



EMPLOYMENT TRIBUNALS

Claimant: Miss A Valdeande

Respondent: Mr Tony Lewis and Ms Hazel Allen

Heard at: Bristol

On: 8 April 2019

Before: Employment Judge Oliver

Representation

Claimant: In person

Respondent: Did not attend

RESERVED JUDGMENT ON REMEDY

1. The respondents are to pay to the claimant the sum of £340.34 in compensation for a unauthorised deductions made from the claimant's wages.
2. The respondents have failed to give to the claimant any itemised pay statements in accordance with section 8 of the Employment Rights Act 1996. The respondents are to pay to the claimant the sum of £232.35 by way of unnotified deductions from the claimant's pay.

REASONS

1. This was a claim for failure to provide itemised payslips and deductions from wages.
2. The respondents had not submitted a response to the claim. A default judgment was issued on 28 November 2018. A remedy hearing was listed to discuss compensation. The respondents did not attend the remedy hearing and were not represented.
3. The claimant had written a document which explained her claim for financial compensation. She had also provided a bundle of indexed documents

and a written witness statement, which I read in advance. She talked through her calculations and relevant documents at the hearing.

Facts

4. The claimant worked for the respondents from 30 January 2017 to 15 August 2018 as a carer/companion/housekeeper. She had a contract of employment with the respondents. She was paid £300 per week and worked for 40 hours per week.

5. The contract of employment says that salary will be paid net of statutory deductions such as tax and national insurance, and the employer shall “account to the relevant authorities for these deductions and provide the employee with a pay slip containing full details of each salary payment, the deductions and the net amount”.

6. The respondent did not provide any pay slips to the claimant while she worked for them.

7. The claimant contacted HMRC to check that tax and national insurance payments had been correctly paid on her behalf. She was told that HMRC held no records for her relating to her employment by the respondent.

8. The claimant’s bank statements show that she was paid £1,200 per month from 28 February 2017 until 27 March 2018, and £1076.08 per month from 27 April 2018 until the end of her employment.

9. The contract of employment says that “the Employer will comply with any statutory obligations regarding pension provision imposed on it in the future”.

10. The respondents did not set up a pension scheme for the claimant and did not make any pension payments.

11. The claimant asked the respondent for payslips a number of times. She resigned on 18 July 2018 with 4 weeks’ notice, ending on 15 August 2018. She says that she resigned because the respondents had failed to sort out her pay and payslips.

12. The claimant has a new job at a lower salary, which she started on 28 November 2018.

13. The claimant made her claim to the Tribunal on 23 September 2018.

14. The respondents provided the claimant with payslips, a P60 and a P45 after she had made her claim to the tribunal. The amounts shown in these payslips are not the same as the amounts that were paid to the claimant’s bank account.

15. The claimant has contacted HMRC and has been told that tax and national insurance contributions have now been received.

Applicable law

16. Under section 8 of the Employment Rights Act 1996 (“ERA”), and employee has the right to be given by his/her employer, “at or before the time at which any payment of salary or wages is made to him, a written itemised pay statement”. This statement should include particulars of any variable and fixed deductions, and the purposes for which they are made.

17. Under section 11 of the ERA, where an employer does not give an employee a statement as required by section 8, an employee may make a reference to an employment tribunal to determine what particulars ought to have been included.

18. Under section 12(3) of the ERA, where an employment tribunal finds that an employer has failed to give an employee any pay statement, it shall make a declaration to that effect. Under section 12(4), where a tribunal finds that any unnotified deductions have been made from the pay of the employee during the period of thirteen weeks immediately preceding the date of the application for the reference, the tribunal may order the employer to pay a sum not exceeding the aggregate of the unnotified deductions. A deduction is an unnotified deduction where it is made without the employer giving the employee particulars of the deduction in a pay statement.

19. Under section 13 of the ERA an employee has a right not to make unauthorised deductions from the wages or salary properly payable to him/her. Under section 24, the tribunal can order the employer to pay to the worker the amount of any deduction made.

20. Under the National Minimum Wage Act 1998 the national living wage (applicable for workers aged 25 or over) was £7.83 per hour.

Conclusions

21. The claimant had made a claim for non-payment of tax and national insurance contributions. However, she explained at the hearing that HMRC had now received contributions for her employment by the respondents. She was no longer claiming compensation for this issue.

22. The claimant claims £312 for non-payment of pension contributions. It appears that the respondents failed to set up a pension scheme and failed to make any pension contributions for the claimant. The respondents may be in breach of the rules on automatic enrolment. However, I am not able to award this compensation to the claimant. This is a sum which should potentially have been paid into a pension scheme, not a sum that is owed directly to the claimant. It is not a deduction from her wages. The claimant may be able to make a complaint to the Pensions Regulator about this issue.

23. The claimant claims £340.34 due to the respondents’ failure to pay the national minimum wage rate of £7.83 per hour from April 2018. This amount has been calculated by her tax adviser. She says that she should have been paid £313.20 per week from April 2018, not £300 per week. It is clear that the amount paid to the claimant’s bank account decreased rather than increased from April 2018. The respondents have made an unauthorised deduction from the wages

properly payable to the claimant by failing to pay at the correct national minimum wage rate from April 2018. The respondents are to pay to the claimant the sum of £340.34.

24. The claimant claims £200 for invoices from her tax adviser, for advice on this matter. This is claimed on the basis that advice and information was necessary to progress this issue and defend her case. I appreciate that the claimant needed professional assistance to understand and bring this claim. However, I am not able to award compensation for professional or legal expenses as part of a claim for unauthorised deduction from wages and/or failure to provide a written pay statement.

25. The claimant claims £2,698 for loss of earnings, on the basis that she had to leave her job due to her employer's treatment of her. The claimant explained clearly how this sum was calculated. However, I am not able to award compensation for loss of earnings as part of a claim for unauthorised deduction from wages and/or failure to provide a written pay statement. The claimant does not have two years of continuous service with the respondents, and so she cannot make a claim for unfair dismissal. This type of compensation can only be awarded following a successful claim for unfair dismissal.

26. I have also considered the respondent's failure to provide itemised pay statements. Section 8 ERA requires a written itemised pay statement to be provided at or before the time at which any payment of wages or salary is made to an employee. The respondents clearly failed to do this. The respondents did not provide the claimant with any itemised pay statement throughout her employment with them. Although they have provided pay statements after the claimant issued her claim, these do not match the sums paid to the claimant at the time and so cannot be accurate.

27. I find that the claimant's itemised pay statements should have shown a payment of £300 per week in accordance with her contract of employment. As it appears that no payments were made to HMRC during this period, these pay statements would not show any deduction for tax or national insurance.

28. I make a declaration that the respondents have failed to give to the claimant any pay statements in accordance with section 8 ERA.

29. Under section 12(4) ERA, I can order the respondents to pay to the claimant the aggregate of unnotified deductions made during the 13 weeks before she made her claim to the tribunal.

30. The claimant made her claim on 23 September 2018. 13 weeks prior to this date is 24 June 2018. The claimant left her employment on 15 August 2018. She was therefore employed for 7.5 weeks during this period.

31. The claimant's bank statements show that she was paid £1076.08 every four weeks during this period. I have already awarded compensation for the failure to pay at the rate of the national minimum wage during this period. The correct rate of pay for this calculation is £300 per week. 7.5 weeks at £300 per week is £2,250. The claimant was actually paid £2017.65 for this period (7.5 weeks at £269.02 per week). The difference is £232.35.

32. The respondents are to pay to the claimant the sum of £232.35 by way of unnotified deductions.

33. The respondents are therefore to pay to the claimant the total sum of £572.69.

34. I appreciate that this is considerably less than the claimant's claim for compensation. However, I can only award compensation for the claims which have validly been made by the claimant – which are deduction from wages and failure to provide an itemised pay statements. I can only award the amounts of compensation that are permitted for these two types of claim.

Employment Judge Oliver

Date 8 April 2019

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON
10 April 2019

FOR EMPLOYMENT TRIBUNALS



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): **1403431/2018**

Name of case(s): **Miss A Valdeande** v **Mr Tony Lewis and Ms Hazel Allen**

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: **10 April 2019**

"the calculation day" is: **11 April 2019**

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

MISS Z KENT
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.