



EMPLOYMENT TRIBUNALS

Claimant: Miss Alicia Brooks

Respondent: Together Trust

Heard at: Manchester **On:** 11 June 2019

Before: Employment Judge Hoey (sitting alone)

Appearances

For the claimant: Herself

For the respondent: No representation or attendance

JUDGMENT

The respondent is ordered to pay the claimant the gross sum of £1647.80 (less such deductions required by law) which is the amount of accrued holiday pay due to the claimant upon termination of her employment.

Reasons

1. This case called as a final hearing. The parties had been advised as to the time and date for the hearing. When the case called the respondent was not represented. I asked my clerk to check the position and the respondent advised that they did not realise the hearing was taking place today. The claimant was in attendance.
2. I put the position to the claimant and it was agreed that it was consistent with the overriding objective to deal with issue today in the absence of the respondent. It was possible to put the respondent's position to the claimant as they had submitted a detailed response form. That would avoid delay and would ensure the matter was dealt with justly.
3. The issue was in narrow focus. The question was what the claimant's holiday entitlement was when she left her employment. The response form clearly set out the respondent's position. The claimant gave evidence and referred to a number of productions.

Findings in fact

4. I was able to make the following findings in fact from the evidence I heard.
5. The claimant was employed by the respondent for a period of 10 months. She was employed to work 5 days a week and contracted to work 37.5 hours a week. The number of hours she worked each day would vary but her weekly hours remained constant. She was paid £8.80 an hour.
6. She entered into a written contract of employment which entitled her to 6.6 weeks holiday a year
7. As she had worked for 10 months by the time her employment ended, she had accrued $10/12 \times 6.6$ weeks which comes to 5.5 weeks' worth of holidays.
8. Her entitlement in terms of hours was therefore 5.5 weeks x 37.5 hours = 206.25 hours.
9. The claimant had taken 15 hours holiday by the end of her employment. She was therefore due 187.25 hours holiday.
10. The claimant had been absent by reason of illness from 30 May to 9 December 2018. She had submitted sick lines but the respondent paid her full pay instead of sick pay for that month. She was overpaid by £1,154.35.
11. The claimant's contract of employment allows the respondent to make deductions from sums due to the claimant by way of overpayments.
12. The claimant's contract also states that her sick pay entitlement increases after 6 months' continuous service to 1 month full and 1 month half pay sick pay entitlement.
13. The claimant had therefore acquired the entitlement to one month's full pay by August and a half pay by September by way of sick pay. Rather than pay the claimant full pay (which was her entitlement) the respondent only paid her statutory sick pay during these months. By so doing the respondent had recovered the overpayment to which it was entitled.
14. The claimant also received a tax rebate for the May overpayment in her August salary payment.
15. The respondent had already recovered the month's pay that was paid to the claimant in error by the end of her employment.

Law

16. A worker is entitled to be paid holidays that have accrued by the date of termination of employment. This is set out in the Working Time Regulations 1998 and in terms of the contract of employment.

17. A failure to pay the sums due can result in a claim for accrued holiday pay either in terms of the Regulations or directly under the contract of employment. A Tribunal can award a sum in respect of the accrued holiday entitlement.

Decision and reasons

18. The respondent accepts that the claimant had only taken 15 hours annual leave. The claimant is therefore due to be paid $187.25 \times$ hourly rate of £8.80 which amounts to £1647.80.
19. The overpayment referred to by the respondent had already been recovered from the claimant. As a result the above sum falls due, less any deductions required by law. This is the sum due to be paid to the claimant under her contract of employment.
20. Payment should be made within 14 days.

Employment Judge Hoey

Date 11 June 2019

JUDGMENT SENT TO THE PARTIES ON

26 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): **2401897/2019**

Name of case(s): **Miss A Brooks** v **Together Trust**

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: **26 June 2019**

"the calculation day" is: **27 June 2019**

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

MR S ROOKE
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.