



EMPLOYMENT TRIBUNALS

Claimant
Mr D Downing

Respondents
The Secretary of State for Business,
Energy and Industrial Strategy ("R1")
John Downing Builders Ltd ("R2")

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT NORTH SHIELDS

ON 29th November 2018

EMPLOYMENT JUDGE GARNON (Sitting Alone)

Appearances

Claimant: in person

R1 : no attendance R2: Mr B Day Director

JUDGMENT

The judgment of the Tribunal is:

1. The name of R2 is amended to that shown above . The claims against R1 are withdrawn but will not be dismissed .
- 2 The claim of breach of contract (notice pay) is well founded against R2 . I award damages of £ 1050 on which no tax is payable .
3. The claimant is entitled to a redundancy payment of £ 1890 payable by the respondent on which no tax is payable
4. The claim for compensation for untaken annual leave is well founded. I award compensation of £ 672 gross of tax and National Insurance (NI).

REASONS

1.The Facts

1.1 The claimant, born 7th October 1957 , was employed as a joiner from 16th February 2015 without any break in service until 20th July 2018 when R2 ceased trading in consequence of which he was dismissed. His pay was £ 420 per week gross.

1.2. R2 has helpfully put in a response admitting the details of employment given on the claim form and saying it does not intend to resist the claim. R1 has also put in a helpful response and said it will not be attending.

1.3. The claimant gave evidence. I asked about other income in the notice period and found he had none which needed to be taken into account. The tax and NI he normally paid gave him a net income of £350 per week

1.4. Yesterday in preparation for this hearing I accessed Companies House website and found R2 applied for a voluntary "strike off" on 12 November . Notice of that application was published on 20th November and there must have been an objection because the strike off was suspended on 28th November . I explained to the claimant what strike off means and it is not "insolvency" as defined in the Employment Rights Act 1996 (the Act).The claimant had not filed the objection and my experience tells me it was probably filed by a preferential creditor such as HMRC. It is possible formal insolvency proceedings will follow and I explained to the claimant how to monitor that and the steps he may then chose to take.

1.5. As R1 says it its response, it will consider paying under s166 the redundancy payment when a copy of this judgment is received. The claimant's best course is therefore to withdraw the claims against R1 reserving the right to bring them again.

2. The Relevant Law and Conclusions.

2.1. A contract of employment may be brought to an end only by reasonable notice unless the claimant is guilty of gross misconduct, which he was not. Damages for not giving that notice are the net pay due during the notice period less any sums earned or received as benefits payable to unemployed people in that period. The statutory minimum period of notice in s 86 of the Act in this case is 3 weeks. $£350 \times 3 = £1050$.

2.2. Redundancy is defined in s 139 which says dismissal shall be taken to be by reason of redundancy if it is wholly or mainly attributable to the fact the employer has ceased to carry on the business for the purpose of which the employee was employed by him. If dismissal is for that reason the employee is entitled to a redundancy payment calculated by a formula in s162. The claimant had at termination 3 years continuous employment. During each such year he was over the age of 41. His redundancy payment is 1.5 weeks gross pay for each of those years $£420 \times 4.5 = £1890$.

2.3. Regulation 14 of the Working Time Regulations 1998 (WTR) says where a worker's employment is terminated during the course of his leave year, and on the date on which the termination takes effect ("the termination date"), the proportion he has taken of the leave to which he is entitled in the leave year under regulation 13 and regulation 13A differs from the proportion of the leave year which has expired. his employer shall make him a payment in lieu of leave in accordance with a formula. In the absence of "a relevant agreement" the leave year starts on the anniversary of commencement of employment. The leave taken between then and the termination date

was the four bank holidays only, so applying the formula 8 days remain to be paid at a daily rate of £84. £84x8= £672. Compensation for untaken annual leave is awarded gross of tax but the sum is taxable.

2.4. The Employment Tribunal rules of Procedure 2013 (the Rules) provide

51. Where a claimant informs the Tribunal, either in writing or in the course of a hearing, that a claim, or part of it, is withdrawn, the claim, or part, comes to an end, subject to any application that the respondent may make for a costs, preparation time or wasted costs order.

52. Where a claim, or part of it, has been withdrawn under rule 51, the Tribunal shall issue a judgment dismissing it (which means that the claimant may not commence a further claim against the respondent raising the same, or substantially the same, complaint) unless—

(a) the claimant has expressed at the time of withdrawal a wish to reserve the right to bring such a further claim and the Tribunal is satisfied that there would be legitimate reason for doing so; or

(b) the Tribunal believes that to issue such a judgment would not be in the interests of justice.

2.5. I anticipate R1 will pay the redundancy pay soon. as an application has already been made by the claimant . R1 will only pay the other elements of this judgment if formal insolvency procedures occur , which they may. I am satisfied the claimant should have the right to bring a claim in the future against R1 in the unlikely event of R1 disputing his entitlements.

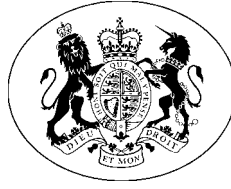
T M Garnon EMPLOYMENT JUDGE

JUDGMENT SIGNED ON 29th NOVEMBER 2018

SENT TO THE PARTIES ON

7 December 2018

Miss K Featherstone
FOR THE TRIBUNAL



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): 2503205/2018

Name of case(s):	Mr D Downing	v	1) Secretary of State for Business, Energy and Industrial Strategy 2) John Downing Builders Ltd
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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: 7 December 2018

"the calculation day" is: 8 December 2018

"the stipulated rate of interest" is: 8%

MISS K FEATHERSTONE
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.