



24 May 2017

## PRESS SUMMARY

**Hartley and others (Appellant) v King Edward VI College (Respondent) [2017] UKSC 39**  
*On appeal from [2015] EWCA Civ 455*

**JUSTICES:** Lady Hale (Deputy President), Lord Clarke, Lord Wilson, Lord Hughes, Lord Gill (Scotland)

### BACKGROUND TO THE APPEAL

The appellants are employed as teachers at the respondent sixth form college [1]. They are paid an annual salary on a monthly basis [15]. Their contracts of employment incorporate terms relating to working time from a collective agreement known as the Red Book [2]. The Red Book provides that teachers will be required to work up to 195 days a year of “directed time” which includes teaching and other duties as directed by the Principal. In addition to directed time, a teacher is required to work for an unspecified amount of undirected time, defined as “such reasonable hours as may be needed to enable [the teachers] to discharge their duties effectively, including, in particular, the marking of students’ work, the writing of reports on students, the preparation of lessons, teaching material and teaching programmes and such other duties as may reasonably be required” [14-16]. The appellants regularly performed undirected duties outside of the normal term-time hours, i.e. during evenings, weekends and/or days of annual leave [20-21].

On 30 November 2011, the appellants participated in a full day of lawful strike action. The Red Book provides that when sixth form teachers go on strike their employer can withhold their pay [2]. The respondent made deductions from the appellants’ pay at a rate of 1/260 of their annual pay, 260 being the number of weekdays in a calendar year [2]. The appellants brought proceedings in the County Court alleging the respondent was in breach of contract. They argued that the respondent was only entitled to deduct 1/365 of their annual pay, pursuant to section 2 of the Apportionment Act 1870 (the “Act”), which provides that “all...annuities...shall...be considered as accruing from day to day, and shall be apportionable in respect of time accordingly”. The Act defines annuities to include salaries [2-5].

Before the trial commenced, another case involving the same issue and very similar facts was decided in favour of the sixth form college in the High Court. The parties therefore agreed for final judgment to be entered in favour of the respondent. The appellants were granted permission to appeal directly to the Court of Appeal, which dismissed the appeal [6-7]. It found that section 2 did not imply a principle of equal daily accrual but a daily accrual at a rate gleaned from the construction of the contract. Elias LJ thought in this case the rate should be 1/195; 195 being the number of days of directed time. However, as some work done in undirected time was not necessarily linked to directed time, he accepted that the respondent’s approach of relating the work to the total number of annual working days was a sensible and acceptable principle [42].

## JUDGMENT

The Supreme Court allows the teachers' appeal. Lord Clarke, with whom the other justices agree, gives the lead judgment.

## REASONS FOR THE JUDGMENT

The Act is intended to address the problems which arise in the context of periodic payments which are entire indivisible payments. The appellants' salaries are such payments; the contracts do not provide expressly or by necessary implication for their salaries to be paid to staff pro rata in respect of divisible obligations to perform work on each day of directed time. The Act is therefore applicable to their contracts [9-11].

The use of the word "considered" in section 2 of the Act shows that the section is a deeming provision, which deems that payments are to accrue day by day at an equal rate. Where an employment contract is an annual contract, it must therefore be apportioned on a daily basis over 365 days, yielding a daily figure of 1/365 [24, 30, 34, 37]. If the employment contract was other than an annual contract, then the rate would no doubt be different [48].

Section 7 of the Act provides that the Act will not apply where it is "expressly stipulated that no apportionment shall take place" [4]. This means that the principle of equal daily apportionment will apply unless the contract in clear terms addresses it and says it should not. Where the language of the contract is clearly inconsistent with this principle this will also amount to an express stipulation for the purposes of section 7 [38-40]. There is nothing in the appellants' contracts which stipulates for any apportionment other than apportionment on a calendar day basis. The Court of Appeal's approach assumes that working days are limited to days on which directed duties are carried out [28-29]. However, the appellants are paid a salary to perform the duties referred to in their contracts and there is no suggestion that some of those are paid and some unpaid. Given the wide scope of the responsibilities of teachers, none of the appellants are able to carry out all of their work during directed time, therefore the appellants carry out much of their work in undirected time outside of the normal college day on evenings, weekends and days of annual leave. While there is a relationship between directed work and undirected work, much undirected work is important in its own right and will not necessarily be directly linked to the directed time in the sense that a failure to work for the day will lead to a proportionate reduction in the undirected work done. This is clear from the vast variety of "Professional Duties" identified in the Red Book under the heading of "Other Activities" and not "Teaching" [18-20, 44-46].

Therefore, in the appellants' case, section 2 of the Act deems that their salaries accrue at an equal daily rate and this is not excluded by section 7. The respondent was therefore only entitled to make deductions from the appellants' pay at a rate of 1/365 of their annual salary [47-49].

*References in square brackets are to paragraphs in the judgment*

## **NOTE**

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:**

<http://supremecourt.uk/decided-cases/index.html>