



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms S Begum

**Respondent:** Homecare For You Ltd

**HELD AT:** Manchester

**ON:**

2 May 2019

**BEFORE:** Employment Judge Grundy

## REPRESENTATION:

**Claimant:** Ms A Holden Reed Friend

**Respondent:** Ms S Pathan, Care Manager assisted by Mr S Bailey

## JUDGMENT

The judgment of the Tribunal is as follows.

1. The Tribunal declared that the claimant does not have a relevant two years' service to found the Tribunal's jurisdiction to adjudicate on her claim of unfair dismissal.
2. The Tribunal declares that the claimant's claim in respect of unpaid holiday pay succeeds and is in fact agreed by the respondent and the respondent shall pay the claimant the sum of £481.36.
3. The claimant's claim in respect of unpaid wages succeeds and is accepted by the respondent, and the respondent shall pay the claimant the sum of £467.37.
4. The claimant's claim in respect of notice pay arising from wrongful dismissal fails and is dismissed.
5. In conclusion the respondent shall pay the claimant the total sum arising from the holiday pay and the arrears of wages in the sum of £948.73.

## REASONS

1. The claimant was employed as a Care Assistant, there is a dispute as to for whom and from when. The claimant is required to establish two years' service for the Tribunal to have jurisdiction to determine an unfair dismissal claim. The parties

agree, that the claimant was employed by I and A Home Care from 7 March 2016. There is then a dispute as to whether the claimant's employment transferred under a TUPE transfer to the respondent. The respondent asserts that the claimant's employment commenced on 5 March 2018. At the outset of the Tribunal hearing the Tribunal identified the issues with the parties as follows:-

2. Firstly, can the claimant establish two years continuous service to found her claim for unfair dismissal.

3. Secondly, was there a TUPE transfer from IA Homecare Services Limited to Homecare For You Ltd. If not, then the unfair dismissal claim will fall away, if it was to proceed whether there was a dismissal, the reason for the dismissal and whether that was a fair dismissal.

4. Further whether the claimant was due to be paid notice pay arising from her dismissal and finally, whether or not there were any arrears of pay under the Wages Act due to the claimant and whether or not the holiday pay was also due.

5. So far as evidence is concerned as I have indicated each party in this matter has been unrepresented by a legal advisor. The Tribunal did however give standard directions case management orders in this matter and those were sent to the parties with the hearing notice on 12 January 2019. Those Case Management Orders indicate that if any person without reasonable excuse fails to comply then they shall be liable on summary conviction to a fine.

6. Unfortunately, those directions have only been partially complied with. The claimant was ordered by 11 February to set out in writing a remedy she required. Both parties were to exchange lists by 25 February and the respondent was ordered to file the documents or at least prepare the documents by 11 March 2019. Both parties were ordered by 25 March 2019 to prepare full written statements of the evidence that they intended to give. Unfortunately, this Tribunal hearing has lasted longer than it needed to because no witness statements have been before the Tribunal, both sides it seems to me are in breach of those Case Management Orders.

7. That said, I have attempted to listen carefully to the oral evidence that both sides have given and I have had regard to each parties' documents as they produced to me today but I do remind the parties that the bundle of documents and the written statements should be indexed and paginated because again that has slowed us down when we have been looking for documents. I have heard the claimant's evidence on oath, I have heard from Ms Holden Reed her witness on oath, and I have heard from Ms Pathan of the respondent on oath. I consider that each of the witnesses has told me the truth as they see it.

8. So far as the law is concerned this is a brief extemporaneous judgment, I have considered the Transfer of Undertakings (Protection of Employment) Regulations, I have considered the Employment Rights Act 1996 and the Wages Act of 1986.

9. These are my findings of fact insofar as I can make them on the information that has been provided. The claimant's original employer I and A Homecare were the parties agree or seem to agree going out of business and ceasing to trade and

did do that in early March of 2016. The respondent I accept went to talk and offered an Open Day for some of the employees or all of the employees in fact who wanted to take up the opportunity of employment with them. The respondent took over the services for some of the service users which I and A Homecare used to visit. I accept from the respondent that there was no consultation or information provided by I and A as there usually would be in a Transfer of Undertaking situation.

10. I and A told the claimant and others at the time that they were not paying redundancy and did not do so, that does not impress me on behalf of I and A, it is also one of those difficult situations where unfortunately sometimes employee do end up falling through the cracks, not all the employees I am told by the respondent went to work for them. The respondent didn't know who would work for them and they didn't know which service users would be coming to them for service.

11. In that situation the respondent offered a new contract of employment, the claimant took up that new contract of employment and that required her to provide a written reference, or at least the basis of somebody who could be asked for a written reference and that was indeed the person who had employed her at I and A. I don't think at the time the claimant would have any understanding of the impact of that nor where that would leave her with hindsight today, I don't suppose that was ever in her mind.

12. What I do find is that the claimant did enter a contract of employment on 20 February 2018 that commenced her employment with this respondent on 5 March 2018, and that was after a couple of meetings that she had had with Homecare For You Ltd. I accept that the claimant doesn't recall signing that contract which is in the bundle of documents but it appears to me on the balance of probabilities likely that she did sign it. I don't accept that the respondent would have come to this Tribunal and forged evidence, that is an extremely serious allegation to make. It would mean that somebody within the respondent was committing a very serious criminal offence.

13. On the evidence therefore, that is before me limited and thin thought it is I don't accept that there was a transfer of undertaking from I and A Homecare Limited to the respondent Homecare For You Limited. As I have said I find the claimant was employed from 5 March 2018 and her employment I find ended on 20 July 2018. Ms Holden Reed invited the respondent to recognise the previous employment, I am not criticising her for making that plea to the respondent but I am not surprised that they don't take up that invitation.

14. Having said that I don't accept that the claimant has two years' service, I have in the grand scheme of this hearing heard the evidence in relation to dismissal and I have heard the evidence from the respondent as to the factual account and the claimant's factual account about that. It seems to me regrettable to say the least that the claimant has not had any information from the respondent, she wrote a perfectly reasonable letter assisted by Ms Holden Reed on 17 September 2018, the date of presentation of her claim to the Tribunal was 27 December 2018 so over a couple of months has passed where that letter ought to have been properly replied to. It was a reasonable letter and it asked proper questions about the termination of her employment with this respondent.

15. I also consider that the claimant's employment was terminated by the respondent, there was a dismissal on 20 July 2018, I accept that from the claimant Vicky Wilson told her she was finished and it seems to me it doesn't bestow credit on the respondent to seek to argue otherwise. The respondent wrongly believed that the claimant had poached their service user but they were right about the fact she had gone to work for their service user, so that leads me to accept that there was a dismissal on 20 July, I don't accept that that was because there wasn't work on the rota for the claimant. The claimant wasn't paid any notice, the claimant has had to come to the Tribunal to sort out what has happened here.

16. I am going to look at paragraph 15 because Ms Holden Reed has suggested that it is an unfair contract term. I don't read it as such, the respondent have an ability within a contract to attempt to protect their business and the term that says "you will agree you will not during your employment, approach a service user or accept a request from a service user to perform services" is an attempt to protect their commercial business. I also consider that Ms Holden Reed doesn't hold the respondent in great esteem and I do take into consideration that that is her view. My view of that contract term going back to the essence of that is that the respondent is entitled to place that contract term in the contract. The bottom line is that the case was that the claimant was in breach of that contract term and that obviously has a knock-on effect for the claims that she brings in relation to notice. She cannot succeed in claiming at common law wrongful dismissal and a notice payment as the respondent was entitled to dismiss without notice due to her breach of contract.

17. My conclusions applying the law to my findings are firstly that the claimant has not established two years' service for the unfair dismissal claim to proceed, in my view the evidence is too thin on the ground for a TUPE transfer, but I do say having heard all of the evidence that the respondent's procedure is regrettably poor, not to have replied to the correspondence is very very unfortunate to say the least but they have made clear their case on the breach of contract and I am sorry to find on the claimant's behalf that there is a breach of contract here.

18. I am also not very impressed with the respondent's procedures insofar as the dismissal aspect is concerned because plainly saying that the claimant had breached her contract and attempting to say that she has not been given work because of the rota doesn't sit easily with me. This could and should have been clarified and set out clearly at the time.

19. It seems inevitable had the claimant established the two years' service that I would ultimately have dismissed her claims because of the breach of contract so the claimant is back where she started in effect.

20. Where the claimant has succeeded is in relation to her holiday pay which should have been paid far earlier, £481.36 and the same in respect of her arrears of pay £467.37 again the claimant has been due that money for a long time.

21. Going back to the original total the claimant succeeds in the sum of £948.73 and the respondent shall pay that sum to the claimant.

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Employment Judge Grundy

Date\_\_\_\_\_ 15 MAY 2019\_\_\_\_\_

JUDGMENT AND REASONS SENT TO THE PARTIES ON  
3 June 2019

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FOR THE TRIBUNAL OFFICE

[JE]





## NOTICE

### THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): **2400082/2019**

Name of case(s): **Ms S Begum** v **Homecare For You 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: **3 June 2019**

"the calculation day" is: **4 June 2019**

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

MISS L HUNTER  
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.