



## THE EMPLOYMENT TRIBUNALS

Claimant  
Ms C Oxnard

Respondent  
London Gold Bullion Ltd

### JUDGMENT OF THE TRIBUNAL

HELD AT NORTH SHIELDS  
EMPLOYMENT JUDGE GARNON

ON 2 January 2019

Appearances : Claimant in person Respondent no attendance

### JUDGMENT

1. The claims of wrongful dismissal (breach of contract), unlawful deduction of wages, failure to pay compensation for untaken annual leave and for a redundancy payment are well founded.
2. On the claim of wrongful dismissal, I order the respondent to pay to the claimant damages of £ 2427.18 on which no tax is payable.
3. On the claim of unlawful deduction of wages, I order the respondent to re-pay to the claimant the sum of £2820.52 gross of tax and national insurance
4. On the complaint of failure to pay compensation for untaken annual leave, I order the respondent to pay compensation of £865 gross of tax and national insurance
5. The claimant is entitled to a redundancy payment of £ 1016 on which no tax is payable.

### REASONS

1. The claimant, born 26 March 1987, presented two claims online on 4 October 2018. The first named as respondent "London Gold Bullion" at an address in Mayfair London but gave a place of work in Newcastle. It showed a start date of employment as 1/9/2016 and a net salary of £1753 per month with an added benefit of the claimant's mobile phone bill being paid up to a maximum (the latter element was rightly not pursued as it is too difficult to quantify). It claimed a redundancy payment, notice pay, arrears of pay and compensation for untaken annual leave. It intimated the respondent had ceased to trade. The second claim form named "Harry Watling London Gold Bullion". The ACAS Early Conciliation (EC) Certificate showed the prospective respondent as "London Gold Bullion Limited" at the address in Mayfair. The second claim was accepted, and, on e-mail clarification from the

claimant, the name of the respondent amended to "London Gold Bullion Limited " but the service address given was a different London address in Battersea Park Road.

2. It was served on 6 November on that address but returned by Royal Mail on 14 November. "London Gold Bullion Limited ", Company Number 10398572, which remains "active " has its registered office at the Mayfair address, as checked today by a Companies House search. A claim may be validly served on a limited company either at its registered office or its place of business. Employment Judge Shepherd ordered it be re-sent to the registered office, which it was on 21 November. The address in Battersea Park Road is that of McLaren's Chartered Accountants who, according to the search, may have acted as Company Secretary. On 26 November McLaren's sent a helpful reply saying they were no longer acting as such and gave a contact name for a director, Mr Blackett .

3. A response was due by 4 December 2018 but none was received. An Employment Judge is required by rule 21 of the Employment Tribunals Rules of Procedure 2013 (the Rules) to decide on the available material whether a determination can be made. I was convinced the claim has been validly served. I had insufficient information to enable me to find the claims proved and determine the sums to be awarded. As I am empowered by the Rules, I sent written questions to the claimant in the form of a standard letter.

4. On 12 December McLaren's emailed saying Mr Blackett had died and was the only person who knew all the details of the claimant's employment. They added her employment had to the best of their knowledge terminated due to lack of funds and the company would now probably have to go into liquidation.

5. On 13 December the claimant replied to the standard letter saying her gross pay had been £ 528.85 per week i.e. £27500 p.a. but she said her net weekly pay was £ 300.96 which did not correspond to her earlier declared £ 1753 per month = £404.53 per week. She confirmed today the lower figure was an arithmetic error. I ordered the claim to remain listed so I could obtain the missing information.

6. I did not have a precise end date for her employment . For all material purposes the Employment Rights Act 1996 ( the Act) provides an employee is "dismissed " if she "terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct." An employee is "entitled" so to terminate the contract only if the employer has committed a fundamental breach of contract see Western Excavating (ECC) Ltd v Sharpe [1978] IRLR 27. Failure to pay wages is such a breach . On 7 September 2018 the claimant told Mr Blackett she was terminating for that reason . The reason for dismissal is in such a case the reason for the breach of contract in response to which she resigned . That was cessation or contraction of business due to lack of funds which comes within the definition of redundancy in s 139.

7. She had a contractual entitlement to two months notice but obtained other, better paid, employment on 22 October , six weeks later. The common law provides a contract of employment may be brought to an end by reasonable notice. Dismissal without such notice

is termed "wrongful" and damages are the net pay the claimant would have received during the notice period less any sums received in mitigation of loss. The claimant's net weekly pay was £404.53. Her loss is £404.53 multiplied by 6 weeks during which she earned nothing and received no benefits which equals **£2427.18**.

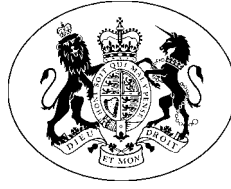
8. In reply to my questions about untaken annual leave, she confirmed the leave year was 1 January to 31 December and in the year her employment ended she had taken inclusive of bank holidays 2.2 weeks. Her proportionate entitlement to termination of the annual leave to which she was entitled under the Working Time Regulations 1998 was 3.83 weeks and the difference of 1.63 weeks which converts to **£865**.

9. The law covering her wages claim is in Part II of the Act. Her unpaid wages for August were £2291.67 and for one week of September £ 528.85 = **£2820.22**

10. The law of redundancy payments is in Part XI of the Act. The amount is a calculation based on date of birth and length of service. She is entitled to one week's pay for each year of continuous employment during the whole of which she was over the age of 22 and under 41. Section 227 provides there is a cap of £508 gross on the amount of a week's pay . She is entitled to 2 weeks gross pay which comes to **£1016**

11. I explained to the claimant the insolvency provisions regarding redundancy payments and those in Part XII of the Act regarding unpaid wages , holiday pay and notice pay. The redundancy payment is payable by the Secretary of State without the company having to be put into liquidation, receivership , administration or voluntary arrangement, but the other sums under Part XII are not. If neither the respondent itself nor any other creditor places the company into formal insolvency, the claimant may do so. A rough estimate of the sums she could then recover from the Secretary of State under Part XII would be £3500.

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**TM Garnon Employment Judge**  
**Date signed 2 January 2019**



## NOTICE

### THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): **2503224/2018**

Name of case(s): **Miss C Oxnard** v **London Gold Bullion Limited**

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: **3 January 2019**

"the calculation day" is: **4 January 2019**

"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](http://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.