



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs A Butler

**Respondent:** Zoe Mann

**HELD AT:** Manchester

**ON:** 23 January 2018

**BEFORE:** Employment Judge Tom Ryan

**Appearances:**

**Claimant:** Mr D Butler, claimant's husband

**Respondent:** In person

## JUDGMENT

The judgment of the tribunal is that:

1. The claimant's complaint for a redundancy payment and her complaints of breach of contract in respect of notice pay, unpaid holiday pay and unauthorised deductions from wages are well-founded.
2. The claimant's further complaint of unauthorised deductions from wages in respect of deductions for tax and national insurance were, with the consent of the parties, not determined. In respect of that further complaint the proceedings are stayed until 30 April 2018.
3. In respect of those complaints that have been held to be well-founded the respondent is ordered to pay compensation to the claimant calculated as follows:

Redundancy payment

£205.00 x 3 years x 1.5	£922.50
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Notice pay

£205.00 x 3 weeks	£615.00
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Unpaid holiday pay

Annual Entitlement      5.6 weeks x (38/52) =      3.6 weeks

Proportion of final year   47/52

Accrued holiday pay      3.6 x (47/52) = 3.2 weeks x £205.00 =      £656.00

Unauthorised deductions from wages

Arrears admitted by the respondent      £255.92

**Total award**      **£2,449.42**

## REASONS

1. The complaints identified above were brought by a claim form presented to the tribunal on 19 September 2017.
2. Although the complaints were resisted, when the matter came for hearing before me the respondent indicated that a number of matters were not in dispute and that a number of matters of fact were agreed.
3. It was agreed that the claimant was employed by the respondent to provide personal assistance to the respondent's daughter, Anais, a disabled person, to enable her to attend college. To that end the claimant worked during the college terms. It was agreed that she worked for 38 weeks a year and for 25 hours a week. It was also agreed that her hourly rate of pay was £8.20.
4. The respondent accepted that the claimant's employment came to an end on 28 July 2017, albeit the claimant had contended it ended on 16 June of that year. The parties agreed that I should determine any relevant matters on the basis of an end date of 28 July. It was common ground that the employment had commenced on 1 September 2014.
5. The respondent accepted that the reason for the termination of the employment was that her daughter was no longer attending college and therefore there was a cessation in the need for the work performed by the claimant to be done. In those circumstances, she accepted that the claimant's dismissal was due to the reason of redundancy.
6. It was also agreed between the parties that the claimant was entitled to the minimum statutory annual leave provided for by the Working Time Regulations 1998 and that the claimant had not been paid at any point in respect of annual leave.
7. Finally, the respondent accepted that in respect of the net payment made to the claimant on 26 April 2017 she had paid the sum of £478 which was less than the expected monthly net payment of £648 to the extent of £170 and that in the

payments for May, June and July 2017 which had been paid by the Wigan Borough Council on her behalf there was a shortfall in each month of £28.64.

8. In considering these matters I was assisted by reference to the documents prepared by Mr Butler on behalf of the claimant, in particular the table and spreadsheet set out on pages 13 and 14 of the claimant's bundle.
9. Since there was a significant measure of agreement in relation to the matters in issue as I have described it was not necessary for me to hear oral evidence to resolve factual disputes.
10. The respondent maintained that the claimant was not entitled to notice pay, according to advice she had received from Wigan Borough Council, because the claimant was only employed to work during school terms. The respondent accepted that she was not aware of what an employee was entitled to in respect of notice. It was agreed there was no contract of employment provided to the claimant. In my judgment, the claimant was entitled to 3 weeks' notice in accordance with section 86 of the Employment Rights Act 1996. That represents one week's notice for each complete year of employment. The reason advanced by the respondent on the basis of the Council's advice does not absolve the respondent as employer from giving notice.
11. In respect of the complaint unpaid holiday pay there was no factual dispute. The claimant had sought unpaid holiday pay in respect of the entirety of her employment. Absent an agreement in respect of holiday pay the claimant was not entitled to carry untaken leave forward from a previous year under the Regulations. Accordingly the claimant was only entitled to compensation under regulation 14 in respect of leave accrued but not taken during the final year of employment.
12. Documents provided by the claimant demonstrated that, in respect of the wages she received from this employment, her other employment and pension payments, her earnings had not exceeded the tax threshold at the point of her dismissal. In those circumstances the sums awarded above in the judgment have been calculated on the basis of gross pay rather than net pay. Should it transpire that the tax threshold is passed the claimant may be liable to account to HM Revenue and Customs in respect of those sums.
13. In respect of the complaint of unauthorised deductions from wages the complaints fell into 2 categories. The respondent accepted that there were shortfalls of wages in respect of the sums awarded above. However, the claimant also maintained that deductions had been made in respect of tax and national insurance and that no monies have been paid in respect of tax and national insurance to the revenue during the course of her employment. Mr Butler explained that it was only very recently that the claimant's online account with HMRC was showing any payments in respect of the claimant's employment by the respondent. The sum now showing on that account represents, approximately, the entirety of the gross pay earned by the claimant during the 3 years of this employment. In those circumstances I indicated that that element of the claim should in my opinion properly be adjourned to enable the parties and the revenue to sort out the implications of that recent information being provided.

For that reason I have stayed that part of the claim for 3 months. If at the end of that period the trouble is notified that the remains of dispute which the tribunal can and should resolve a further hearing will be listed.

14. As to the matters in respect of which there was alleged to be a shortfall in the monies that were paid these fell again into 2 categories. In respect of the sum of £170 by which wages were paid short in April 2017, the respondent explained that this was a deduction which she had been told by the auditors of the direct payment scheme to make because it represented pay in respect of the period during which her daughter had not attended college because of ill-health. However the respondent also accepted that in the 3 years of this employment there had been other occasions in respect of which the claimant was not required to assist because of the respondent's daughters ill-health and yet had been paid in full. There was a dispute between the parties as to whether there was an agreement that payments are made in the circumstances or not. It was not necessary for me to resolve that dispute. Either there was an agreement that payments would be made in the circumstances or if the alternative had been agreed there had clearly been a variation implied by the conduct of the respondent such that payment was now due under the contract. Alternatively it could be construed that by custom and practice payment in those circumstances was now due. For that reason I concluded there had been unauthorised deduction in respect of that month in that sum.
15. In respect of the 3 payments that had been paid at the reduced rate of £619.36 £648 the respondent explained that this was because payments are being taken over by the Council who had then paid the claimant on the basis of an hourly rate of £8.10 instead of £8.20. Although the respondent said that she had only been advised that the rate was £8.10 she accepted that the council had previously paid the claimant of the rate of £8.20 a week. She accepted that all other calculations of pay were based on the rate of £8.20. Mr Butler pointed out that in correspondence with ACAS prior to the hearing Wigan Borough Council had accepted the rate of £8.20. In those circumstances I was satisfied that in paying on a reduced rate unauthorised deductions from wages had been made in the sum of £28.60 for a month or £85.92 in the aggregate.
16. I should record that this last complaint was calculated on net sums since the parties agreed that these were deductions from the pay actually paid to the claimant
17. For those reasons I upheld the complaints and ordered the respondent to make the payments set out above.

Employment Judge Tom Ryan  
23 January 2018

JUDGMENT AND REASONS SENT TO THE PARTIES ON  
29 January 2018  
FOR THE TRIBUNAL OFFICE



## NOTICE

### THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): 2405244/2017

Name of case(s): Mrs A Butler v Zoe Mann

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: 29 January 2018

"the calculation day" is: **30 January 2018**

"the stipulated rate of interest" is: 8%

For the Employment Tribunal Office