

## Update

# Working Time Regulations – Offshore Workers’ Leave

This newsletter will be of particular interest to the Oil and Gas industry. Yesterday the Supreme Court ruled, in the sample case of *Russell and others v Transocean and others*, on whether off-shore workers are entitled to holiday time in addition to the time spent onshore on ‘field breaks’ away from work.

### Facts

The majority of the appellants work a shift patterns of two weeks “on” (ie. 14 days offshore working 12 hour shifts) followed by two weeks “off” (ie. 14 days onshore field break). Whilst during the two-week onshore field breaks, the appellants generally are not required to perform any work obligations, they do on occasion undertake training courses, appraisals, medical assessments and offshore survival courses. The appellants sought to take their holiday entitlement during the period they were working offshore, which was refused by their employers on the basis that entitlement to annual leave was to be taken during their offshore field breaks. This case has now progressed through the Tribunal system to the Supreme Court.

### Working Time Regulations

Regulation 13 of the Working Time Regulations 1998 (WTR) states (at the time the appellants made their claims) that a worker is entitled to paid annual leave of at least four weeks and Regulation 15 permits a worker to take this leave at a time

of his choice by giving notice to his employer, with the proviso that his employer may require him to take leave on particular days.

### Background to the Supreme Court’s Decision

In commencing proceedings before the Employment Tribunal, the appellants argued that ‘annual leave’ means a release from what would otherwise have been an obligation to work, and as such they should be permitted to take annual leave only during periods when they would otherwise be required to work on the offshore installations. The respondent employers maintained that an onshore field break is itself a rest period, as the workers were generally not required to work during this time, and so the paid annual leave entitlement was discharged. The Employment Tribunal upheld the appellants claims, ruling that ‘annual leave’ for the purposes of Regulation 13 involved a release from what would otherwise have been an obligation to work.

That decision was overturned by the Scottish Employment Appeal Tribunal (EAT), ruling that the two-week onshore field breaks represent time when the appellants are free of all and any work obligations and as such the field breaks were more than adequate to cover entitlement to annual leave. The Inner House upheld the EAT's decision, ruling that the field breaks satisfied the workers' right to annual leave. The appellants appealed to the Supreme Court.

### **The Supreme Court Decision**

The Supreme Court held that offshore workers can lawfully be required to take their annual leave entitlement during onshore field breaks, as these breaks represent adequate rest periods for the purposes of the Working Time Regulations. In reaching its decision, the Court considered Council Directive 2003/88/EC (the Working Time Directive, or WTD) which forms the basis of the WTR. In particular, the Court considered the preamble to the WTD, which provides that "all workers should have adequate rest periods" and the definition of rest period, which is defined as "any period which is not working time". The Court ruled

that, as the purpose of the WTR and WTD was to ensure that workers were provided with adequate rest breaks from work for reasons of health and safety, it was irrelevant whether these rest breaks were at times designated by the employer or the worker. As such, the Court found that the two-week onshore field breaks were more than adequate to satisfy a worker's entitlement to annual leave and employers were entitled to insist that workers take their paid annual leave during onshore field breaks. The appellants sought to appeal to the ECJ on the definition of 'annual leave' but the Supreme Court denied the appellants the right to appeal, meaning that this decision is final.

It has been a seven year legal battle in which North Sea workers have been seeking to secure paid leave over and above the time spent on onshore field breaks. The issue is now over from a legal viewpoint. However, from an industrial perspective, the Unions previously stated that if the Supreme Court ruled against them, strike action could result and therefore the matter may not quite be over.

### **Further information**

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