



EMPLOYMENT TRIBUNALS

Claimant: Mrs J Moorhouse

Respondent: Sam Wilson

HELD AT: Manchester

ON: 9 October 2018

BEFORE: Employment Judge Tom Ryan

Appearances:

Claimant: In person

Respondent: No attendance

JUDGMENT

The judgment of the tribunal is that:

1. The application by the respondent for a postponement of the hearing is refused.
2. The claimant's complaint of unauthorised deductions from wages in respect of holiday pay is well-founded.
3. The respondent is ordered to pay the claimant compensation calculated as follows:

5 days holiday pay (gross) (37.5 hours x £8.50 per hour)	£318.75
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4. The tribunal finds that the employer was in breach of his duty under section 1(1) of the Employment Rights Act 1996 to give a statement of employment particulars to the claimant.
5. In accordance with section 38 of the Employment Act 2002 the tribunal makes an award of an amount equal to 4 weeks' pay to be paid by the respondent to the claimant so that, to the sum set out in paragraph 3 above, there is to be added the further sum of £1275.00.
6. The respondent is ordered to pay the resulting sum of £1,593.75 to the claimant on or before 23 October 2018.

REASONS

1. By a claim presented to the tribunal on 16 July 2018 the claimant alleged that the respondent had made unauthorised deductions from her wages by failing to pay outstanding holiday pay in respect of 5 days untaken holiday.
2. The respondent presented a response disputing the claim but appearing to accept that the claimant was entitled to a maximum of 2½ days holiday pay.
3. The respondent did not attend at the time and place fixed for the hearing. When contacted by the tribunal by telephone he asserted that that he had not been notified of the hearing. When reminded that the date of hearing was contained in the letter sent with the notice to the respondent of the requirement to serve a response, he apologised and said he would send an email to the tribunal. The respondent emailed the tribunal apologising again for his non-attendance. He accepted that the date of hearing was on the original letter but that “we didn’t receive a response to our documentation to the claim. Therefore I believe my Dad just took this as a case closed issue.” He asked for the case to be postponed for hearing to a date that he would attend.
4. When informed of the contents of the email the claimant objected to an amendment.
5. Having regard to the communications from the respondent I was not satisfied that there was any good reason for the respondent’s failure to attend the hearing. I do not understand the assertion that it was believed to be a “case closed issue”. I therefore refused the application to postpone.
6. In deciding the claimant’s case I took account of her oral evidence and the respondent’s assertions contained in the response.
7. Essentially the claimant’s case turned upon whether I accepted her evidence.
8. I found that the claimant was not provided with written particulars employment nor a copy of the handbook when she started her employment. She was unaware at the start of her employment of the respondent’s practice not to permit additional holiday to be taken in the months of November and December and up until early January of the following year.
9. The claimant habitually took holiday at Christmas time. When she asked Mr Wilson for holiday for the first Christmas of her employment in 2017 it is common ground that he refused her permission to take it. The claimant asked whether in the circumstances she could carry forward holiday into May 2018, which was in the following holiday year, I find as a fact that Mr Wilson agreed that she might do so. At that stage she had 7 days holiday outstanding.
10. The claimant gave notice to terminate her employment and it came to an end on 27 April 2018. When she asked for her accrued holiday pay she was told that she was only entitled to 2 days’ pay. The respondent then paid her for 2 days holiday accrued but untaken.

11. For those reasons I found that the claimant's case that she was entitled to a further 5 days holiday accrued but untaken was established.
12. The claimant worked 37½ hours a week at the rate of £8.50 per hour. The gross sum to which is entitled in respect of unpaid holiday is therefore £318.75.
13. The claimant informed me, and I accepted, that she had not been provided with a written statement of particulars of her employment at any stage.
14. In those circumstances the tribunal must consider whether to make an award under section 38 of the Employment Act 2002. There is no requirement that a claim under that section be made by a claimant.
15. The effect of the section is that where no statement of particulars is provided in breach of section 1 or section 4 of the Employment Rights Act 1996 which provide, essentially, that such a statement must be given after an employee has been employed for a period of 2 months, the tribunal must consider whether to make an award or an additional award of compensation.
16. The award may be for 2 weeks' pay or, if the tribunal considers just and equitable to do so, for 4 weeks' pay. In my judgment where an employer makes no attempt to comply with its statutory obligation and, in particular, where the effect of the breach is a significant cause of the claim, it is appropriate to award the higher sum.
17. In this case I find that on the facts the respondent made no attempt to comply with its obligation to provide a written statement of particulars. Had it done so, it is likely the claimant would have been made aware of the restriction on taking holiday in the Christmas period and upon the term in the respondent's handbook restricting the carrying forward of holiday. In those circumstances, as the claimant informed me, she would have taken her holidays earlier and the need to make this complaint would not have arisen. For that reason I have awarded 4 weeks' pay.
18. For the avoidance of doubt, I make it clear that the sums I have awarded are to be paid without deduction by the respondent but, as and when received, the claimant may be liable to tax in respect of the sums.

Employment Judge

9 October 2018

JUDGMENT AND REASONS SENT TO THE PARTIES ON
1 November 2018

FOR THE TRIBUNAL OFFICE



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): **2413470/2018**

Name of **Mrs J Moorhouse** v **Sam Wilson**
case(s):

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: 1 November 2018

"the calculation day" is: 2 November 2018

"the stipulated rate of interest" is: **8%**

MISS H KRUSZYNA
For the Employment Tribunal Office

INTEREST ON TRIBUNAL AWARDS

GUIDANCE NOTE

1. This guidance note should be read in conjunction with the booklet, 'The Judgment' which can be found on our website at www.gov.uk/government/collections/employment-tribunal-forms

If you do not have access to the internet, paper copies can be obtained by telephoning the tribunal office dealing with the claim.

2. The Employment Tribunals (Interest) Order 1990 provides for interest to be paid on employment tribunal awards (excluding sums representing costs or expenses) if they remain wholly or partly unpaid more than 14 days after the date on which the Tribunal's judgment is recorded as having been sent to the parties, which is known as "the relevant decision day".

3. The date from which interest starts to accrue is the day immediately following the relevant decision day and is called "the calculation day". The dates of both the relevant decision day and the calculation day that apply in your case are recorded on the Notice attached to the judgment. If you have received a judgment and subsequently request reasons (see 'The Judgment' booklet) the date of the relevant judgment day will remain unchanged.

4. "Interest" means simple interest accruing from day to day on such part of the sum of money awarded by the tribunal for the time being remaining unpaid. Interest does not accrue on deductions such as Tax and/or National Insurance Contributions that are to be paid to the appropriate authorities. Neither does interest accrue on any sums which the Secretary of State has claimed in a recoupment notice (see 'The Judgment' booklet).

5. Where the sum awarded is varied upon a review of the judgment by the Employment Tribunal or upon appeal to the Employment Appeal Tribunal or a higher appellate court, then interest will accrue in the same way (from "the calculation day"), but on the award as varied by the higher court and not on the sum originally awarded by the Tribunal.

6. 'The Judgment' booklet explains how employment tribunal awards are enforced. The interest element of an award is enforced in the same way.