



EMPLOYMENT TRIBUNALS

Claimant: Miss C Walker

Respondent: Sandy Lane Residential Hotel

HELD by: CVP

ON: 4 August 2021

BEFORE: Employment Judge Shulman

REPRESENTATION:

Claimant: In person

(The claimant's mother was present to give support)

Respondent: Mr A Lindsay, Solicitor

(Also present were Mrs E Parkin, Ms G Murgatroyd and Miss V Gregory)

JUDGMENT

The claim for holiday pay was dismissed on withdrawal by the claimant.

REASONS

1. This was a claim by the claimant for carried over holiday pay. The claimant was a night care assistant and the respondent a care home.
2. The carry over was for 14 days holiday in respect of the holiday year ending 31 March 2021 following the effective date of termination of the claimant's employment on 1 May 2021.
3. The basis of the claimant's claim was that she was not allowed to take the outstanding holiday during her employment.
4. The claimant accepted that she had no right of carry over in her contractual arrangements with the respondent. The Tribunal explained to her that if that

was the case the only way upon which she might achieve carry over was pursuant to the Working Time (Coronavirus) (Amendment) Regulations 2020 SI 2020/365 (which found their way into amendments to the Working Time Regulations 1998 (Regulations)). The new Regulation 13(10) of the Regulations, which was brought in by the Coronavirus Regulations (Coronavirus Regulations), opened the door to an employee, where it was not reasonably practicable for a worker to take some or all of her annual leave in a relevant leave year as a result of the effects of Covid-19, to entitlement to carry forward such untaken leave. The claimant was not aware of a Coronavirus Regulations.

5. The Tribunal explained to the claimant the meaning of effect of Covid-19 as including the effects on the worker, the employer or the wider economy or society. The Tribunal pointed out to her that on 13 May 2020 the Government issued Guidance on “holiday entitlement and pay during coronavirus”, which suggested that there were factors relevant when considering whether or not it was reasonably practicable for the worker to carry over leave. The Tribunal took the claimant over six instances in the Guidance and from the claimant’s answers it was clear that the claimant could not satisfy the guidance. Therefore, the reasonable practicability test and the effects of Covid-19 tests were not satisfied.
6. The claimant had nothing to add and cross-examination was commenced. Particularly Mr Lindsay wished to cross-examine the claimant on the respondent’s witness statements, which were served on the Tribunal the previous evening to the hearing and the claimant had not seen them at all.
7. The Tribunal arranged for the claimant to have copies and it was then that the Tribunal took the opportunity to discuss the claimant’s case with the parties, in that the absence of contractual carry over and/or the application of the the Coronavirus Regulations and that it appeared that there was nowhere for the claimant to go. The Tribunal therefore invited the claimant to take time, with her mother, to consider whether or not it was appropriate for her to pursue the case further, making it absolutely clear that it was her right to pursue the case if she wished to do so.
8. The claimant took 15 minutes and she came back and stated that she had decided that she wished to withdraw her claim whereupon the Tribunal dismissed the same.

Employment Judge
Date: 12 August 2021

JUDGMENT SENT TO THE PARTIES ON
Date: 17 August 2021

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