



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr N Cripps

**Respondent:** The Secretary of State for Business, Energy and Industrial Strategy

**HELD AT:** Liverpool

**ON:** 15 March 2018

**BEFORE:** Employment Judge Barker

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Not in attendance

## JUDGMENT

The judgment of the Tribunal is that the claimant is entitled to recover the sum of £1,743, which is calculated as follows:

1. The claimant is entitled to notice pay. The claimant was entitled to four weeks' notice pay at his net weekly wage of £238, which is £952. The claimant's employer made a further payment after his dismissal of £280, which reduces the sums owed to the claimant. The claimant is therefore entitled to recover £672 in this regard.
2. The claimant has not been paid for accrued but untaken annual leave and is entitled to recover £1,071 in this regard.

## REASONS

1. Mr Cripps' employer, First Harvest Limited, went into creditors' voluntary liquidation on 31 May 2017. Due to a failure on the part of First Harvest Limited to supply the Respondent with information relating to Mr Cripps' employment via the

liquidator, the Respondent has been unable to administer Mr Cripps' claim from the National Insurance Fund under s182 of the Employment Rights Act 1996 for unpaid notice pay and holiday pay outstanding on termination of his employment.

2. The purpose of this hearing was to find facts and establish information from which the Respondent may properly consider Mr Cripps' claims. The Respondent had indicated to the Tribunal in advance of the hearing that it would not be in attendance. The Respondent submitted detailed written submissions, to which the Tribunal has had careful regard.

### **The Claimant's Terms and Conditions of Employment**

3. Mr Cripps supplied several key documents to the Tribunal, namely a contract of employment dated 2 May 2016, signed by him and his employer, which contained clauses setting out the parties' agreed terms in relation to notice and annual leave entitlement, and payslips and personal bank statements which demonstrated the weekly pay he received from First Harvest Limited prior to his dismissal.

4. Mr Cripps was not, however, able to supply any further evidence in relation to his annual leave or his dismissal date. Mr Cripps' oral evidence in this regard was taken under oath following questions from Judge Barker and is recorded in this judgement.

5. Mr Cripps' oral evidence, which is accepted, is that on the commencement of his employment on 1 September 2015 and for many months thereafter, he received no contract of employment or written statement of terms and conditions. He repeatedly requested such a written statement and was eventually provided with one in 2016, which he signed and which was before the Tribunal in evidence.

6. Mr Cripps' employment is said in this contract to have started on 2 May 2016. His evidence was that this was incorrect and that his start date was in fact 1 September 2015. I accept his evidence in this regard.

7. Clauses 19 to 22 of the contract deal with annual leave entitlement. Clause 19 says that the annual leave year commences on 1 January each year and runs for one year. Clause 20 states:

*"During each Holiday Year, the Employee is entitled to six weeks of paid annual leave, such entitlement accruing on a pro rata basis, with Bank and Public Holidays to be included in the calculation of the Employee's six weeks of paid annual leave."*

8. Clause 53 of the contract deals with notice on termination and states:

*"The Employee and the Employer agree that reasonable and sufficient notice of termination of employment by the Employer is the greater of four (4) weeks or any minimum notice required by law"*

### **The Claimant's Entitlement to Notice Monies**

9. Mr Cripps' evidence to the Tribunal was that he was dismissed with approximately thirty minutes' notice on 25 April 2017 and did not receive any notice monies. Mr Cripps supplied payslips and bank statements to the Tribunal for the period in question. His bank statements for April 2017 to 4 May 2017 show that he was paid £280 per week in the period immediately prior to his dismissal, save for his salary in the week of his dismissal, when he was paid for part of the week only. This accords with Mr Cripps' description of his dismissal as having taken place mid-week, on 25 April. His bank statements also show that on 4 May 2017 he was paid a further £280 by his employer, presumably in error.

10. Mr Cripps told the Tribunal that his gross hourly wage was £8 per hour for a 35 hour week and his ET1 claim form, box 8.2, sets out his normal take home pay as £238 per week.

11. His payslips purport to show that PAYE and National Insurance were deducted from his pay in April 2017. However, as payments of £280 per week were made into his bank account during this period, this cannot have taken place. Mr Cripps told the Tribunal that it was his view that his employer had not attempted to meet its obligations in this regard as they would have known that liquidation was going to happen imminently. He discovered by making enquiries that no deductions had been made and subsequently paid the shortfall in National Insurance contributions himself. It is also apparent that, in addition to failing to deduct for National Insurance, his employer also failed to deduct income tax prior to his dismissal.

12. Given that Mr Cripps gave evidence that he is now unable to work due to ill health and is in receipt of incapacity benefits and that in any event he did not find alternative work after his dismissal and prior to becoming unwell, it appears that Mr Cripps would have been entitled to an income tax rebate on any tax paid in April 2017 in any event, had his employer deducted it. However, this is not a matter that is within the jurisdiction of this Tribunal to determine. This Tribunal has been asked to determine sums payable as a consequence of Mr Cripps' dismissal on 25 April 2017 and in relation to his holiday pay.

13. The net sum of £238 per week is used as the basis of the following calculations. It was explained to Mr Cripps during the Hearing that the net sum and not the gross sum would be used. Some initial calculations were done in the Hearing itself, however in error these were done on the basis of the gross weekly wage and not the net weekly wage, and this written record of the decision corrects those errors made. Those calculations, also in error, did not take account of the additional payment made to Mr Cripps by First Harvest on 4 May 2017 shown in Mr Cripps' bank statement.

14. At the time of his dismissal, he was entitled as per the terms of his contract to four weeks' notice at a weekly net salary of £238, which is £952. Mr Cripps did not

find alternative work in that four week period, although he was fit and able to work at that time. Mr Cripps now suffers from a medical condition and is in receipt of ill health benefits while awaiting an organ transplant, but this was not the case during his notice period. A further payment of £280 was made by his employer after his dismissal and on 4 May 2017, presumably in error. Account must be given for this payment made during what would have been Mr Cripps' notice period and it reduces his entitlement from £952 to £672 for notice monies. No further deductions fall to be made from this sum.

### **The Claimant's Entitlement to Holiday Pay**

15. In relation to his annual leave entitlement, Mr Cripps' evidence was that First Harvest Limited provided him with no written records of annual leave taken or accrued, save for the relevant clauses of his contract of employment. His evidence was that he took no annual leave in leave year 2016 and none in 2017 but that his employer permitted him to carry ten days over from 2016 to 2017. His evidence is accepted in this regard.

16. Mr Cripps is therefore entitled to ten days annual leave for 2016, plus a pro-rata amount for the period of the 2017 leave year worked prior to the date of his employer's insolvency, as per s184 and 185 of the Employment Rights Act 1996. His employer's insolvency took place on 31 May 2017 and his leave year started on 1 January 2017. He is therefore entitled to 12.5 days annual leave during this period, calculated on the following basis:

Number of working days per week:	5
Working days in a full leaver year:	260
Working days to date of insolvency:	108
Annual leave entitlement:	30 days (as per his contract)

Pro rata accrued holiday:  $30/260 \times 108 = 12.5$  days plus 10 days carried over leave from 2016 = 22.5 days

17. 22.5 days equates to 4.5 weeks, on the basis of a five day working week. Mr Cripps is therefore entitled to recover  $4.5 \times £238$ , which amounts to £1,071 unpaid holiday pay.

Employment Judge Barker

Date 15<sup>th</sup> March 2018

JUDGMENT AND REASONS SENT TO THE PARTIES ON

23 March 2018

FOR THE TRIBUNAL OFFICE



## NOTICE

### THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: 2424077/2017

Name of case: Mr N Cripps v The Secretary Of State For  
Business, Energy &  
Industrial Strategy

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: 23 March 2018

"the calculation day" is: 24 March 2018

"the stipulated rate of interest" is: 8%

MR S ARTINGSTALL  
For the Employment Tribunal Office