

# Worker not entitled to holiday pay for untaken annual leave as he was not prevented from taking it

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# Worker not entitled to holiday pay for untaken annual leave as he was not prevented from taking it?

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The Employment Appeal Tribunal has held that a salesman was not entitled to claim for untaken annual leave on termination where he claimed he had not taken the leave because the employer said it would not be paid. He had been paid wages whilst at work during those periods and he had shown no evidence that he was prevented from taking the holiday.

Mr King worked as a commission-only salesman for the Sash Window Workshop from June 1999. At no point was Mr King paid for holiday or sickness leave. The Company terminated Mr King's contract on 6 October 2012, once he had turned 65. Mr King brought a claim for unpaid holiday pay from the start of his employment under the Working Time Regulations.

The EAT rejected Mr King's claim for unpaid holiday on two grounds. Firstly, the Working Time Regulations specify that annual leave can only be carried over where the worker cannot take it for reasons beyond his control. The EAT saw no evidence that Mr King was prevented from taking his leave. Though it agreed that Mr King may have been more willing to take his annual leave if it were paid, it found that he was able to take it and indeed, Mr King did take his full leave entitlement in some years. No evidence was presented to show that the Company had ever refused Mr King's requests for annual leave.

Secondly, the EAT found that Mr King's claim was not one for unlawful deductions from his wages. Mr King had been at work and earning during the periods when his annual leave was not taken. As such, he had suffered no loss of pay and could not claim a series of deductions from his wages.

*Sash Window Workshop Ltd and another v King UKEAT/0057/14*

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