



THE EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
Mr Michael Johnson

Respondent
DJM Fabrication Limited
t/a DJM Fabrications Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Held at: North Shields
Before: Employment Judge A M Buchanan

On: 15 January 2019

Appearances

For the Claimant: Ms K Johnson-Knox – Lay Representative

For the Respondent: No attendance

JUDGMENT

Rule 21 of Schedule I to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (“the 2013 Rules”)

1. The name of the respondent is amended to DJM Fabrication Limited t/a DJM Fabrications Limited.

2.1 It was not reasonably practicable for the claim of breach of contract (notice pay) to be presented within the period of three months beginning with the effective date of termination of the contract of employment of the claimant and the claim was filed within such further period as was reasonable.

2.2 It was not reasonably practicable for the claims for a declaration of unauthorised deduction from wages in respect both of wages and of holiday pay to be presented before the end of the period of three months beginning with the date of payment of the wages from which the deductions were made and the claims were presented within such further period as was reasonable.

3. The claim for a declaration of unauthorised deduction from wages in respect of the wages due to the claimant for January 2018 to 1 May 2018 is well – founded and the respondent is ordered to pay to the claimant the sum of **£4969.40p** (4 calendar months at £1417.35 per month less £700 gross received in that period) forthwith. This is a gross

award and the claimant shall account to the appropriate authority for any income tax due in respect of such sum on receipt by him. The claimant, having attained the age of 65 years, was not liable for employee national insurance contributions.

4. The claim for a declaration of unauthorised deduction from wages in respect of unpaid holiday pay is not well-founded and is dismissed. The claimant had taken the holidays to which he was entitled in the holiday year current at the date of termination of his employment on 1 May 2018.

5. The complaint of breach of contract in respect of unpaid notice pay is well-founded and the respondent is ordered to pay to the claimant £3185.64 (12 weeks at £265.47 per week net) damages for breach of contract forthwith. This sum is increased by an award of two weeks' pay (2 x £327.08) in the sum of £654.16 pursuant to section 38(3) of the Employment Act 2002. The respondent is ordered to pay to the claimant the sum of **£3839.80** forthwith.

6. The claimant is entitled to receive from the respondent a redundancy payment in the sum of £6378.06 (19.5 weeks x £327.08 per week gross) and the respondent is ordered to pay the sum of **£6378.06** to the claimant forthwith.

7. The total sum due from the respondent to the claimant is **£15187.26p** and is payable forthwith.

NOTES

1. The respondent filed a response on 12 December 2018 indicating that the claims of the claimant were not defended.

2. The claimant had not received written particulars of his employment and the respondent was in breach of its obligations under sections 1 and/or 4 of the Employment Rights Act 1996 when these proceedings were begun. Accordingly, an award under section 38(3) of the Employment Act 2002 is appropriate but at the minimum amount given the size of the respondent company.

3. The correct name of the respondent is DJM Fabrication Limited but it appears to have traded as DJM Fabrications Limited. There is no company registered at Companies House with the name of DJM Fabrications Limited.

4. Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by any party at the hearing or a written request is presented by any party within 14 days of the sending of this written record of the decision.

5. Public access to employment tribunal decisions
Judgements and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

EMPLOYMENT JUDGE A M BUCHANAN

JUDGMENT SIGNED BY EMPLOYMENT
JUDGE ON 15 January 2019



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): **2503284/2018**

Name of case(s): **Mr M Johnson** v **DJM Fabrication Limited
T/A DJM Fabrications
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: **23 January 2019**

"the calculation day" is: **24 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/publications/employment-tribunal-hearings-judgment-guide-t426

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.