

Chief Constable of the Police Service of Northern Ireland and another (Appellants/Cross-Respondents) v Agnew and others (Respondents/Cross-Appellants) (Northern Ireland)

Case ID: 2019/0204

Case summary

Issue

- (1) Whether the Respondents in bringing their complaints as to a series of unlawful deductions and underpayments of holiday pay are restricted to a period ending no later than three months prior to the presentation of the complaints to the Tribunal.
- (2) What is meant by a series of unlawful deductions to pay and when such a series ends.
- (3) What is the correct approach to calculating unlawful deductions and underpayments of holiday pay, including the approach to annual leave entitlement, overtime and the reference period for calculating normal pay.
- (4) Whether the Respondents have been discriminated against contrary to Article 14 of the European Convention on Human Rights read in conjunction with Article 1 of Protocol 1.

Facts

Officers and civilian employees of the Police Service of Northern Ireland had, since the introduction of the Working Time Regulations (Northern Ireland) 1998 (“WTR (NI) 1998”), been paid their basic pay while on annual leave (i.e. without having regard to overtime and certain allowances), whereas the case law of the Court of Justice of the European Union in relation to article 7 of the Working Time Directive 2003/88/EC had evolved to require that workers be paid their “normal pay” during such leave.

This only came to the attention of the Appellants following delivery of the decision in *Bear Scotland Ltd v Fulton* [2015] ICR (EAT). The Respondents began presenting their complaints for unlawful deductions from pay and underpayments of holiday pay to the Industrial Tribunal in 2015.

The claims were made under Articles 45 and 55 of the Employment Rights (Northern Ireland) Order 1996 (“ERO”), which relates to a “worker” but has no express provision deeming police constables to be workers. In the alternative, the claims were made under Regulation 30 WTR (NI) 1998 and Regulation 43 Working Time Regulations (Northern Ireland) 2016, under which a worker (which includes a police officer) may present a complaint as to underpayment, but the complaint must be brought within three months.

The Appellants accept that the calculation and payment of holiday pay as basic pay instead of normal pay amounts to making an unlawful deduction from wages and a failure to pay holiday pay in full. This appeal is concerned with the extent of the remedy available to the Respondents. This includes how far back the claims may reach, and whether the Respondents are “workers” within the meaning of the ERO and are thus not limited to a period of three months. Further issues on appeal include the correct method of calculating unlawful deductions and underpayments, the proper mode of calculating “normal pay”, and whether the Respondents have been discriminated against contrary to Article 14 European Convention on Human Rights read in conjunction with Article 1 Protocol 1.

Judgment appealed

[\[2019\] NICA 32](#)

Parties

Appellant(s)

(1) Chief Constable of the Police Service of Northern Ireland (2) Northern Ireland Policing Board

Respondent(s)

Alexander Agnew and others

Intervener

UNISON

Appeal

Justices

Lord Hodge, Lord Briggs, Lord Kitchin, Lady Rose, Lord Richards

Hearing start date

14 December 2022

Hearing finish date

15 December 2022

Watch hearing

14 Dec 2022 [Morning session](#) [Afternoon session](#)

15 Dec 2022 [Morning session](#)