



EMPLOYMENT TRIBUNALS

Claimant: Mr W Wilde

Respondent: Lifestyle Carpets Limited

Heard at: Manchester

On:

3 June 2019

Before: Regional Employment Judge Parkin

REPRESENTATION:

Claimant: Mrs S Wilde, Lay Representative

Respondent: Mr T Hurst, Director

JUDGMENT

The judgment of the Tribunal is that:

1. The respondent's time for presenting its response is extended and it is accepted.
2. The respondent made unlawful deductions from the wages of the claimant and is ordered to pay him the sum of £454.85 gross.
3. The claimant has not proved any further entitlement to outstanding holiday pay.
4. No award of interest is made.
5. No order for costs is made against the respondent.

REASONS

1. By a claim form presented on 6 February 2019, the claimant claimed unpaid wages together with outstanding holiday pay and an interest payment for late payment and costs or fees arising from the attendance at the Employment Tribunal of the claimant's wife. The outstanding pay was calculated in the sum of £636.73 representing 7 days' work at £90.97 per day based upon the gross salary of £23,650 per annum divided by the 260 working days in the year. Further details of the remedy sought by the claimant were received on 6 March 2019.
2. The respondent's ET3 response was due by 13 March 2019 but was received out of time on 20 March 2019 with no full explanation for the delay in presentation. Accordingly, by a letter dated 28 March 2019, the Tribunal rejected it and there was no further correspondence from the respondent seeking leave to present the response out of time or explaining why it was out of time. However, the respondent attended the hearing and having heard Mr Hurst, having regard to the provisions of Rule 20 of the Employment Tribunals Rules of Procedure 2013, the Tribunal extended time for the presentation of the response and accepted the response.
3. There was considerable discussion with the parties what the issue between them was, in circumstances where the respondent acknowledged that the claimant had indeed worked for 5 days between 1 and 7 November 2018, before the claimant was remanded in custody on 8 November 2018 which was to have been his day off. The claimant had sought payment for 7 days, from effectively 1 to 8 November 2018 except for a further day off on about 3 November 2018. The respondent still acknowledged only liability to pay for 5 working days contending that 8 November 2018 could not be viewed as a normal day off work in circumstances where the claimant was taken into custody on that day.
4. The claimant was not in attendance. The Tribunal heard brief oral evidence from Mrs Wilde confirming her husband's claim and from Mr Hurst on behalf of the respondent. From the oral and documentary evidence, the Tribunal made the following key findings of fact in respect of the claims.
5. The claimant was employed as a Sales Manager and effectively right-hand person to Mr Hurst in the small carpet business based in Royton, in particular looking after the shop whilst Mr Hurst was out measuring up for carpets. As well as the claimant there were a couple of other paid carpet fitters together with some other self-employed fitters in the business which Mr Hurst ran almost single-handedly.
6. The claimant worked 5 days a week and was paid on a monthly basis but at a fixed salary of £23,650 per year, working 260 days during each year with a leave year running to the calendar year. Whilst the records relating to leave taken by the claimant during 2018 had not been disclosed in full to the claimant, the Tribunal accepted Mr Hurst's evidence that the claimant had taken slightly more than his entitlement during 2018, mainly on the basis of taking days off when Manchester United were playing or at a weekend although on a fairly irregular basis each week.

When work was heavy it was not unknown for the claimant to work both days at the weekend and take extra days off elsewhere.

7. At the beginning of November 2018, the claimant was away on a normal day off work on Thursday 1 November then working through save for one further day off work, probably on Saturday 3 November, until Wednesday 7 November 2018. Whereas the following day, Thursday 8 November, was to be another day off, in fact he was taken into and remanded in custody that day and thereafter remained unavailable to resume his employment with the respondent. When Mr Hurst discovered the full matter relating to the claimant being taken into custody a few days later, he terminated the claimant's employment forthwith.

8. Whereas Mr Hurst originally instructed his accountant to pay the claimant for 9 days from 1 to 9 November 2018, he did not pay the claimant for those days and subsequently took the view that the claimant was only entitled to payment for days worked, although the P45 issued reflected that the 9 days' payment was made. On checking his records, he satisfied himself that the claimant had taken slightly more than his entitlement to days off during the earlier part of the year.

9. Both parties declined the opportunity to make closing representations, relying on what they had earlier put in the claim and response forms or said in evidence, and the Tribunal had to apply the law at Part II of the Employment Rights Act 1996, in particular at sections 13 and 23-24. The onus of proof in establishing non-payment or unlawful deduction from wages lay with the claimant.

10. The Tribunal had considerable sympathy for the claimant's wife who did her very best to represent his interests. Where the claimant was not available to avail himself of his normal day off work on Thursday 8 November 2018, the Regional Employment Judge concluded that he could only establish entitlement to unpaid wages for the days he had actually worked in November 2018, on the claimant's computation of a day's pay for each working day at the daily rate of £90.97 gross. Accepting the respondent's evidence that there was an additional day not working alongside Thursday 1 November before Thursday 8 November, the claimant established 5 days working and thus entitlement to 5 days' pay, amounting to £454.85 gross. Since the respondent's P45 indicated payment for 9 days' pay in November 2018, that will need to be modified to show accurately the amount of pay to be made by the respondent.

11. As to the interest claimed at 8% for late payment by the claimant, the Tribunal regrets that there is no standard entitlement to receipt of interest until a judgment is made and the claimant has not established any other basis for compensation in respect of losses arising from late payment.

12. The claimant has not established any further entitlement to outstanding holiday pay from the respondent. Whilst acknowledging the sparsity of records or evidence relating to the holidays taken by the claimant during the year of 2018, it remained for the claimant to establish entitlement to any sums for the days off he took but did not receive appropriate payment for.

13. Finally, the Tribunal deals with the application for costs, strictly for a preparation time order, in accordance with the principles at rule 74 onwards of the

2013 Rules. Put simply, the Tribunal did not consider that the threshold was reached that the respondent, had acted vexatiously, abusively, disruptively or otherwise unreasonably in the way the proceedings had been conducted. Notwithstanding the late presentation of the response by one week, the Tribunal did not consider that in itself amounted to unreasonable conduct of the proceedings, where the respondent had belatedly indicated an intention to resist the claims in part at least and attended the hearing in order to do so.

Regional Employment Judge Parkin

Date 4 June 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON

4 June 2019

FOR THE TRIBUNAL OFFICE

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): **2401793/2019**

Name of **Mr W Wilde** v **Lifestyle Carpets Limited**
case(s):

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: **4 June 2019**

"the calculation day" is: **5 June 2019**

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

MR I STOCKTON
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.