

Working time - Grange v Abellio London Ltd

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CATEGORY:
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Until this case there were conflicting decisions on whether a worker could complain of being denied a rest break only if he or she has made an explicit request for a break. The EAT resolved the conflict in the worker's favour and held that the way the working day is arranged can have the effect of denying the worker the right to a rest. Although the employee did not complain for two and half years, the employer had a responsibility to make sure that employees are able to take their breaks. As the denial of a rest break can lead to a claim for compensation, employers should proactively monitor their working practices and make sure that working arrangements do not in practice make it impossible for workers to take breaks.

Where a worker's daily working time is six hours or more the worker is entitled under the Working Time Regulations to a break of at least 20 minutes. Mr Grange was employed by Abellio London Limited from 2009. He initially had responsibility for monitoring the arrival and departure times of a bus service and generally managing it. He had a working day of eight and a half hours of which half an hour was unpaid and treated as a rest break, although in practice he had difficulty taking the break. From July 2012 his working hours (and those of others in a similar role) reduced to eight hours, on the understanding that they would work without a break and finish half an hour earlier. This was communicated to staff at a meeting although Mr Grange was not present.

In July 2014, Mr Grange lodged a grievance and complained that having had to work without a break for two and a half years had negatively affected his health. The grievance was not upheld. In the meantime he brought a claim in the employment tribunal, claiming that he had been denied his entitlement to a rest break at various times during his employment. Following earlier case law, the Tribunal rejected his claim on the basis that he had not made a request for a break and therefore the employer had never actually refused to give him one.

The EAT said that that was the wrong approach. It relied on a judgment of the European Court in which the Court said that employers 'cannot withdraw into a passive role and grant rest periods only to those workers who ask for them' but rather the employer has a 'duty to afford' them. It sent the claim back to the tribunal to look at the facts again in light of that principle.

COMMENT

Employers may have been lulled into a false sense of security by the earlier case law and need to be aware of the risk of claims if they arrange working hours in a way that explicitly or implicitly prevents employees from taking a short break during the working day. They should also bolster their position by positively encouraging employees to take breaks, for example by including a clear policy in their staff handbooks and training managers to raise the issue with employees who appear to be working long hours without a break.

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