



THE EMPLOYMENT TRIBUNALS

Claimant: Mr A Stanton

Respondent: C & C Bars Limited

Heard at: Teesside Justice Hearing Centre **On:** Monday 4th February 2019

Before: Employment Judge Martin sitting alone

Members:

Representation:

Claimant: In Person

Respondent: No attendance and no appearance

JUDGMENT

1. The claimant's complaint of breach of the Working Time Regulations (Holiday Pay) is well-founded. The respondent is ordered to pay the claimant the sum of £3,730.06 calculated as follows:

Outstanding holiday pay for the year 2016 - £1355.70

Outstanding holiday pay for the year 2017 - £1882.92

Outstanding holiday pay for the year 2018 - £491.44

This is a net amount and the respondent is responsible for the payment of income tax and any national insurance contributions thereon.

2. Pursuant to section 38 of the Employment Act 2002 the tribunal is satisfied that the claimant has succeeded in his claim for holiday pay and the respondent has failed to provide the claimant with a written statement of particulars of employment. Accordingly the tribunal is entitled to and does exercise its discretion to award the claimant two weeks' pay at the rate of £313.20 making a total sum of £626.40 as compensation for the respondent's failure to provide the claimant with a statement of his employment particulars.

The total sum ordered to be paid by the respondent to the claimant is £4356.46.

REASONS

1. By a claim form presented on 2nd November 2018 the claimant brought a claim for outstanding holiday pay.
2. No response was received to the claim. The notice of hearing was sent to the parties on 27th November 2018.
3. The claimant gave evidence at the hearing today under oath and produced a number of documents showing how he had calculated his claim for holiday pay.
4. The claimant was employed by the respondent as bar staff. He commenced his employment in 2013 and left on 1st July 2018. He did not receive any written particulars of his employment during the course of his employment.
5. The claimant was not paid any holiday pay during his employment. He was told he was not entitled to holiday pay. The claimant worked various different hours and days of the week. He worked an average of forty hours a week. The respondent's holiday year ran from 1st April to 31st March each year, but the claimant did not take any holidays during the course of his employment, nor did he receive any holiday pay during his employment.
6. The Tribunal took account of the deduction from Wages (Limitation) Regulations 2014, which limited claims for unlawful deduction from wages and holiday pay to two years from the date of the claim.
7. The claimant's average weekly wage for 2016 was £288.00. His average weekly wage for 2017 was £300.00. His average weekly wage for 2018 was £313.20. The claimant contacted ACAS and calculated his claim for holiday pay based on the government website. He is claiming his holiday pay on the basis of his average weekly wage and is then using a calculation of 12.07% to ascertain his holiday pay entitlement for each year.
8. The claimant worked thirteen weeks in 2018. He is claiming £491.44 holiday pay for the last year of his employment in 2018. In 2017 the claimant's weekly wage was £300.00. He worked the full year. Accordingly he is claiming £1882.92 holiday pay for that year. Although the claimant worked all of 2016, his claim for holiday pay is limited to thirty-nine weeks for that year taking account of the 2014 regulations. His average weekly wage over that year was £288.00, so he is claiming £1,355.70 holiday pay for that year.
9. The tribunal is satisfied that the respondent failed to provide the claimant with a statement of written terms and conditions of employment. Accordingly pursuant to section 38 of the Employment Act 2002, the tribunal is satisfied that the claimant has been successful in relation to a claim under schedule 5 of that Act, and that the claimant should be awarded a sum in compensation for that failure. The tribunal has therefore awarded him two weeks wages, based on his average weekly wage of £313.20, in respect of the respondent's failure to provide the claimant with a written statement of particulars of employment.

EMPLOYMENT JUDGE MARTIN

JUDGMENT SIGNED BY EMPLOYMENT
JUDGE ON 13 February 2019

Public access to employment tribunal decisions

Judgments 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.



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): **2503358/2018**

Name of case(s): **Mr A Stanton** v **C&C Bars Ltd**

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: **14 February 2019**

"the calculation day" is: **15 February 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.