

Employee Paid Less Due To Part-Time Status

In the know

Part-time workers are protected against being treated less favourably by their employer just because they are part-time. Employers usually use the “pro-rata” principle when calculating entitlements for part-time workers but a recent case shows that employers can still get it wrong. Here, we take a look at the case.

Facts of the case

- In *British Airways v Pinaud*, the claimant worked at British Airways from 1985 on a full time basis. After her return from maternity leave in 2005, she started to work part-time;
- The full-time shift pattern was called the “6/3 pattern” – six days off and three days on. Over the year, a full-time crew member was required to be available for work for 243 days and had 122 days off;
- The part-time shift pattern was called the “14/14 pattern” and was expressly described as a 50% contract so the basic salary was 50% of the full time salary. The pattern was 14 days on and 14 days off. This meant that, over the year, the part-time crew member was required to be available for 130 days;
- The claimant claimed she was treated less favourably with regard to the terms of her contract because she was required to be available for proportionately more days than a full-time employee;
- The Part-Time Workers Less Favourable Treatment Regulations 2000 prohibit less favourable treatment on the grounds of part-time status, but allow employers the opportunity to objectively justify any less favourable treatment.

Employment Tribunal Decision

- The Employment Tribunal found that the claimant had been treated less favourably when compared with a full-time employee;
- This was on the basis of a simple calculation: 50% of 243 days was 121.5 days; the claimant had to be available for 130 days which was 8.5 days more than 50%. Put another way, the claimant had to be available for 53.5% of the days the comparator had to be available but was only paid 50% of the

comparator’s salary;

- The treatment could not be objectively justified, said the ET, because there was a less discriminatory way of achieving their aim of a workable, practical, predictable, flexible and popular shift pattern;
- The less discriminatory way would have been to pay the part-time employee 53.5% of the full-time salary;
- When the employer appealed, the Employment Appeal Tribunal agreed with the original decision.

Practical implications

- This case appears somewhat cut and dry. The part-time employee was performing more than half of a full-time employee’s hours but only getting paid the equivalent of half the wages;
- The hourly rate for the part-time employee was therefore less than the full-time employee, just because she was part-time.

Croner Tips

When using the pro-rata principle, ensure that entitlements are calculated based on real time figures. If part-time employees are paid half of a full-time worker’s wage and operational needs require part-time workers to work more than half the full-time hours, ensure their pay matches their working demands.

The content of this briefing is correct at the time of publishing.

Please contact the 24 Hour Advice Service for advice on your specific situation before acting on the information in this article