an overtime rate to hours worked by him in excess of his contracted hours and, in relation to what he contended should have been a greater entitlement (in contract) to paid annual leave than that of his colleagues, and or in addition to his statutory entitlement, by reason of the fact that he had worked a greater number of hours than they had.

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18. He did not identify or otherwise point to an entitlement in law, whether in contract or otherwise, for the additional payments in respect of which he advanced claims. Neither was he able to quantify with any accuracy the sums of money involved.

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## Submissions for the Respondent

- 5 19. For the respondent, Mr Pincott submitted that the claimant had failed to provide any evidence of the enhanced contractual entitlement which he asserted, beyond a passing reference to a Handbook, which he did not produce and which, based on his own evidence, said no more than that "paid holiday entitlement depended on the number of hours worked". He submitted primarily that the claim should be dismissed on the basis that the claimant had failed to discharge his onus of proof.
- 10 20. Separately, and under reference to the oral and documentary evidence presented, invited the Tribunal to hold that as a matter of fact the claimant had no such contractual entitlements he having raised these matters with the respondent shortly after entering their employment and, again on his own evidence, having been informed that no such contractual entitlement to additional payments existed.
- 15 21. In relation to holiday pay, it was a matter of agreement between the parties that in respect of the holiday years 2020, 21 and 22 the claimant had received his whole entitlement, whether contractual or statutory and, including his carried forward entitlements under the temporary Covid Regulations. In respect of earlier years 2016, 17, 18 and 19, the claims on any view were presented several years out of time and the Tribunal lacked Jurisdiction to Consider them under both primary and any relevant saving provisions no case having been advanced in respect of the latter. In any event, even if a claim were to be regarded as a section 13 Unauthorised Deduction from Wages, which construction had not been argued for by the claimant under, section 24(4)(2) of the Employment Rights Act 1996, a back claim would be limited to a period of 2 years and thus, that the claimant had no Title to Present and the Tribunal would have no Jurisdiction to Consider a claim in those terms.
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22. On the above cumulative grounds the respondent's representative invited the Tribunal to dismiss the claim.

#### Discussion and Decision

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23. The claims advanced by the claimant are presented as complaints of breach of contract. At no point does the claimant assert that the respondents have failed to accord to him his statutory entitlement to paid annual leave or have failed to compensate him in respect of accrued but untaken statutory entitlement, as at the Effective Date of Termination of his employment. Rather, both in relation to his claim for back pay and for additional paid annual leave (compensation for the same), the claimant asserts that his entitlement arises in contract.

- 15 24. The onus of proving the existence of such an obligation in contract owed to him and incumbent upon the defendants rests with the claimant. He must prove, on the balance of probabilities and upon the preponderance of the evidence that such an obligation existed, the particular terms of the obligation such as to allow the Tribunal to quantify its effect and further, that the respondent has breached their obligation, giving rise to a claim for damages and, finally, to show that the measure of damages claimed is a sum the payment of which would put the claimant in the position he would have been but for the breach. The evidence presented at hearing fails to establish any of the above elements and the claims accordingly fail and fall to be dismissed on their merits.

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- 30 25. Separately, and in any event, the claims, let it be assumed that such a contractual basis for them had been established, were all presented several years out of time and thus the Tribunal would have lacked Jurisdiction to Consider them on their primary basis. No alternative case for consideration was advanced under any of the saving provisions and no reasons for the many years of delay in raising these matters was advanced in evidence or submission. It is likely therefore, even had the claims been otherwise



established on their merits, that they would have fallen to be dismissed for want of Jurisdiction.

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