



# THE EMPLOYMENT TRIBUNALS

**Claimant:** J Gargantos

**Respondent:** Club Mumbai

**Heard at:** North Shields Hearing Centre      **On:** 1<sup>st</sup> May 2019

**Before:** Employment Judge Martin

**Members:**

***Representation:***

**Claimant:** In Person

**Respondent:** No attendance or representation

## JUDGMENT

1. The claimant's complaint of unlawful deduction from wages is well-founded. The respondent is ordered to pay the claimant the sum of £1,000.
2. The respondent is also ordered to pay the claimant two weeks wages in the sum of £406.64 in respect of their failure to provide the claimant with a statement of terms and conditions of employment in accordance with section 38 of the Employment Act 2002.

## REASONS

1. The claimant was employed by the respondent as a waitress on 10<sup>th</sup> September 2018. She was not given any contract of employment or pay slips throughout her employment. The claimant left her employment on 25<sup>th</sup> or 26<sup>th</sup> October 2018 following seven weeks work. She left because she had obtained alternative employment. The claimant was told that she would be paid £7.82 an hour, namely the national minimum wage. She said that worked on average twenty hours a week but the hours could be variable per day.

2. By the time the claimant left her employment she had not been paid any wages. She was informed that she would be paid the week after she left i.e. the 1<sup>st</sup> or 2<sup>nd</sup> November 2018. She did not receive any wages on the 1<sup>st</sup> or 2<sup>nd</sup> November 2018 and continued to chase the respondent for her outstanding wages. She was told by the respondent that the wages would be paid by way of instalments. She eventually received £300 into her bank account in about December 2018. She did not receive any further monies and contacted ACAS in January 2019.
3. The tribunal has considered section 13(3) of the Employment Rights Act 1996 “where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion, the amount of the deficiency shall be treated for the purposes of this part as a deduction made by the employer from the worker’s wages on that occasion”. Section 23(2) states that an employment tribunal shall not consider a claim under this section unless it has been presented before the end of the period of three months beginning with in the case of a complaint relating to a deduction by the employer the date of the wages from which the deduction was made. Section 23(4) states that a tribunal shall not consider a complaint if it is not presented within that time period unless it is satisfied that it was not reasonably practicable for a complaint to be presented before the end of the period of three months was presented within a reasonable time period thereafter.
4. The tribunal also considered Section 38 of the Employment Act 2002 and schedule 5 which states that it may award a claimant between two to four weeks wages if an employer fails to provide an employee with a statement of terms and conditions of employment.
5. After hearing evidence from the claimant the tribunal concluded that all of the claimant’s wages were due to be paid to her on 1<sup>st</sup> or 2<sup>nd</sup> November 2018, namely the week after her employment ended. The tribunal considered that was the date on which the claimant’s wages were due.
6. The claimant contacted ACAS regarding her claim on 29<sup>th</sup> January 2019. The ACAS conciliation lasted for one day. She then presented her claim to this tribunal on 30<sup>th</sup> January 2019.
7. This tribunal concluded that the claimant’s claim for unlawful deduction from wages had to be presented to this tribunal by 31<sup>st</sup> January 2019 or 1<sup>st</sup> February 2019.
8. Therefore her claim for unlawful deduction from wages was presented in time as it was presented within three months of the date when deduction was made from her wages namely on 1<sup>st</sup> or 2<sup>nd</sup> November 2018. For those reasons the claimant’s complaint of unlawful deduction from wages succeeds.

**EMPLOYMENT JUDGE MARTIN**



IT SIGNED BY EMPLOYMENT

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**Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://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): **2500165/2019**

Name of case(s): **J Gargantos** v **Club Mumbai**

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: **21 May 2019**

"the calculation day" is: **22 May 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](http://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.