



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss C Holland

**Respondent:** Nathan Stocks (formerly t/a NS Travel)

**Heard at:** Manchester

**On:**

3 June 2019

**Before:** Employment Judge Holmes

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Not in attendance

# JUDGMENT ON REMEDY

It is the judgment of the Tribunal that:

1. The claimant's claims of unlawful deduction from wages succeed. The respondent unlawfully deducted a total of **£559.91** from the claimant's wages, which sum he is ordered to pay her. This is a sum which should be paid without any deduction of tax and national insurance, for which the claimant will be responsible to account to HMRC if appropriate.
2. The claimant withdraws her complaints of maternity and pregnancy discrimination and those claims are dismissed upon withdrawal by her.

# REASONS

1. The claimant brought claims against her former employer, Mr Stocks, who ran a travel agency in the Ladysmith Centre at Ashton-under-Lyne. The claimant was first employed by the respondent on 2 January 2019, her employment being relatively short-lived ending, as it did, on 16 January 2019.
2. The claimant made her agreement with Mr Stocks in a purely verbal fashion, when she was taken on by him, on the basis that she would be paid at the appropriate National Minimum Wage for that employment and would work a 45 hour

week. She duly worked on 2, 3, 4, 7, 8, 9, 10, 11 and 16 January 2019. The claimant has given evidence before the Tribunal confirming the work that she did, the hours that she did , and the agreement whereby she was to be paid by the respondent.

3. On 16 January 2019, however, the respondent turned up late for work, which resulted in the claimant deciding that she had had enough of this employment and she left in those circumstances. She had not been paid prior to termination, and when she raised with the respondent the fact that she had not been paid , he raised some counter argument that because the claimant had not given notice he was not obliged to pay her and would effectively cross claim for the cost of replacing her. He has not in fact done so and indeed the claimant's removal from work in these circumstances would not entitle the respondent simply to refuse to pay her without establishing a right to make such a counterclaim, which he has not done.

4. The respondent has not responded to the proceedings at all, and consequently he was not entitled to take part in them, and has not attended before the Tribunal today. Miss Holland has done so, and has given evidence in support of her claims. Whilst in her original claim form she ticked the box for discrimination on the grounds of pregnancy or maternity, and indeed was 23 weeks' pregnant at the time that her employment ended, on reflection , whilst that was clearly an aggravating feature of the fact that she was not paid for this period of employment, she does not contend that the reason she was so treated was that she was pregnant. Indeed, she is aware of other instances where some 16 other people who had previously worked for the respondent had not been paid, and it would seem that she was not singled out for this treatment. Consequently she has, very sensibly and correctly, not pursued her discrimination claims which she withdraws and which will be dismissed accordingly.

5. That leaves her unlawful deduction from wages claims, the deduction being of course a total 100% deduction, in that the respondent failed to pay her at all. The Tribunal is quite satisfied that the claimant is entitled to be paid for the hours that it is satisfied that she did indeed work, and that the total amount that she therefore is entitled to is £559.91 as she has calculated.

6. The claimant did mention that she incurred some £288 of childcare for her children , which she was unable to recover due to her inability to satisfy Universal Credit that she was working. The Tribunal has considered whether it has any jurisdiction to include this as a head of claim. Unfortunately the Tribunal does not consider that it does. Whilst section 24(2) of the Employment Rights Act 1996 does empower a Tribunal , if satisfied that the unlawful deduction from wages has caused loss to a claimant , to make an additional award, the difficulty in this case is that this loss incurred by the claimant arose not so much as a result of the failure of the respondent to pay her, but of the failure of the respondent to provide any evidence of her employment; in other words it is not a consequence of the non payment, it is a consequence of the absence of any established employment relationship, and so it seems to the Tribunal that it is not empowered to make that additional award notwithstanding that the claimant clearly suffered that additional loss.

7. Further, whilst it is obviously correct that the respondent provided no paperwork in connection with the claimant's employment at all, so as potentially to be in breach of section 1 of the Employment Rights Act 1996 which might entitle the Tribunal to make an additional award under section 38 of the Employment Act 2002,

unfortunately the claimant's right to a written statement of particulars of her employment does not arise until she has been employed for two months, so the employer would not actually be in breach of that requirement, so the Tribunal cannot make any additional award there.

8. Further the claimant, being monthly paid, had not at the time of the termination of her employment had the opportunity, or indeed the requirement, to raise any issue with the respondent about non payment. On that basis, none of the ACAS Codes of Practice would be involved at that stage, and so there can be no uplift.

9. Consequently the Tribunal makes the award of £559.91, but that is the only award the Tribunal can make.

Employment Judge Holmes

Dated: 5 June 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON

11 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](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): **2401765/2019**

Name of **Miss C Holland** v **Nathan Stocks (formerly t/a NS Travel)**  
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: **11 June 2019**

"the calculation day" is: **12 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](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.