Overtime counts when calculating statutory holiday pay

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Workers are entitled to overtime payments as part of their holiday pay provided the overtime was connected to the performance of the tasks required under a contract of employment.

Mr Neal worked for Freightliner under a contract that provided for a 35 hour week made up of seven hour shifts although he was required to work overtime when necessary. Such overtime was considered 'voluntary'. In reality, Mr Neal worked shifts of 8.5 or nine hours. He received a premium for time worked in addition to the contractual seven hours but these extra hours were not taken into account for the purpose of calculating holiday pay. As such, he brought a claim for unlawful deductions of wages and a breach of the Working Time Regs 1998.

The Tribunal found in Mr Neal's favour that workers are entitled to receive holiday pay for overtime where the work is 'intrinsically linked' to the employment contract. The fact that he volunteered to perform these tasks outside his contractual hours did not mean that the performance at those times was not intrinsically linked. Furthermore, the fact that he was paid a premium for the over time provided*'an additional link to the performance of his tasks andtheir inclusion as part of normal remuneration for the purposes of the calculation of holiday pay'*.

Whilst this decision is likely to be appealed, employers should consider taking paid overtime into account when calculating holiday pay, as they could be challenged on this front by workers.

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