



7 December 2011

PRESS SUMMARY

Russell (Appellant) and others v Transocean International Resources Limited and others (Respondents) (Scotland)

Russell and others (Appellants) v Transocean International Resources Limited and others (Respondents) (Scotland) [2011] UKSC 57

On appeal from the Inner House of the Court of Session

JUSTICES: Lord Hope (Deputy President), Lord Brown, Lord Mance, Lord Kerr, Lord Wilson

BACKGROUND TO THE APPEALS

The Appellants are all employed to work in various capacities on offshore oil and gas installations. The Respondents are their employers. With the exception of one, all were contracted to work to a pattern of two weeks offshore followed by two weeks onshore (called a ‘field break’). Whilst offshore the Appellants generally worked a 12 hour shift each day during which rest breaks were taken. This was followed by 12 hours off duty living offshore on the installation. They did not have any days off while they were offshore. For the most part the Appellants were free from work-related obligations during the entire period of their field breaks.

The Working Time Regulations 1998 (‘the WTR’) set out in domestic law the provisions of the Working Time Directive 2003 (‘the WTD’), which lays down minimum health and safety requirements for the organisation of working time, with ‘minimum rest periods’ consisting of daily rest, weekly rest and annual leave (Articles 3 to 7 WTD). Article 7 of the WTD and Regulation 13 of the WTR provide that the worker is entitled to paid annual leave of at least four weeks (at the time the Appellants made their claims). Regulation 15 of the WTR provides that a worker may take leave to which he is entitled on such days as he chooses by giving notice to his employer, but that the employer may require him to take leave on particular days. The issue in this case is whether the period spent onshore should count towards the workers’ entitlement to four weeks’ paid annual leave.

The Appellants issued proceedings contending that ‘annual leave’, properly construed, means release from what would otherwise have been an obligation to work, and therefore the WTR required the Respondents to permit them to take annual leave from periods when they would otherwise be required to work on the offshore installation. The Respondents maintained that the time onshore is itself a rest period, as it is not working time, so the paid annual leave entitlement was discharged by two weeks onshore within the shift pattern. The Employment Tribunal held that ‘leave’ in Regulation 13 of the WTR involved a release from what would otherwise have been an obligation to work. That decision was set aside by the Employment Appeal Tribunal, which held that the time available during field breaks, after allowing for compensatory rest to take account of the fact that the Appellants worked offshore without a weekly rest period, was more than sufficient to cover the entitlement to annual leave. The Inner House of the Court of Session refused the Appellants’ appeal, holding that what the WTD required was that there be provided to the worker within the year at least four remunerated weeks in which he was free from working commitments. There was nothing in the WTD to suggest that employers might not arrange matters so that annual leave was taken during the school holidays or such similar industrial equivalent.

JUDGMENT

The Supreme Court unanimously refuses the request for a reference to the Court of Justice of the European Union, dismisses the appeal, and affirms the interlocutor of the Extra Division of the Court of Session. The judgment is given by Lord Hope.

REASONS FOR THE JUDGMENT

Under the WTD, every worker must be entitled to a rest break, a daily rest, and a weekly rest period. Each period must be measured separately from each other. They cannot intrude upon each other or overlap [16]. Where necessary because of special working patterns, workers must be afforded equivalent periods of compensatory rest. In the Appellants' case, it was agreed that the first two days of each period of their field break is accounted for as compensatory rest, to make up for the fact that they work a 12 hour shift every day during their two weeks offshore [17]. With regard to the annual leave entitlement, Article 7 of the WTD does not require that those four weeks must be taken consecutively or that those weeks cannot be interrupted [18]. But as a period of leave is not a period which is defined in Article 2 as working time, it must be taken to be what that article defines as a rest period. It is an annual period of rest [19].

The WTD does not imply any qualitative requirement to test whether a given period can be accounted as rest. The exercise that must be carried out is simply one of counting up the relevant hours, days or seven-day periods and ensuring that the worker is not required to work during those periods. There is no indication anywhere that the WTD was concerned about the quality of the minimum periods of rest, other than to make it clear in the definition of 'rest period' that it means a period which is not working time[21].

The contract in question is a contract for the whole of the year, in which the employees were required to work for 26 weeks [34]. The purpose of the entitlement to annual leave is to enable the worker to rest and enjoy a period of relaxation and leisure. The ECJ has not said that a pre-ordained rest period, when the worker is free from all obligations to the employer, can never constitute 'annual leave'. On the contrary, the term 'rest period' simply means any period which is not working time, and 'any period' means every such period irrespective of where the worker is at that time and what he is doing, so long as it is a period when he is not working. It is plain that any period when the Appellants are on field break onshore will fall into that category [36]. The Respondents are therefore entitled to insist that the Appellants must take their paid annual leave during periods other than their 26 working weeks when they are onshore on field break. This is permitted by Regulation 13 of the WTR, read in conformity with Article 7 of the WTD [38].

A reference to the CJEU is not necessary in this case. The meaning to be given to article 7, for the purposes of this judgment, is not open to any doubt [43].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

www.supremecourt.gov.uk/decided-cases/index.html