Part-time worker's entitlement to leave is not to be pro-rated compared to a full-time worker

By Jack Castle

In *Harpur Trust v Brazel* [2022] UKSC 21 the Supreme Court decided that the domestic implementation of the Working Time Directive, the Working Time Regulations 1998, provided an entitlement to 5.6 weeks' leave for all workers on permanent contracts. This is the leave entitlement whether the worker is full or part time, including zero-hours contracts.

Facts and Conclusion

1. Mrs Brazel is a visiting music teacher at Bedford Girls School, run by the Harpur Trust. She is a part-time worker on a permanent contract, with no guaranteed minimum hours and is only paid for the work done.

2. It was common ground she is a worker for the purposes of the Working Time Regulations ('**WTR**'), which implemented the Working Time Directive ('**WTD**'). The WTR provides that all workers are entitled to 5.6 weeks' paid leave.

3. From January 2011 to June 2016 the Trust paid her holiday pay based on the proportion that 5.6 weeks of annual leave bears to the total working year, which was 12.07%. She was then paid 12.07% of her total pay for the term.

4. The Harpur Trust defended this method by saying it accords with what it called the 'conformity principle'. This principle was said to arise from European Law which held the amount of annual leave should be in conformity with the amount

of work actually performed during the year. As such the WTR should be read such as to give effect to the wording and purpose of the WTD (at [34]–[44]).

5. However, the Supreme Court noted that the WTD allows member states to make the leave requirement more generous to workers under their domestic provisions (at [41]). Any provision going beyond the minimum requirements of the WTD is a matter of domestic statutory construction of the WTR and does not offend European Law:

> '*In short, the amount of leave to which a part-year worker under a permanent contract is entitled is not required by EU law to be, and under domestic law is not, prorated to that of a full-time worker*' (at [79]).

6. Note that '*a part-time worker who takes four calendar weeks' leave is in fact only relieved of working on the particular days in those calendar weeks on which they would have worked otherwise*' (at [48]). As Underhill LJ in the Court of Appeal said ([2019] EWCA Civ 1402 at [63]): '*In the 5.6 weeks of the school holidays that notionally constitute the Claimant's annual leave she is likewise only being relieved from working the number of hours for which she would have given lessons, and her holiday pay also will be based only on her earnings from such lessons.*' But both the Court of Appeal and Supreme Court decided that she should not receive less than her entitlement to reflect the fact that she does not work throughout the year.

Impact of Decision

7. All workers on a permanent contract are entitled to 5.6 week's holiday, whether they work full or part time. The difference in holiday pay is reflected only in the weekly pay calculation, which would obviously be higher for a full-time than part-time worker on the same hourly wage.

8. The method of calculation for holiday pay is therefore as follows (which the Supreme Court calls the 'Calendar Week Method'):

    a. Work out the number of calendar weeks the worker has taken as paid leave (the total yearly entitlement being 5.6 weeks).

    b. Calculate the worker's 'week's pay' according to the applicable method in Regulation 16 WTR (which refers to s.224 Employment Rights Act 1996).

    c. Multiply (a) by (b).

9. The Supreme Court also reinforced that annual leave is not 'accrued' with hours worked. 5.6 weeks' holiday is a right from the first day of employment. Although Regulations 14 and 15A WTR modify this entitlement retrospectively in certain situations when employment is terminated part-way through a leave year, this does not change the right of a worker to take 5.6 weeks holiday at any point they choose so long as this does not inconvenience their employer (at [69]).

Jack Castle

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