Appeal No. UKEAT/0257/20/RN(V)

EMPLOYMENT APPEAL TRIBUNAL

ROLLS BUILDING, 7 ROLLS BUILDINGS, FETTER LANE, LONDON, EC4A 1NL

At the Tribunal
On 17 March 2021
Judgment handed down on 5 May 2021

Before

HEATHER WILLIAMS QC, sitting as a DEPUTY HIGH COURT JUDGE

(SITTING ALONE)

MR R SOMERVILLE APPELLANT

MEDICAL PRACTITIONERS TRIBUNAL SERVICE RESPONDENT

JUDGMENT

APPEARANCES

For the Appellant	MR ROBIN SOMERVILLE (In Person)
For the Respondent	MR IVAN HARE One of Her Majesty's Counsel Instructed by: DAC Beachcroft LLP 3 Hardman Street Manchester M3 3HF

SUMMARY

WORKING TIME REGULATIONS

The Employment Tribunal correctly held that the Claimant's claim under Regulation 16, **Working Time Regulations 1998** ("**WTR**") was presented out of time, as the time for doing so ran from the date when he contended payment ought to have been made (5 March 2018); and it was accepted that if this was the correct date, then the claim was not brought in time.

In **Smith v Pimlico Plumbers Limited** UKEAT/0211/19/DA the Employment Appeal Tribunal held that the CJEU's decision in **King v Sash Window Workshop** [2018] ICR 693 concerned leave that was not taken because of the employer's failure to remunerate such leave and did not extend carry-over rights in respect of leave that was taken. Furthermore, the Claimant had been clear that he was only making a claim under Regulation 16. He had not brought a Regulation 14 WTR claim for payment on termination in lieu of accrued entitlements. Accordingly, the CJEU's decision in **King** did not support his contention that the time for presenting his claim ran from when the relationship terminated.

HEATHER WILLIAMS QC

Introduction

1. Mr Somerville appeals from the finding in the reserved judgment of Employment Judge Massarella ("the Judge") in the London (East) Employment Tribunal ("the Tribunal") promulgated on 20 July 2020 that his claim for unpaid statutory holiday pay under the **Working Time Regulations 1998** ("**WTR**") and/or **section 23, Employment Rights Act 1996** ("**ERA**") was presented out of time, so that the Tribunal had no jurisdiction to hear it. I will refer to the parties as they were known below.

2. The Respondent is a statutory committee of the General Medical Council and is responsible for the adjudicative functions necessary for the professional regulation of doctors in the United Kingdom. The Claimant was a Tribunal Member with the Respondent for four years, the relationship ending in April 2018. His claim form was presented on 20 July 2018. A claim was also made for age discrimination. No appeal arises in relation to the Tribunal's finding that the discrimination claim was also presented out of time. In its response form, the Respondent denied that the Claimant was an employee or a worker within the meaning of the applicable statutory definitions and raised the limitation issues.

3. In the same claim form the Claimant claimed unpaid statutory holiday pay from the Nursing and Midwifery Council ("NMC"), with whom he was a Panel Chair. The ET's ruling that the Claimant was a worker in relation to the NMC has also been appealed (UKEAT/0528/20/RN) and is the subject of a separate reserved judgment. I reserved my decision in this case because Mr Somerville relied on his status as a worker in respect of the NMC in some of the submissions that he made in this appeal.

4. The Tribunal listed an open Preliminary Hearing to deal with questions of employment status and limitation. It took place on 13 – 15 November 2019 and 14 – 15 February 2020. In the event, because the Tribunal decided that it had no jurisdiction to hear the claims against the Respondent, it did not go on to deal with the Claimant's status in relation to this relationship.

5. The Tribunal rejected the Claimant's case that the three month period for presenting his claim ran from the date when the relationship ended on 4 April 2018; finding instead that time ran from 5 March 2018, the date when the Respondent last paid the Claimant and when he said he should have received holiday pay. On this basis the claim was outside of the prescribed time limit as the claim form was presented on 20 July 2018. The Claimant did not gain an extension as a result of the conciliation process, because he did not contact ACAS until 30 June 2018.

The issue on the appeal

6. The issue between the parties is a narrow one. The Claimant accepts that if the Tribunal was correct to conclude that time ran from 5 March 2018, then his claim was presented out of time. Furthermore, he has not appealed the Judge's rejection of his alternative contention that if the claim was presented out of time, it was not reasonably practicable for him to have presented it within the primary time limit.

7. However, the Claimant submits that the Tribunal erred in law in determining that time ran from 5 March 2018, rather than the termination date of 4 April 2018. Equally, the Respondent accepts that if time did run from the later date, then the claim was presented in time.

The holiday pay claim

8. At [13] of the Particulars of Claim document appended to the claim form, the Claimant said he claimed for "loss of the various benefits to which he was entitled for the duration of his engagement, by virtue of being an employee or worker". In his subsequent Better Particulars of

Claim, the Claimant said at [11] that he claimed "the Respondents made unlawful deduction of wages for loss of the various benefits to which he was entitled for the duration of his engagement, by virtue of being an employee or worker of the Respondents flowing from sections 230(1) or 230(3) and section 13(1) of the Employment Rights Act 1996 and Regulation 16 of the Working Time Regulations 1998". He said he was unable to assess the quantum of the benefits until disclosure was provided.

9. The Judge explained how the issues had been clarified at the open preliminary hearing as follows:

> "**9. Regional Employment Judge Taylor directed that the parties send the Tribunal a draft list of issues by 18 January 2019. That was not done. Nor were the issues clarified at the preliminary hearing. At the beginning of the hearing before me, I asked the parties to use the time while I was reading into the case to agree a list of factual and legal issues for the Tribunal, including the preliminary issue before me. The parties made several attempts to do so, and a workable version was eventually achieved by the morning of the third day.**
>
> **"10. The Claimant alleges that both Respondents failed to pay him in respect of his statutory leave entitlement, contrary to Regs 13, 13A and 16(1)…[WTR] and had thereby made unauthorised deductions from his wages, contrary to s.13(1) ERA. He confirmed both orally and in the final agreed list of issues, that he was not advancing a claim under Reg 14 WTR: his case was not that he was not permitted to take annual leave, rather that a payment should have been made in respect of annual leave each time he was paid; his was solely a claim under Reg 16 WTR."**

10. Mr Somerville confirmed the accuracy of this passage to me, specifically that he had informed the Judge that he brought his **WTR** claim solely under Regulation 16. He agreed with Mr Hare that he had told the Judge he "pinned his colours to that mast". This was consistent with his Better Particulars of Claim document.

The Tribunal's findings

11. The Judge set out his conclusion on the primary time limits issue as follows:

> **"44. The Claimant agreed in cross-examination that the MPTS made its last payment to him on 5 March 2018, in relation to an invoice of 23 February 2018 for a hearing which had been cancelled. If, as Mr Hare submitted, time ran from 5 March 2018, the claim was presented six weeks and four days outside the three-month time limit…**

45. The Claimant contended that time ran from the date of the termination of the agreement with the MPTS. In his written closing submissions, the Claimant gives a date of 4 April 2018. If time ran from that date, because he contacted ACAS within three months of it, the extension afforded to him by reason of the conciliation process means that time expired on 11 August 2018, and his claim was in time.

46. In his submissions, the Claimant asserted that 'the starting point for limitation is the date of the termination of the employment relationship'… However, in the next paragraph, he asserted that 'pursuant to s.23(3) ERA each failure is a deduction'. He submitted that there was 'no reference to last payment date in any statutory provisions or authority identified by the First Respondent' and relied on the fact that the Respondent could have engaged him to sit on a hearing at any time up to the termination of the agreement.

47. I asked him in the course of his oral submissions to explain in greater detail what the basis was for his submission that time ran from the termination date. He confirmed again that his case was that an additional payment should have been made to him in respect of holiday pay each time he was paid by the Respondent. He accepted that the last payment made to him was on 5 March 2018. However, he argued that 'the right survived the payment in March 2018, it was not extinguished'; he argued that all of the accrued holiday pay, unpaid throughout his time with MPTS, and including the amount not paid on 5 March 2018, 'crystallised' at the termination of the contract. The Claimant identified the 'unauthorised deduction' on which he was relying for the purposes of his claim as the failure to pay all the outstanding holiday pay on termination.

48. In support of his argument the Claimant referred me to *King v The Sash Window Workshop Ltd* [2015] IRLR 348 EAT, [2018] ICR 693 ECJ. I do not consider that case assists the Claimant: the worker brought his claim in time; it was not a case about limitation, rather it concerned the extent to which the entitlement to take annual leave can be carried over from one period to the next.

49. I am not persuaded by the Claimant's analysis. At no point in his evidence or submissions did he suggest that there was any restriction on his ability or willingness to take annual leave during his time with MPTS, only that the Respondent had not included payment in respect of annual leave when it discharged his invoices.

50. If the Claimant was a worker of MPTS, and entitled to holiday pay, I conclude that he should have received that pay for the final time on 5 March 2018: that was the last occasion on which it could be argued that any 'wages were deducted' (for the purposes of s.23(2)ERA), and the last date on which any such 'payment should have been made' (for the purposes of Reg 30(1)(b) WTR).

51. There is nothing in the ERA or the WTR, or indeed in *King*, to suggest that the termination of employment gives rise to a fresh cause of action, which sets the clock running again in respect of a claim brought by reference to Reg 16. I accept Mr Hare's submission that, if the Claimant's claim is to proceed any further with this claim, he requires an extension of time…"

12. During his submissions to me, Mr Somerville said he did not recollect putting his case to the Judge in the manner described in the second sentence of [J/47]. (When referring to particular paragraphs in the reserved judgment I will use the formulation [J/paragraph number].) However, after Mr Hare had addressed me on his recollection of the submissions made below, Mr Somerville agreed that he had submitted both that he was entitled to payment reflecting holiday

pay each time an invoice was settled by the Respondent, and if they then failed to make such payment, the right carried over / crystallised on termination.

The parties' submissions

13. The Claimant argued that the CJEU's decision in **King v Sash Window Workshop Ltd** [2018] ICR 693("**King**") established that the entitlement to take annual leave carried over from one leave period to the next, so that he could claim outstanding sums upon termination. He pointed out that as the Respondent disputed he had worker status, it would not have made payment on 5 March 2018 in any event and he suggested that to interpret limitation under the **WTR** as running from the date of payment, rather than the date of termination, was unduly restrictive and out of step with the CJEU's judgment. Secondly, he submitted that the difference in wording between Regulation 30(1)(b) **WTR (**which referred to the last date on which "payment should have been made") and section 23(2) **ERA** (which referred to the last payment from which "wages were deducted") was significant. Thirdly, he argued that until the contractual relationship ended, neither party knew if he would do any further work pursuant to it, which meant that it was only on termination of the relationship that the total amount owed to him became fixed.

14. The Respondent relied upon the Judge's reasoning and emphasised that the Claimant had agreed at all material times that his claim under the **WTR** was brought solely under regulation 16. He submitted that in **King** the CJEU were not concerned with a Regulation 16 claim and that the Court's reasoning related to untaken leave (where payment for the same is denied). In further support of this position, the Respondent relied upon the EAT's recent decision in **Smith v Pimlico Plumbers Limited** UKEAT/0211/19/DA ("**Pimlico Plumbers**").

15. Judgment in **Pimlico Plumbers** was handed down on the morning of the day listed for hearing the present appeal. As agreed on the previous day, the hearing was put back to the

A afternoon, so that the parties had the morning to read and consider the significance of that decision. Both parties confirmed they were ready to proceed in the afternoon and did not seek further time.

B 16. Mr Hare also submitted that the wording of regulation 30(1)(b) **WTR** was clear as to the running of time and that the Claimant's third argument was not on point, as he had not in fact undertaken any further work for the Respondent after the 5 March 2018 payment.

C **The legal framework**

17. Regulation 13 **WTR** provides (as material):

> **"(1) Subject to paragraph (5), a worker is entitled to four weeks annual leave in each leave year.**
> **…**
> **(9) Leave to which a worker is entitled under this regulation may be taken in instalments, but –**
> **(a) subject to the exception in paragraphs (10) and (11), 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."**

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E 18. Paragraphs 13(10) and (11) permits a worker to carry forward for two years, leave that it was not reasonably practicable to take as a result of the effects of coronavirus. As I describe below, in **Pimlico Plumbers** the EAT re-interpreted Regulation 13 to include provision for carrying over leave that a worker was unable or unwilling to take because they were on sick leave and leave that a worker was unable or unwilling to take because of their employer's refusal to remunerate them in respect of such leave. Paragraph 13A provides that a worker is entitled to additional leave in each leave year determined in accordance with paragraph 13A (2).

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19. Regulation 14 WTR provides (as relevant):

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> **"(1) This regulation applies where –**
> **1. a worker's employment is terminated during the course of his leave year, and**
> **2. on the date on which the termination takes effect ("the termination date") the proportion he has taken of the leave to which he is entitled**

in the leave year under regulation 13 and regulation 13A differs from the proportion of the leave year which has expired.

(2) Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave in accordance with paragraph (3).
…

(5) Where a worker's employment is terminated and on the termination date the worker remains entitled to leave in respect of any previous year which carried forward under Regulation 13(10) and (11), the employer shall make the worker a payment in lieu of leave equal to the sum due under Regulation 16 for the period of untaken leave."

20. Regulation 16 WTR provides (as relevant):

"(1) A worker is entitled to be paid in respect of any period of annual leave to which he is entitled under Regulation 13 and Regulation 13A, at the rate of a week's pay in respect of each week of the leave."

21. Regulation 30 WTR deals with remedies. It provides (as relevant):

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

(a) …
(b) has failed to pay him the whole or any part of any amount due to him under Regulation 14(2) or 16(1).

(2) …<u>an Employment Tribunal shall not consider a complaint under this regulation unless it is presented –</u>

(a) <u>before the end of the period of three months…beginning with the date on which it is alleged</u>…or, as the case may be, <u>the payment should have been made</u>" (Emphasis added)

22. Accordingly, on the face of it, Regulation 30(2)(a) lays down a clear point from which time runs for the purposes of a Regulation 16 claim.

23. Claims for payment of annual leave under Regulation 16 **WTR** and claims for payments in lieu on termination under Regulation 14 **WTR** can be brought as claims for unlawful deductions from wages under section 13 **ERA**: **<u>Revenue and Customs Comrs v Stringer</u>** [2009] ICR 987 HL. In relation to such claims the time limits provisions contained in section 23 ERA apply:

> **"(1) A worker may present a complaint to an Employment Tribunal**
> **(a) that his employer has made a deduction from his wages in contravention of section 13…**
>
> **(2) …<u>an Employment Tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with</u> –**
>
> **(a) in the case of a complaint relating to a deduction by the employer, the <u>date of payment of the wages from which the deduction was made</u>".** (Emphasis added)

24. The **WTR** were made under section 2(2) of the **European Communities Act 1972** to implement in domestic law **Directive 2003/88/EC** of 4 November 2003 on working time ("**WTD**"). Article 7 provides:

> **"1. Member states shall take the measures necessary to ensure that every worker is entitled to paid annual leave of at least four weeks in accordance with the conditions for entitlement to, and granting of, such leave laid down by national legislation and/or practice.**
>
> **"2. The minimum period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated."**

25. The right to annual leave is also enshrined in the EU **Charter of Fundamental Rights** ("**Charter**"). Article 37(2) provides:

> "**Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave**."

26. Article 47 of the **Charter** provides:

> "**Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this article…"**

27. For present purposes, the paid annual leave rights contained in the **WTD** and in the **Charter** are not substantively affected by the provisions of the **European Union (Withdrawal) Act 2018**: see **Pimlico Plumbers** at [50] – [51].

28. The CJEU's decision in **King** concerned a reference from the Court of Appeal. The claimant, Mr King, had only been able to take unpaid leave when working for the company, who

did not accept that he had 'worker' status. Mr King brought a claim for: holiday accrued but untaken in his termination year ("holiday pay 1"); leave he had taken but had not received payment for ("holiday pay 2"); and pay in lieu of accrued but untaken leave in respect of the earlier years he worked for the company ("holiday pay 3"). The first two claims were successful before the Employment Tribunal and the appeal only concerned holiday pay 3. Holiday pay 1 was a claim brought under Regulation 14(2) **WTR**; and holiday pay 2 was a Regulation 16 claim. By the time the case was before the Court of Appeal, it was accepted that Mr King had worker status, but the company disputed that he was entitled to carry over periods of untaken leave into a new holiday year, in particular in light of the terms of regulation 13(9) **WTR**.

29. The first question referred to the CJEU was: "If there is a dispute between a worker and employer as to whether the work is entitled to annual leave with pay pursuant to [Article 7, **WTD**] is it compatible with EU law, and in particular the principle of effective remedy, if the worker had to take leave first before being able to establish whether he is entitled to be paid?" The CJEU held that Article 7 **WTD** and Article 47 of the **Charter** must be interpreted as meaning that "in the case of a dispute between a worker and his employer as to whether the worker is entitled to paid annual leave in accordance with article 7…they preclude the worker having to take his leave first before establishing whether he has the right to be paid in respect of that leave": [47].

30. The second referred question asked: "If the worker does not take all or some of the annual leave to which he is entitled in the leave year when any right should be exercised, in circumstances where he would have done so but for the fact that the employer refuses to pay him for any period of leave he takes, can the worker claim he is prevented from exercising his right to paid leave such that the right carries over until he has the opportunity to exercise it?" The third to fifth questions related to the extent of the right, if the second question was answered in the

affirmative. The Court's answer to the second to fifth questions was: "that Article 7 [**WTD**] must be interpreted as precluding national provisions or practices that prevent a worker from carrying over and, where appropriate, accumulating, until termination of his employment relationship, paid annual leave rights not exercised in respect of several consecutive reference periods because his employer refused to remunerate that leave".

31. In **Pimlico Plumbers** Choudhury P. held that the CJEU's decision in **King** was concerned with leave that was untaken (because of the employer's failure to remunerate such leave) and there was nothing in the Court's reasoning to suggest that equivalent carry-over rights applied in relation to leave that was taken but unpaid: see the discussion and reasoning at [63], [70], [75] – [78], [86], [89], [90] and [92]. In so far as Mr Somerville submitted to me that **Pimlico Plumbers** recognised a broader right to carry-over entitlements to annual leave / payment for the same, these passages make it quite clear that this was not the case.

32. Furthermore, the EAT in **Pimlico Plumbers** went on to re-interpret Regulations 13, 14 and 30 **WTR** to reflect this understanding of the CJEU's decision in **King:** see [105] and the appendix to Choudhury P.'s judgment. (This re-interpretation also took account of the Courts' decisions in **NHS Leeds v Larner** [2012] ICR 1389 CA and **Plumb v Duncan Print Group** [2016] ICR 125 in respect of sickness absence cases; but it is unnecessary to set those aspects out for present purposes.) Regulation 13(16) and (17) were as follows:

> **"(16) Where in any leave year a worker was unable or unwilling to take some or all of the leave to which the worker was entitled under this regulation because of the employer's refusal to remunerate the worker in respect of such leave, the worker shall be entitled to carry forward such untaken leave as provided for in paragraph (17).**
>
> **(17) Leave to which paragraph (16) applies may be carried forward and taken in subsequent leave years until the termination of the worker's employment with the employer**." (Emphasis added)

33. Regulation 14(5) was re-interpreted to include leave carried over under regulation 13(16) and (17); and regulations 30(1)(b) and 30(5) **WTR** were re-interpreted to include reference to a failure to pay an amount due under regulation 14(5).

34. Accordingly, the carry-over rights, including the right to payment in lieu on termination, identified by the CJEU in **King** are in terms limited to circumstances where the worker did not take his annual leave entitlement because his employer declined to pay him in relation to such leave. Although the Judge did not have the benefit of **Pimlico Plumbers**, his approach was consistent with it and it would, of course, now be binding upon him.

35. It is also important to note that the scope of the CJEU's decision in **King** was considered in **Pimlico Plumbers** in the context of a submission that Mr Smith had brought claims under regulation 30(1)(a) that he had been denied his right to paid annual leave in breach of Regulation 13; and for payment in lieu on termination pursuant to Regulation 14(5): see, for example, [52]. (Contentions that the EAT rejected for the reasons given at [96] – [101] and [111] – [112].) The position in respect of a regulation 16 **WTR** claim was not contentious and was described as follows by Choudhury P. at [114]: "Any claim under Regulation 16(1) and 30(1)(b) WTR in respect of that period of leave would have had to have been presented under Regulation 30(2)(a) before the end of the period of three months beginning with the date the payment should have been made". Accordingly, neither the judgment of the CJEU in **King** nor the judgment of the EAT in **Pimlico Plumbers** offers any support for the proposition that carry-over rights can apply in respect of a Regulation 16 claim, which, by its nature involves seeking payment for particular leave taken; indeed the passages in Choudhury P.'s judgment which I have referred to are plainly to the opposite effect.

Conclusion

36. For the avoidance of doubt, I have approached the Claimant's submissions on the assumed basis that he did have worker status in relation to the Respondent, but, like the ET below, I have not made any determination in relation to that issue.

37. As I have already explained, Mr Somerville's claim was brought under Regulation 16 **WTR** only. Accordingly, it was a claim made for payment in respect of periods of leave. He did not bring a Regulation 14 **WTR** claim for accrued leave entitlements payable on termination. Accordingly, his submission that he can rely on **King** as requiring the **WTR** to be interpreted so as to permit claims to be made on termination of the relationship (rather than from when payment should have been made) is misconceived; claims on termination can be brought under regulation 14, in so far as accrued rights to payment then exist, but Mr Somerville did not make such a claim.

38. The second, related hurdle which the Claimant is unable to overcome is that his claim was not advanced as one for leave that he had been unable or unwilling to take because of the Respondent's refusal to pay for the same. As I have explained above, the EAT identified in **Pimlico Plumbers** that this is the extent of the reinterpretation of the **WTR** carry-over and payment in lieu provisions that **King** requires.

39. As regards the Claimant's submission that in **King** the CJEU did not say that time for bringing a claim under the **WTD** ran from the point when payment was due, this was explicable by the fact that no Regulation 16 claim was before Court in that case (paragraph 26 above). Additionally, the CJEU in **King** was not concerned with the particular domestic time-limit provisions in the **WTR**, which fall within the procedural autonomy afforded to Member States: see **Pimlico Plumbers** at [40] and [92a.].

40. As I have noted at paragraphs 10 and 12 above, Mr Somerville accepts he told the ET that his case was that a payment in respect of holiday should have been made to him each time he was paid by the Respondent, as recorded by the ET at [J/47] and [J/49]. Although he also submitted to the ET and before me that his claim "crystallised" at the termination of his contract; this contention is inconsistent with the proposition that holiday pay was payable with each payment he received from the Respondent. Furthermore, the proposition that the Respondent's liability "crystallised" on termination is not sustainable in light of the difficulties for Mr Somerville that I have identified at paragraphs 35 and 36 above; there was no substantive basis identified for the contention that his holiday entitlements carried over and nor was Regulation 14, the vehicle for advancing such a claim, relied upon in his case.

41. Accordingly, the ET was correct in holding at [J/51] that there is nothing in the legislation or in the CJEU's decision in **King** indicating that termination of employment gives rise to a fresh cause of action which sets the limitation clock running again in respect of the Claimant's claim under Regulation 16.

42. The ET was also correct in deciding at [J/50] that there was no material significance in the slightly different wording in section 23(2) ERA ("the date of payment of the wages from which the deduction was made") and Regulation 30(2)(a) ("the date on which it is alleged…that payment should have been made") in terms of the point when the prescribed time for presenting a claim started to run. Both provisions quite clearly state that time runs from when it is said that the payment was due, and the ET was correct in applying that approach. The difference in wording was not "overlooked" as Mr Somerville submitted. Equally, the wording of both provisions makes clear that it is the date when payment ought to have been made that is material. Accordingly, the Claimant's point that in fact the Respondent would not have paid him for holiday on the payment dates does not assist him.

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43. Lastly, I do not accept the Claimant's submission that liability only "crystallised" on termination because until that point it was not known whether or not he would undertake further work for the Respondent. On the way he characterised his claim, liability to make a payment in respect of holiday arose each time he was paid by the Respondent. Accordingly, if he had worked additional days prior to termination, on his case, a further sum for holiday pay would have fallen due on the payment date for that work. In any event, the point is entirely theoretical as he did not undertake further work for the Respondent and the last payment date was 5 March 2018, as the ET highlighted.

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44. I do not underestimate the complexity of the WTR provisions for someone in Mr Somerville's position. However, the point on appeal is a narrow one and no error of law has been shown in respect of the ET's conclusion that time ran from the 5 March 2018, so that the claim was presented out of time. Accordingly, the appeal is dismissed.

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