



THE EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondent

(1) Mr James Bulmer
(2) Mr Shaun Anthony Scott
(3) Mr Ian Jones

AND

Gelders Food Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Held at: North Shields

On: 20 February 2019

Before: Employment Judge A M Buchanan (sitting alone)

Appearances

For the Claimants: In person
For the Respondent: No response entered and no attendance

JUDGMENT

It is the judgment of the Tribunal that:

Claim Number 2501776/2018: James Bulmer (“the first claimant”)

1.1 The first claimant has leave to amend his claim to include an application for a redundancy payment, an application for breach of contract (wrongful dismissal) in respect of notice pay and an application for unpaid holiday pay.

1.2 The claim for a declaration of unauthorised deduction from wages advanced by the first claimant relying on the provisions of Part II of the Employment Rights Act 1996 (“the 1996 Act”) is well-founded and the respondent is ordered to pay to the first claimant forthwith the sum of £276.15p (3 weeks x £92.05 statutory sick pay gross per week) in respect of unpaid wages. This is a gross amount and the first claimant shall account to the appropriate authorities for any income tax and employee national insurance contributions due in respect of such sum when received by him.

COMBINED PROCEEDINGS

Case Numbers: 2501776/2018 2503230/2018 and 2503352/2018

1.3 There is an award of two weeks' pay pursuant to section 38(3) of the Employment Act 2002 ("the 2002 Act") as I am satisfied that when these proceedings were instituted the respondent was in breach of its duty to the first claimant under sections 1 and/or 4 of the 1996 Act. The amount of £276.15p referred to above is increased by two weeks gross pay namely £563.76 (2 x £281.88) and thus the respondent is ordered to pay to the first claimant **£839.91** inclusive of the amount referred to in paragraph 1.2 of this Judgment.

1.4 The respondent is ordered to pay to the first claimant pursuant to section 24(2) of the 1996 Act **£11.89** to compensate the first claimant for financial loss sustained by the first claimant by reason of the unauthorised deduction referred to in paragraph 1.2 of this Judgment.

1.5 The first claimant is entitled to a redundancy payment from the respondent in the sum of **£3100.68** (11 weeks at £281.88 gross per week) and the respondent is ordered to pay that amount to the first claimant.

1.6 The respondent is ordered to pay to the first claimant damages for breach of contract in respect of notice pay in the sum of **£3110.88** (12 weeks x £259.24 net per week).

1.7 The respondent is ordered to pay to the first claimant unpaid holiday pay in the sum of **£698.98** (12.4 days x £56.37 gross per day) in respect of the holiday year 1 January 2018 until 14 August 2018. This is a gross amount and the first claimant shall account to the appropriate authorities for any income tax and employee national insurance contributions due in respect of such sum when received by him.

1.8 The total sum due to the first claimant from the respondent is **£7762.34** and the respondent is ordered to pay that amount to the first claimant forthwith.

Claim Number 2503230/2018: Shaun Anthony Scott ("the second claimant")

2.1 The second claimant has leave to amend his claim to include an application for a redundancy payment and a claim for breach of contract (wrongful dismissal) in respect of notice pay. This is on the basis that the employment of the second claimant ended on 21 September 2018 and that the claim form was filed on 4 October 2018.

2.2 The claim for a declaration of unauthorised deduction from wages advanced by the second claimant relying on the provisions of Part II of the 1996 Act is well-founded and the respondent is ordered to pay to the second claimant forthwith the sum of £3246.61p (10 weeks x £270.33 gross per week plus 4 weeks 2 days at £562.50 gross per week plus 8 weeks 3 days statutory sick pay at £92.05 gross per week less £2707.78 received in that period) in respect of unpaid wages. This is a gross amount and the second claimant shall account to the appropriate authorities for any income tax and employee national insurance contributions due in respect of such sum when received by him.

2.3 There is an award of two weeks' pay pursuant to section 38(3) of the 2002 Act as I am satisfied that when these proceedings were instituted the respondent was in breach of its duty to the second claimant under section 1 and/or 4 of the 1996 Act. The amount of £3246.61 referred to above is increased by two weeks gross pay namely £1016 (2 x £508.00 – statutory maximum) and thus the respondent is ordered to pay to the second claimant **£4262.61p** inclusive of the amount referred to in paragraph 2.2 of this Judgment.

2.4 The respondent is ordered to pay to the second claimant **£320.00** to compensate the second claimant for financial loss sustained by the second claimant by reason of the unauthorised deduction referred to in paragraph 2.2 of this Judgment.

COMBINED PROCEEDINGS

Case Numbers: 2501776/2018 2503230/2018 and 2503352/2018

2.5 The second claimant is entitled to a redundancy payment from the respondent in the sum of **£13970** (27.5 weeks at £508.00 gross per week) and the respondent is ordered to pay that amount to the second claimant.

2.6 The respondent is ordered to pay to the second claimant damages for breach of contract in respect of notice pay in the sum of **£5400.00** (12 weeks x £450.00 net per week).

2.7 The respondent is ordered to pay to the second claimant unpaid holiday pay in the sum of **£1046.25** (9.3 days x £112.50 gross per day) in respect of the holiday year 1 January 2018 until 21 September 2018. This is a gross amount and the second claimant shall account to the appropriate authorities for any income tax and employee national insurance contributions due in respect of such sum when received by him.

2.8 The total sum due to the second claimant from the respondent is **£24998.86** and the respondent is ordered to pay that amount to the second claimant forthwith.

3. Claim Number 2503352/2018: Ian Jones (“the third claimant”)

3.1 The claim for a declaration of unauthorised deduction from wages advanced by the third claimant relying on the provisions of Part II of the 1996 Act is well-founded and the respondent is ordered to pay to the third claimant forthwith the sum of **£1973.16p** (7 weeks x £281.88 gross per week) in respect of unpaid wages. This is a gross amount and the third claimant shall account to the appropriate authorities for any income tax due in respect of such sum when received by him. The third claimant having attained the age of 65 did not pay employee national insurance contributions.

3.2 There is an award of two weeks' pay pursuant to section 38(3) of the 2002 Act as I am satisfied that when these proceedings were instituted the respondent was in breach of its duty to the third claimant under section 1 and/or 4 of the 1996 Act. The amount of £1973.16p referred to above is increased by two weeks gross pay namely **£563.76** (2 x £281.88).

3.3 Accordingly the total amount due from the respondent to the third claimant is **£2536.92** (£1973.16 plus £563.76) and is payable forthwith.

4. The claim of Jade Alexandria Harrop under claim number 2501759/2018 previously combined with the three above mentioned claims is separated from them and is subject to an order issued under separate cover.

REASONS

Claim Number 2501776/2018: James Bulmer

1. I am satisfied the employment of the first claimant ended on 14 August 2018 when he was told by the respondent that he had been removed from the payroll.

2. Prior to the termination of his employment the first claimant had been away from work ill and was owed three weeks statutory sick pay at the time of his dismissal.

3. The respondent had failed to issue to the first claimant a statement of the main terms and conditions of his employment and I consider it appropriate to exercise my powers under section 38(3) of the 2002 Act.

COMBINED PROCEEDINGS

Case Numbers: 2501776/2018 2503230/2018 and 2503352/2018

4. As a result of the failure of the respondent to pay the statutory sick pay due to him the first claimant suffered £11.89 bank charges and that sum is awarded to him pursuant to section 24(2) of the 1996 Act.

5. The first claimant was dismissed by reason of redundancy and had worked for the respondent company since 4 December 2004 (section 5.1 of his claim form) and so given his age is entitled to 11 weeks gross pay in the sum of £281.88 per week namely £3100.68 by way of a redundancy payment. In reaching this conclusion I apply the presumption contained in section 163(2) of the 1996 Act.

6. The first claimant was not given notice of his dismissal and is entitled to 12 weeks' notice pay at the net rate of £259.24 per week. I am satisfied that the first claimant received no income from other sources including state benefits in the notice period as his partner was in employment.

7. In the holiday year which began on 1 January 2018 the first claimant was entitled to 17.4 days holiday and he had taken no holiday days except bank holidays in that period. That equates to 5 days holiday taken leaving a claim of 12.4 days and that is the amount of holiday I compensate.

Claim number 2503230/2018: Shaun Anthony Scott

8. I am satisfied the employment of the second claimant ended on 21 September 2018 when the last of the employees were dismissed by the respondent. At that time the second claimant was away ill and had been since 24 July 2018 but I am not persuaded that his employment lasted beyond 21 September 2018.

9. Prior to the termination of his employment the second claimant had been working as a baker for which he was paid £270.33 per week gross. I am satisfied that he was promoted to bakery manager (a position he had held previously) with effect from 22 June 2018 on £15 per hour and 37.5 hours per week namely £562.50 per week gross and £450.00 per week net. This was the contractual rate of pay of the second claimant from 22 June 2018. I have calculated the net pay by reducing the gross pay by 20% in the absence of any other evidence. From 24 July 2018 until the date of his dismissal on 21 September 2018 the second claimant was entitled to receive statutory sick pay of £92.05 per week. There had been considerable delays by the respondent in paying the wages of the second claimant and the position in respect of what was due and what was paid is confused. I have accepted the evidence of the second claimant as to the correct position save in relation to the date of his dismissal. The evidence was clear that no one had worked at the respondent's premises since 21 September 2018 and thus I accept that as the date of the dismissal of the second claimant notwithstanding that he was away ill at the time. The claimant accepts that in the period in question he received from the respondent at various times £2166.23. That would be a net sum. I calculate the gross sum by treating it as 80% of the gross sum which therefore equates to £2707.78. The calculation of the wages outstanding is as follows:

Wages from 13 April 2018 to 22 June 2018 at £270.33 per week = £2703.30

Wages from 22 June 2018 to 24 July 2018 at £562.50 gross per week = £2475.00

Statutory Sick Pay from 24 July 2018 to 21 September 2018 at £92.05 per week = £776.09

Total: £5954.39

COMBINED PROCEEDINGS

Case Numbers: 2501776/2018 2503230/2018 and 2503352/2018

I am satisfied the sums received by the second claimant from the respondent in that period amounted to £2166.23p which grossed up amounts to £2707.78.
The balance is therefore £3246.61p.

10. The respondent had failed to issue to the second claimant a statement of the main terms and conditions of his employment and I consider it appropriate to exercise my powers under section 38(3) of the Employment Act 2002.

11. As a result of the failure of the respondent to pay the wages due to him, the second claimant suffered bank charges and unarranged overdraft fees detailed in section 8.1 of his claim form totalling £320 and that sum is awarded to him pursuant to section 24(2) of the 1996 Act.

12. The second claimant (born 11 February 1962) was dismissed by reason of redundancy and had worked for the respondent company since 1984 (section 5.1 of his claim form) and so given his age is entitled to 27.5 weeks gross pay in the sum of £508 per week (the statutory maximum) namely £13970.00 by way of a redundancy payment. In reaching this conclusion I apply the presumption contained in section 163(2) of the 1996 Act.

13. The second claimant was not given notice of his dismissal and is entitled to 12 weeks' notice pay at the net rate of £450.00 per week. I am satisfied that the second claimant mitigated his loss and did not receive any income from any source including state benefits in the notice period except income from another part time job which he had whilst working for the respondent.

14. In the holiday year which began on 1 January 2018 the second claimant was entitled to 20.3 days holiday up to 21 September 2018 and he had taken some holidays and from the scant evidence before me I am satisfied that 9.3 days remained outstanding as at 21 September 2018. I award compensation accordingly. The second claimant sought to persuade me that he had four weeks' holiday outstanding to him from the start of his employment in 1984. I am not satisfied on the evidence before me that that is so and I award the entitlement for the holiday year which began in January 2018 only.

Claim number 2503352/2018: Ian Jones

15. The third claimant was paid £7.83 per hour for 36 hours per week until his dismissal on 24 August 2018. I am satisfied that 7 weeks' wages were owing to him at that point.

16. The third claimant brought no other claims to the Tribunal.

General Matters.

17. I am satisfied that all claims advanced to the Tribunal were brought in time.

18. The respondent company appears as "Active" at Companies House but it has ceased to trade. The claimants may wish to send this Judgment to the Redundancy Payments Office at Redundancy Payments Service, ET Section, PO Box 16684, Birmingham B2 2EF and seek payment of the sums awarded in so far as the Secretary

COMBINED PROCEEDINGS

Case Numbers: 2501776/2018 2503230/2018 and 2503352/2018

of State is liable to meet such payments under the terms of the statutory guarantees contained in the 1996 Act.

EMPLOYMENT JUDGE A M BUCHANAN

**JUDGMENT SIGNED BY EMPLOYMENT
JUDGE ON 20 February 2019**

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COMBINED PROCEEDINGS

Case Numbers: 2501776/2018 2503230/2018 and 2503352/2018



THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): **2501776/2018, 2503230/2018 & 2503352/2018**

Name of case(s): **Mr J Bulmer** v **Gelders Food Ltd**
Mr S Scott
Mr I Jones

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: **25 February 2019**

"the calculation day" is: **26 February 2019**

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

MISS K FEATHERSTONE
For the Employment Tribunal Office

COMBINED PROCEEDINGS

Case Numbers: 2501776/2018 2503230/2018 and 2503352/2018

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.