

THE INDUSTRIAL TRIBUNALS

CASE REF: 23791/21

CLAIMANT: Joseph Martin

RESPONDENT: DGS Service Solutions Limited

JUDGMENT

The claimant's claims for accrued holiday pay for his contractual notice period, holiday pay for holidays carried over from previous employers and sickness pay are dismissed following their withdrawal.

The unanimous judgment of the tribunal is the claimant's remaining claims for holiday pay, redundancy pay and pension payments are not well founded and are dismissed.

CONSTITUTION OF TRIBUNAL

Employment Judge: Employment Judge Bell

Members: Mrs Adams
Ms McNulty

APPEARANCES:

The claimant was self-represented.

The respondent was represented by Mr Mark Reid, Solicitor.

1. The claimant in his claim complained that he was owed holiday pay, payment in lieu thereof on termination having been made at an incorrect rate, excluded his notice period and holidays carried from previous employers; redundancy pay, no account having been taken of 32 hours for 12 & 13 July; pension contributions, paid at 3% of gross pay above a qualifying earnings band rather than on all pay; and sickness pay, for the period 9 October to 6 November 2020.
2. The respondent in its response resisted the claimant's claims.
3. The tribunal confirmed to the claimant at the outset of the substantive hearing that the reasonable adjustment agreed at case management would be observed and breaks provided if required by him.

4. At hearing the claimant confirmed that he no longer wished to pursue claims for accrued holiday pay relating to his contractual notice period, holidays carried over from previous employers and sickness pay.

ISSUES

5. Remaining issues for determination by the tribunal were accordingly:
 - (a) Is the claimant owed holiday pay arising from payment being made for 7.6 rather than 9.2 hours per day's holiday due?
 - (b) Is the claimant owed statutory redundancy pay arising from failure to take into account in calculation of a week's pay overtime payable at triple time usually worked on 12 & 13 July?
 - (c) Has the respondent failed to pay pension contributions for the claimant at 3% on gross earnings?

EVIDENCE

6. The claim, response, agreed bundle of documentation together with the sworn oral testimony of Mr David Huxley and Ms Kathleen O'Loughlin on behalf of the respondent and that of the claimant on his own behalf were taken into consideration.

FINDINGS OF FACT

7. The claimant began employment as a shopping centre site supervisor with OCS Cleaning on 6 March 1989. His employment thereafter transferred a number of times, ultimately transferring from Robinson Services Ltd to the respondent when it took over contract cleaning for the shopping centre on 1 June 2018.
8. The claimant's original contract of employment was not available at the time of his transfer to the respondent. Employee liability information provided by Robinson Services Ltd to the respondent for the claimant confirmed pay for bank holidays was triple time; weekly contract hours, '46'; annual leave entitlement '5.6 weeks +10 service days'; pension scheme, 'Aegon'; claimant currently contributing to a pension scheme; and pension contribution on employer, '3%'.
9. The claimant's normal working hours were:
 - Monday 8 hours
 - Tuesday 8 hours
 - Wednesday 8 hours
 - Thursday 9 hours
 - Friday 8 hours
 - Saturday 5 hours.
10. The claimant's usual pay was £464.60 gross per week, being 46 hours at £10.10 per hour.

11. Written confirmation provided by OCS Group UK Limited to the claimant set out that whilst employed by them he was, entitled to the following benefits:

 ‘...
 6 weeks full holiday pay
 Triple time paid on any bank holiday worked
 Company Pension plan.’
12. Before transfer of his employment to the respondent, the claimant raised dissatisfaction regarding the transferor’s calculation of holiday pay in relation to the 28-day cap on statutory paid holiday entitlement; he brought the matter up again at a meeting in 2019 with the respondent. The claimant considered that he was disadvantaged for working on a Saturday because staff like him working more than five days were receiving relatively less fully paid weeks off at a normal week’s pay and a lower average day’s holiday pay. It was in dispute whether Mr Huxley had agreed with the claimant that it would be fairer that a divisor of 5 rather than 6 be used to calculate a day’s holiday pay to redress this whereby the claimant would have been paid an average of 9.2 rather than 7.6 hours for each day of holiday taken.
13. Following the meeting claimant continued to receive holiday pay based on a 6-day week.
14. The claimant as cleaning supervisor was responsible for preparing the weekly work roster and in particular ensuring appropriate staff cover was in place for bank holidays.
15. Following transfer to the respondent the claimant was paid for overtime at triple time in his monthly pay on 1 June 2018 for 12 hours, 27 July 2018 for 16 hours, 11 January 2019 for 16 hours, 3 May 2019 for 16 hours and 31 May 2019 for 8 hours.
16. In July 2019, the claimant’s mother was gravely ill in hospital and claimant took holiday leave on 12, 13 and 15 July 2019.
17. The claimant worked on public holidays falling in May, July and Dec 2018/Jan 2019, and April 2019 (based upon payments made thereafter at triple time in the claimant’s wages). It is accepted that the claimant usually worked on bank holidays albeit was unable to do so due to extremely difficult personal circumstances in July 2019 and that the opportunity to do so did not arise in July 2020 because he was on furlough leave, however based upon the wording of written confirmation given by OCS to the claimant, ‘Triple time paid on any bank holiday worked’, the tribunal is persuaded on balance that working overtime on bank holidays was not a compulsory contractual requirement.
18. In March 2020 due to the Covid-19 pandemic, the claimant was placed on furlough leave for which he was paid 80% furlough pay calculated upon a 4 weekly average pay of £1858.40 (184 hours @ £10.10 per hour). Payment for holiday leave taken thereafter during furlough leave was made without a furlough reduction. No additional payment was made to the claimant for any additional benefit / non-discretionary overtime during his furlough leave.
19. The claimant since commencement of his employment with OCS had been in a

number of different occupational pension schemes. When the claimant transferred to the respondent, the respondent made minimum prescribed pension contributions under Government guidelines of initially of 2% into the Nest pension scheme rising to 3% from April 2019.

20. In March 2019, Ms O'Loughlin held a grievance meeting with the claimant following a grievance raised by him in February 2019 that the respondent had failed to pay 3% of gross pay into his pension. Ms O'Loughlin thereafter sought and obtained from Robinson Services Limited confirmation that it had paid a 3% contribution to the claimant's pension, (it was not clarified whether this was upon gross or qualifying earnings).
21. A conversation also took place at the March 2019 grievance meeting regarding holiday entitlement, the claimant confirmed to Ms O'Loughlin that information provided by the transferor was incorrect and his correct entitlement was 4 weeks and 10 service days, not 5.6 week and 10 service days.
22. On 25 March 2019 Ms O'Loughlin set out in her grievance outcome letter to the claimant:

'You said that you were entitled to a higher contribution because you have a contract that states you are entitled to a 3% contribution and not the current rate of 2%, however a written copy of your contract is not available. Nevertheless, the HR Director from Robinson Services did confirm to me by email that you were entitled to a contractual pension contribution of 3%.

Therefore, I am satisfied that a contribution of 3% should be made to your pension.

Allegation upheld: DSG Solutions Director, David Huxley, has confirmed that he will make arrangements to have your pension contributions backdated to reflect the additional 1% and to bring you up to date with your entitlements.

You should note that from April 2019, the company would have automatically increased your contributions to 3%, and you will be obliged to contribute 5% unless you opt out of this scheme. If you opt out of the scheme you are not entitled to have your contributions paid to an alternative scheme, the contractual pension rights will only apply so long as you are a member of the company provided pension scheme.'

23. The respondent calculated the shortfall owing to the claimant from 1 June 2018 to 8 March 2019 and because it could not be paid into the claimant's pension, paid £161.47 as a lump sum to the claimant on 13 December 2019.
24. At a redundancy meeting on 16 September 2020 the claimant queried pension contributions made by the respondent, Mr Huxley agreed to look into what the contributions should be.
25. By letter dated 16 September 2020, the respondent terminated the claimant's employment by reason of redundancy with effect on 17 September 2020. Payment was made to the claimant in lieu of notice and untaken holidays accrued due to the end of September 2020. Parties were in agreement that the claimant had a balance

of 8.5 days holidays accrued due to him on termination of his employment.

26. In email correspondence with Ms O'Loughlin of 22 October 2020 the claimant put to her *'it was David who said my 46 hours a week should be divided by 5 and not 6 to give me an average of 9.2 hours a day but if you can't recall this and say David was to look into it then what was the outcome and why did you not inform me.'* The tribunal consider more probable that Mr Huxley agreed with the claimant at the time of their meeting in 2019 to give the matter further consideration but did not however return to the claimant or implement any change and is not persuaded that Mr Huxley reached an agreement with the claimant to use a divisor of five to calculate his daily holiday pay going forward.
27. The respondent paid the claimant a statutory redundancy payment calculated in accordance with Article 197 **ERO** using £464.60 as a week's pay.
28. In a letter dated 28 October Ms O'Loughlin confirmed that she was satisfied that the claimant's pension contributions were accurate, setting out detail of payments which had been made by the respondent at 3% on qualifying earnings.
29. The claimant expected contributions by the respondent to have been made at 3% on his full earnings, not just upon qualifying earnings.
30. The claimant presented his claim to the Office of the Tribunals on 29 November 2020.

RELEVANT LAW

A week's pay

31. The Employment Rights Northern Ireland Order 1996 [**ERO**] sets out how the amount of a week's pay shall be calculated at Articles 16-20, including:-

"17.— (1) This Article and Articles 18 and 19 apply where there are normal working hours for the employee when employed under the contract of employment in force on the calculation date.

(2) Subject to Article 18, if the employee's remuneration for employment in normal working hours (whether by the hour or week or other period) does not vary with the amount of work done in the period, the amount of a week's pay is the amount which is payable by the employer under the contract of employment in force on the calculation date if the employee works throughout his normal working hours in a week.

...

Remuneration varying according to time of work

18.— (1) This Article applies if the employee is required under the contract of employment in force on the calculation date to work during normal working hours on days of the week, or at times of the day, which differ from week to week or over a longer period so that the

remuneration payable for, or apportionable to, any week varies according to the incidence of those days or times.

(2) The amount of a week's pay is the amount of remuneration for the average number of weekly normal working hours at the average hourly rate of remuneration.

(3) For the purposes of paragraph (2)—

(a) the average number of weekly hours is calculated by dividing by twelve the total number of the employee's normal working hours during the relevant period of twelve weeks, and

(b) the average hourly rate of remuneration is the average hourly rate of remuneration payable by the employer to the employee in respect of the relevant period of twelve weeks.

(4) In paragraph (3) "the relevant period of twelve weeks" means the period of twelve weeks ending—

(a) where the calculation date is the last day of a week, with that week, and

(b) otherwise, with the last complete week before the calculation date."

32. The Employment Rights (Northern Ireland) Order (Coronavirus, Calculation of a week's pay) Regulations (Northern Ireland) 2020 makes provision for the calculation of a week's pay (for entitlements including redundancy pay) to disregard furlough reductions where an employee was furloughed on or before notice of termination/ termination of their employment and the calculation date on or before 30 September 2021 or relevant period includes a week where the employee was furloughed. It sets out at:

"4.— (1) This regulation applies where E's remuneration fell within the description in Article 17(2) of the 1996 Order (remuneration for employment in normal working hours which does not vary with the amount of work done) on the relevant date.

(2) The amount of a week's pay is the amount which is payable by the employer under E's contract of employment in force on the calculation date if E works throughout E's normal working hours in a week, and for these purposes—

(a) E's normal working hours, in relation to any period during which E is furloughed, include E's furloughed hours, and

(b) the amount which is payable, in relation to any period during which E is furloughed, is to be calculated

disregarding any reduction in the amount payable as a result of E being furloughed.

...

6.— (1) *This regulation applies where E's remuneration fell within the description in Article 18(1) of the 1996 Order (remuneration for employment in normal working hours which varies according to time of work) on the relevant date.*

(2) *The amount of a week's pay is the amount of remuneration for the average number of weekly normal working hours at the average hourly rate of remuneration, where —*

(a) *the average number of weekly normal working hours is calculated by dividing the total number of E's normal working hours during the relevant period by twelve, and*

(b) *the average hourly rate of remuneration is the average hourly rate of remuneration payable by the employer to E in respect of the relevant period.*

(3) *Where E is furloughed for any part of the relevant period—*

(a) *E's normal working hours, in relation to that part of the relevant period, include E's furloughed hours, and*

(b) *for the purposes of the calculation of the average hourly rate of remuneration payable for the relevant period, the hourly rate of remuneration for that part of the relevant period is the hourly rate payable under E's contract of employment in force on the calculation date, disregarding any reduction in the amount payable as a result of E being furloughed.*

(4) *For the purposes of this regulation, subject to regulation 7(3), the "relevant period" means the period of twelve weeks ending—*

(a) *where the calculation date is the last day of a week, with that week,*

(b) *otherwise, with the last complete week before the calculation date.*

..."

33. In summary a week's pay under the **ERO** for employee's where remuneration for employment in normal working hours does not vary, is the full amount payable for normal contractual working hours in a week. For employees with variable contractual hours/ remuneration, a week's pay is the average of pay (disregarding any furlough reduction where applicable) for the twelve weeks prior to the calculation date.

Overtime

34. The Coronavirus Job Retention Scheme introduced in March 2020 gave wage assistance to employers impacted by COVID-19, allowing employers to claim back a proportion of normal pay for qualifying employees who consented to being laid off from work on 'furlough' leave at 80% pay. The reference salary used for fixed rate employees was the amount payable in the latest pay period ending on or before 19 March 2020 and for those with variable/ irregular pay the higher of the same month's earnings from the previous year or average monthly earnings from the 2019-20 tax year. HMRC guidance advised employers when calculating wages for furlough grant applications that regular payments the employer was obliged to make should include non-discretionary payments for hours worked, including overtime (but not discretionary payments).
35. Whilst it is recognised in case law that calculation of pay for the 4 weeks of leave entitlement derived from European legislation (provided for in Regulation 15 Working Time Regulations (Northern Ireland) 2016), its focus being *normal remuneration* rather than *a normal week*, should take account of overtime worked with sufficient frequency and/or regularity that it is part of the worker's normal pattern of work, the focus for statutory redundancy pay however remains *normal working hours in a week* in which only compulsory overtime is taken into account.

Holidays

36. Workers are entitled to a maximum of 28 days annual leave entitlement under the Working Time Regulations (Northern Ireland) 2016 [**WTR**]. Provision is made under:-
- Regulation 15 (1) for 4 weeks' annual leave entitlement.
 - Regulation 16(1) for 1.6 weeks additional leave entitlement.
 - Regulation 16 (2) that the aggregate entitlement under regulation 16(1) and regulation 15(1) is subject to a maximum of 28 days.
 - Regulation 17, for payment in lieu of untaken leave accrued where a worker's employment is terminated during the course of his leave year.
 - Regulation 20 (1) that a worker is entitled to be paid in respect of any period of annual leave to which the worker is entitled under regulation 15 and regulation 16, *at the rate of a week's pay in respect of each week of leave*.
 - Regulation 20 (2) & (3) for the amount of *a week's pay* to be determined in accordance with Articles 17 to 20 **ERO**.
 - Regulation 43, to seek redress through an industrial tribunal and for an industrial tribunal to award compensation.

Breach of Contract

37. An employee may bring a claim for damages for breach of his contract of employment or for a sum due under that contract, or any other contract connected with his employment, before an industrial tribunal if the claim arises out of or is outstanding on termination of his employment, under the Industrial Tribunal Extension of Jurisdiction Order (Northern Ireland) 1994. An industrial tribunal shall not entertain a complaint in respect of an employee's contract claim unless it is presented:- (a) within the period of three months beginning with the effective date of termination of the contract giving rise to the claim; or (b) where there is no effective

date of termination, within the period of three months beginning with the last day upon which the employee worked in the employment which has terminated; or (c) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within whichever of those periods is applicable, within such further period as the tribunal considers reasonable.

Redundancy Pay

38. Under Article 170 **ERO**, a redundancy payment is payable by an employer to any employee of his, if the employee is dismissed by the employer by reason of redundancy.
39. Article 197 **ERO** provides for the amount of a redundancy payment to be the number of years (up to twenty) ending with the relevant date, during which the employee has been continuously employed payable at one and a half weeks' pay for years of employment in which the employee was not below the age of forty-one; one week's pay for years otherwise not below the age of twenty-two; and otherwise half a week's pay for years up to the age of twenty-two.

The Transfer of Undertakings and Pensions

40. The Transfer of Undertakings (Protection of Employment) Regulations 2006 [**TUPE**] and the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 safeguard employee rights upon a relevant transfer of an undertaking or business to a new employer making provision for the transfer of all rights, powers, duties and liabilities of the transferor under or in connection with an employee's contract of employment from the transferor to the transferee (under regulation 4 **TUPE**), but excepts (under regulation 10) transfer of rights under an Occupational Pension Scheme relating to benefits for old age, invalidity, or survivors, as follows: -

“10.—(1) Regulations 4 and 5 shall not apply—

- (a) to so much of a contract of employment or collective agreement as relates to an occupational pension scheme within the meaning of the Pension Schemes Act 1993(1); or*
- (b) to any rights, powers, duties or liabilities under or in connection with any such contract or subsisting by virtue of any such agreement and relating to such a scheme or otherwise arising in connection with that person's employment and relating to such a scheme.”*

41. The Pensions (Northern Ireland) Order 2005 makes provision for pension protection on transfer of employment, as follows:

“Pension protection on transfer of employment

Conditions for pension protection

234.— (1) *This Article applies in relation to a person (“the employee”) where—*

- (a) *there is a transfer of an undertaking, business or part of an undertaking or business for the purposes of regulation 3(1)(a) of the Transfer of Undertakings (Protection of Employment) Regulations 2006 or there is a service provision change within the meaning of the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006,*
- (b) *by virtue of the transfer or service provision change the employee ceases to be employed by the transferor and becomes employed by the transferee, and*
- (c) *at the time immediately before the employee becomes employed by the transferee—*
 - (i) *there is an occupational pension scheme (“the scheme”) in relation to which the transferor is the employer, and*
 - (ii) *one of paragraphs (2), (3) and (4) applies.*

(2) *This paragraph applies where—*

- (a) *the employee is an active member of the scheme, and*
- (b) *if any of the benefits that may be provided under the scheme are money purchase benefits—*
 - (i) *the transferor is required to make contributions to the scheme in respect of the employee, or*
 - (ii) *the transferor is not so required but has made one or more such contributions.*

...

Form of protection

235.— (1) *In a case where Article 234 applies, it is a condition of the employee's contract of employment with the transferee that the requirements in paragraph (2) or the requirement in paragraph (3) are complied with.*

(2) *The requirements in this paragraph are that—*

- (a) *the transferee secures that, as from the relevant time, the employee is, or is eligible to be, an active member of an occupational pension scheme in relation to which the transferee is the employer, and*

- (b) *in a case where the scheme is a money purchase scheme, as from the relevant time—*
- (i) *the transferee makes relevant contributions to the scheme in respect of the employee, or*
 - (ii) *if the employee is not an active member of the scheme but is eligible to be such a member, the transferee would be required to make such contributions if the employee were an active member, and*
- (c) *in a case where the scheme is not a money purchase scheme, as from the relevant time the scheme complies with prescribed requirements.*
- (3) *The requirement in this paragraph is that, as from the relevant time, the transferee makes relevant contributions to a stakeholder pension scheme of which the employee is a member.*
- (4) *The requirement in paragraph (3) is for the purposes of this Article to be regarded as complied with by the transferee during any period in relation to which the condition in paragraph (5) is satisfied.*
- (5) *The condition in this paragraph is that the transferee has offered to make relevant contributions to a stakeholder pension scheme of which the employee is eligible to be a member (and the transferee has not withdrawn the offer).*
- (6) *Paragraph (1) does not apply in relation to a contract if or to the extent that the employee and the transferee so agree at any time after the time when the employee becomes employed by the transferee.*
- (7) *In this Article—*
- *“the relevant time” means—*
 - (a) *in a case where Article 234 applies by virtue of the application of paragraph (2) or (3) of that Article, the time when the employee becomes employed by the transferee;*
 - (b) *in a case where that Article applies by virtue of the application of paragraph (4) of that Article, the time at which the employee would have been a member of the scheme referred to in paragraph (1)(c)(i) of that Article or (if earlier) would have been eligible to be such a member;*

- “relevant contributions” means such contributions in respect of such period or periods as may be prescribed;
- “stakeholder pension scheme” means a pension scheme which is registered under Article 4 of the 1999 Order.”

42. Minimum employer pension contributions from 6 April 2018 were set at 2% on earnings between set thresholds (‘qualifying earnings’) and from 6 April 2019 at 3 % on earnings between set thresholds.
43. The LRA information note on The Transfer of Undertakings (Protection of Employment) Regulations 2006 [TUPE] and the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (No.6) sets out:

“Occupational Pension Schemes

Rights under an Occupational Pension Scheme relating to benefits for old age, invalidity or survivors do not transfer. An employee is not permitted to bring a claim for breach of contract or constructive unfair dismissal arising out of a loss or reduction in his rights under such a Scheme. Pension rights which have been earned up to the time of transfer are protected by existing Social Security legislation and Pension Trust arrangements. The Regulations do not impose any obligation upon the new employer to continue with a pension scheme. However, The Pensions (Northern Ireland) Order 2005 and The Transfer of Employment (Pensions Protection) Regulations (Northern Ireland) 2005 provide limited protection where the old employer provided a pension scheme then the new employer must provide some form of pension scheme for those employees who were members or were eligible to join.”

44. In summary, key to determining a transferee’s pension obligations under **TUPE** is the type of pension involved. For a personal pension plan there is obligation to replicate existing pension benefits but for an occupational (/stakeholder) plan, the transferee can either match employee contributions up to 6%, or, match the former employer’s contribution rate.

APPLICATION OF LAW TO FACTS

- A. *Is the claimant owed holiday pay arising from payment being made for 7.6 rather than 9.2 hours per day’s holiday due?*
45. The claimant contended that he should properly have been paid 5.6 week’s pay for his holiday entitlement under the **WTR** which was capped at 28 days and that Mr Huxley had also agreed with him that holiday pay would be calculated based on a 5 rather than 6 day week and payment would made for 9.2 rather for 7.6 hours per day’s holiday?
46. Statutory paid leave entitlement under the **WTR** is subject to a maximum of 28 days for which payment is to be made *at the rate of a week’s pay in respect of each week of leave*, with the amount of a week’s pay to be determined in accordance with Articles 17 to 20 **ERO**.

47. The tribunal accept payment at the contended rate would have resulted in the claimant receiving more than normal remuneration for **WTR** paid holiday entitlement and are not persuaded that the claimant's entitlement thereunder was properly 5.6 week's pay for 28 days holiday rather than 28 days at an average working day's pay calculated by dividing weekly hours by working days, nor as per its finding set out above that Mr Huxley had ultimately agreed with the claimant to use a divisor of 5 rather than 6.
48. The tribunal is not persuaded that the respondent has failed to pay the claimant holiday pay due (*arising from payment being made for 7.6 rather than 9.2 hours per day's holiday due*) in breach of either the **WTR** or contractual agreement.
- B. *Is the claimant owed statutory redundancy pay arising from failure to take into account in calculation of a week's pay overtime payable at triple for 12 & 13 July?*

Was overtime compulsory? Was pay fixed or variable?

49. The claimant contended that under the Job Retention Scheme overtime should have been paid to him by the respondent for 12 & 13 July 2020 and redundancy payment then been worked out under 'the 12 week rule' whereby a week's pay for calculation of statutory redundancy payment would have increased.
50. The tribunal find as set out above that overtime on bank holidays albeit usually worked by the claimant was not a compulsory contractual requirement; that the claimant had normal working hours (46 per week); remuneration which did not vary with the amount of work done in normal working hours; and that the amount payable by the respondent under the contract of employment in force on the calculation date if the claimant worked throughout his normal working hours in a week was £464.40.
51. The tribunal accept that the claimant was in the circumstances correctly treated as having fixed rather than variable pay and that the amount of a week's pay for the purpose of calculating his statutory redundancy was correctly determined under Article 17 **ERO** as £464.40 gross and his redundancy payment calculated in accordance with Article 197 **ERO** using this amount for a week's pay.
52. The tribunal is not accordingly persuaded that the claimant is owed a shortfall in statutory redundancy pay arising from failure to take into account in calculation of a week's pay overtime payable at triple time for 12 & 13 July.
- C. *Has the respondent failed to pay pension contributions for the claimant at 3% on gross earnings?*
53. The claimant contended that the respondent had failed to match pension contributions made by former employers at 3% on full gross earnings rather than just those over a 'qualifying earnings' threshold.
54. Regulation 4 **TUPE** safeguards employee rights upon a relevant transfer of an undertaking or business to a new employer making provision for the transfer of all rights, powers, duties and liabilities of the transferor under or in connection with an employee's contract of employment from the transferor to the transferee, but excepts under regulation 10 transfer of rights under an Occupational Pension

Scheme relating to benefits for old age, invalidity, or survivors.

55. The tribunal find that the claimant prior to the transfer of his employment to the respondent was in an occupational pension scheme rather than a personal pension scheme and as such the respondent was not obligated to replicate existing pension benefits but had to comply with pension protection on transfer of employment required under The Pensions (Northern Ireland) Order 2005 under which it could either matching the former employer's contribution rate or match the claimant's employee contribution up to 6% on qualifying earning and that the respondent complied with the latter.
56. The tribunal is not persuaded accordingly that the respondent has in breach of contract failed to pay employer pension contributions at 3% on the claimant's gross earnings.

CONCLUSION

57. The claimant's claims for accrued holiday pay for his contractual notice period, holiday pay for holidays carried over from previous employers and sickness pay are dismissed following their withdrawal.
58. The unanimous judgment of the tribunal is the claimant's remaining claims for holiday pay; redundancy pay and pension payments are not well founded and are dismissed.

Employment Judge:

Date and place of hearing: 31 May 2022, Belfast.

This judgment was entered in the register and issued to the parties on: