



EMPLOYMENT TRIBUNALS

Claimant: Ms Lyn Cartmell

Respondent: Steven Moore

RECORD OF A HEARING

Heard at: Carlisle (in public)

On: 21 October 2019

Before: Employment Judge Hoey

Representatives

For the claimant: Representing herself

For the respondent: Representing himself

JUDGMENT

The respondent shall pay to the claimant:

1. The sum of £2,275.04, in respect of a failure to pay the claimant the applicable national minimum wage for the period 16 July 2018 to 5 November 2018; and
2. The sum of £273.20, in respect of the respondent's failure to pay the claimant the applicable minimum wage rate for the period 6 November 2018 to 28 December 2018.

Discussion and reasons

1. This case called as a final Hearing. Both parties were in attendance.
2. I began the Hearing by referring to the overriding objective in terms of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 which requires matters to be dealt with justly, which includes fairly and proportionately.

3. The Hearing began by identifying what exactly the claimant was seeking in terms of her claim and by seeking from the respondent what his defence was.
4. It soon became apparent that there was in fact no dispute as to the issues and facts in question, given the respondent accepted as accurate the figures that the claimant set out and the hours that she had worked.
5. The Hearing was able to progress to deal with the matters arising effectively with both parties' consent in terms of Rule 64 of the Rules (which allows parties to agree matters by consent).
6. I ensured that the parties fully understood the issues arising. I also ensured the respondent was given time to check the position from the records he had brought. He did so carefully and was able to confirm the position candidly.

Issues

7. The issue that arose was whether the claimant was due to be paid the national minimum wage (called the national living wage) for each hour worked during 2 periods of her employment: from 16 July 2018 to 5 November 2018 and then from 6 November 2018 to 6 January 2019. The claimant was not seeking any payment for the period beyond 6 January 2019.

Facts

8. The Tribunal is able to make the following findings of fact which emerged from the parties' agreement.
9. The respondent owns a laundrette and engaged the claimant (who was over 25 at all times) to provide laundry work with effect from 16 July 2018. The claimant was engaged, as an employee, to work for the respondent. She agreed to provide her personal services for the respondent and did so.
10. The respondent agreed with the claimant that she would be paid £178 gross a week.
11. She was initially required to work a weekly pattern of 4 days 930am to 530pm (with half hour unpaid break) and 2 days 930am to 330pm (with half hour unpaid break). For this period in question (which the parties accepted was 16 weeks) she was working (and worked) 39 hours a week.
12. From 6 November 2018 to 6 January 2019 her hours decreased, but she continued to be paid (and it was agreed that she be paid) £178 gross a week. For this period she worked 30 hours for each of these weeks.
13. The claimant did not work any hours from 28 December 2018 (as she was away from work for various reasons).

14. For the period 6 November 2018 to 28 December 2018 (which the parties agreed amounted to 4 weeks) the claimant did work 30 hours each week and was paid the gross sum of £178 for each week.
15. The respondent accepted that the claimant was only ever paid the maximum weekly sum of £178 gross. While some weeks were paid at a sum less than this, the respondent made up the difference by overpaying sums due to the claimant in subsequent weeks. The claimant had checked the position and confirmed that she had in fact received £178 for each relevant week. This was accepted by the respondent, who candidly accepted he was not aware of the minimum wage rules (and had not checked the position at the point of payment).

Law

16. In terms of the National Minimum Wage Act 1998, section 1, a worker is entitled to be paid at a rate not less than the national minimum wage. Section 2 states that a person qualifies for the minimum wage where they are a worker.
17. The National Minimum Wage Regulations 2015 set out how the rate is calculated. The applicable hourly rate is set each year.
18. Where a worker is entitled to be paid by reference to the time to be worked (such as in the claimant's situation) chapter 3 of the 2015 Regulations explain how the calculation is carried out. This is called time work and involves a calculation of the time (in hours) the claimant was working to ensure that for each hour the claimant worked, she receives the applicable minimum wage rate.
19. Under section 28 of the 1998 Act it is presumed that the claimant qualifies for the national minimum wage unless the contrary is established - section 28(1). It is also presumed that the claimant was paid less than the minimum wage for the period in question unless the contrary is established – see section 28(2).
20. A worker is entitled to be paid a sum equal to the national minimum wage for each hour worked within the relevant pay reference period (section 17).
21. In addition, a claim for failure to pay the national minimum wage is a claim for unlawful deductions of a wage under section 13 of the Employment Rights Act 1996 since the worker is entitled to be paid the applicable hourly rate for each hour worked, and paying the worker less than this results in an unlawful deduction from the wages due. In other words, the sum properly payable under a worker's contract by way of wages is the national minimum wage rate and a failure to pay this is a breach of section 13 of the 1996 Act, thereby allowing a Tribunal to order payment of the sum in question.
22. Where the employer has failed to pay the worker the relevant rate for each hour worked, the Tribunal is required to base the calculation upon the national minimum/living wage rate that applies at the date of calculation – section 17 (4) of the 1998 Act – even if the minimum wage rate was lower when the deduction took place.

23. Where the Tribunal finds the claimant was not paid the minimum wage for the period in question, the Tribunal can order the respondent to pay to the claimant the balance (which would be at the current rate) for each hour when the (then applicable) minimum wage was not paid.
24. The applicable rate at the time in question (to 31 March 2019) was £7.83. The rate increased to £8.21 with effect from 1 April 2019 and is the applicable rate as at today's date. As the claimant was over 25 she is entitled to the national living wage (which is the name for the higher rate of the national minimum wage).

Discussion and decision

25. The claimant was a worker engaged by the respondent to provide her personal services. She is therefore entitled to be paid the national minimum wage for each hour she worked for the respondent.
26. For the first period in question, namely from 16 July to 5 November 2018 (which amounts to 16 weeks) the respondent accepted that the claimant worked 39 hours each week and was paid the gross sum of £178 for each week.
27. She was therefore paid the hourly rate of £4.56 which was below the national minimum rate applicable at the time in question (£7.83).
28. For this 16 week period, she was paid $£178 \times 16 = £2,848$.
29. For each week she is now due to be paid £8.21 (the national minimum wage rate applying today) X 39 (the hours worked each week) which amounts to £320.19. For the 16 week period she should have been paid $£320.19 \times 16$ which amounts to £5,123.04.
30. The underpayment which is due to the claimant is the difference between £5,123.04 and £2,848, namely £2,275.04.
31. For the second period in question, namely from 6 November 2018 to 6 January 2019, the claimant accepts that she did not work from 28 December 2018. She accepts that she is only due to be paid the minimum wage for the period to 28 December 2018. The period in question runs to 4 weeks.
32. For this 4 week period the claimant was paid £178 for working 30 hours. This results in an hourly rate of £5.93 which is less than the minimum wage rate applicable at the time (£7.83).
33. She was paid £712 for the 4 week period.
34. She is due to be paid 30 (the number of hours worked during the week) x £8.21 (the applicable rate as at today's date) x 4 (the number of weeks) which amounts to £985.20.

35. The balance due to the claimant is therefore the difference between £985.20 and £712, namely £273.20.

Observation

36. The respondent noted that his accountant was dealing with the taxation aspects of the sums paid to the claimant. This is something that the parties should attend to urgently thereby ensuring all relevant deductions and payments required by law have been accounted for.

Summary

37. The respondent is therefore ordered to pay the claimant the sums of £2,275.04 and £273.20, which arise as a consequence of the claimant receiving a sum less than that properly payable under her contract for the 2 periods in question given the sums paid for each hour worked were less than the national minimum wage.

Employment Judge Hoey

Dated: 21 October 2019

JUDGMENT SENT TO THE PARTIES ON

12 November 2019

FOR THE TRIBUNAL OFFICE



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: **2405530/2019**

Name of case: **Miss L Cartmell** v **Steven Moore**

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: 12 November 2019

"the calculation day" is: 13 November 2019

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

MR S ARTINGSTALL
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.