

Case Nos: 2410407/2019,
2410408/2019, 2410410/2019,
2410411/2019, 2410412/2019,
2410413/2019, 2410414/2019,
2410415/2019, 2410416/2019.



EMPLOYMENT TRIBUNALS

Claimant: Miss L Crabbe, Miss J Carroll,
Mr J Richter, Miss L Hudson, Mr A Johnson, Mr M Davies,
Miss N Stenson, Mr R Owen, Ms J Lyle.

Respondent: Asel Fashion Limited (in Creditors Voluntary Liquidation)

Heard at: Liverpool

On: 7 February 2020

Before: Employment Judge Benson

RESERVED JUDGMENT ON REMEDY

1. The respondent has breached the each of the claimants' contracts by not providing notice. The respondent is ordered to pay to the claimants the net sums as set out below as damages:

Miss L Crabbe: £55.21

Miss J Carroll: £nil

Mr J Richter: £nil

(£109.08 less £169.39 received on 7 June 2019; balance of £60.31 to be offset below)

Miss L Hudson: £nil

(£38.28 less payment of £69.00 received on 7 June 2019; balance of £30.71 offset below)

Mr A Johnson: £nil

(£145.03 less payment of £206.00 received on 7 June 2019; balance of £60.97 to be offset below).

Mr M Davies: £nil

(£124.68 less £243.82 received 7 June 2019; balance of £119.12 offset below)

Miss N Stenson: £nil

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(£169.94 less £230.90 received on 7 June 2019. Balance of
£60.95 offset below)

Mr R Owen: £nil:

(£131.19 less £211.40 received on 7 June; balance of £80.21
offset below)]

Ms J Lyle: £5.55

(£68.38 less £62.83 received on 7 June 2019)

2. The respondent has failed to provide the claimants with a statement of main terms of employment. The respondent is ordered to pay to the claimants an additional award of 4 weeks gross pay as set out below:

Miss L Crabbe : £220.84

Miss J Carroll : £831.00

Mr J Richter: £436.33

Miss L Hudson: £151.12

Mr A Johnson: £580.12

Mr M Davies: £498.76

Miss N Stenson: £679.76

Mr R Owen: £524.76

Ms J Lyle: £273.52

3. The Respondent failed to pay the claimant in lieu of entitlement to annual leave. The respondent is ordered to pay to the claimants the gross sums in lieu of entitlement to annual leave as set out below:

Miss L Crabbe: £12.71

(£101.07 less payment of £88.36 received on 7 June 2019)

Miss J Carroll: £783.05

Mr J Richter: £10.17

(£70.48 less £60.31 being balance of payment received on 7
June 2019)

Miss L Hudson: £109.45

(£140.16 less balance of £30.71 offset)

Mr A Johnson: £406.08

Mr M Davies: £95.73

(£214.85 less balance of £119.12 received on 7 June 2019
offset)

Miss N Stenson: £84.55

(£91.50 less balance of £60.95 received on 7 June 2019 offset)

Mr R Owen: £145.84

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(£226.05 less balance of £80.21 received on 7 June 2019 offset)
Ms J Lyle: £346.10

4. The Respondent has made an unauthorised deduction from each of the claimants' wages in respect of outstanding pay. The respondent is ordered to pay to the claimants the gross sums as set out below:

Miss L Crabbe: nil

Miss J Carroll: nil

Mr J Richter: £65.82 (April and May 2019)

Miss L Hudson: £nil

Mr A Johnson: £374.78

(February £187.22; March £137.60; April £146.95 with overpayment offset of £96.99)

Mr M Davies: £nil

Miss N Stenson: £24.62 (April 2019)

Mr R Owen: £380.12

(February £15.88; April £327.55; May £57.99; overpayment in March £21.30)

Ms J Lyle: £129.45

REASONS

1. Each of the claimants has provided me with a schedule of their losses. I have also received a helpful summary schedule prepared by the claimants' representatives together with supporting staff rotas setting out the actual hours worked by each of the claimant during the period 1 February 2019 to 12 May 2019 when the claimants' employments terminated.
2. None of the claimants had written contracts of employment. Although there were indications given to the claimants when they started employment of the number of hours they might work in a normal week, I consider that they had no normal working hours or agreed number of contractual hours of work per week.
3. Their weeks' pay and losses should therefore be calculated in accordance with sections 224 and 228 of the Employment Rights Act 1996, being based upon their average weekly remuneration in the twelve weeks before their employment ended (or if their employment is for a shorter period, such sum as fairly represents a weeks' pay). I have relied upon the schedule of hours and national minimum pay rates provided the claimants' CAB representative and where appropriate cross checked with the rotas and Schedules of loss in my calculations.

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4. I have also noted that many claimants were paid some amounts by the respondent on an intermittent basis but as they had payslips, they did not know what the amount related to. These payment have been deducted from the amounts awarded as proposed by the claimants.
5. Accrued but unpaid holiday pay has been calculated on the basis of the statutory entitlement of 5.6 weeks per annum. The respondent did not permit the employees to take holidays. In King v Sash Window Workshop and anor 2018 ICR 693, ECJ, confirmed that an employee whose employer refuses to pay holiday pay, and who therefore does not take his or her full annual leave entitlement, can recover a payment in lieu of unused leave on termination of the employment relationship. None of the claimants had been advised when the respondent's holiday year commenced. In such circumstances, the individual's holiday year would run from the individual start dates of their employment in accordance with Regulation 13 of the Working Time Regulations 1998. None of them had worked for the respondent for more than a year and as such all employees were entitled to their full holiday entitlement prorated from the start dates of their employment, details of which are set out below.
6. For those employees who are entitled to an award in respect of outstanding wages, I have identified the period to which each award relates.
7. I have set out below the basis of my calculations for each claimant:

Miss L Crabbe: employment commenced 12 January 2019.
Average gross weeks pay: £55.21; $17/52 \times 5.6$ weeks accrued holiday: £101.07.

Miss J Carroll: employment commenced 7 September 2018.
Average weeks pay £207.75; $35/52 \times 5.6$ weeks accrued holiday: £783.05

Mr J Richter: employment commenced 1 April 2019. Average weeks pay £109.08; $6/52 \times 5.6$ accrued holiday: £70.48

Miss L Hudson: employment commenced 15 September 2018.
average weeks pay £38.28; $34/52 \times 5.6$ accrued holiday: £140.16

Mr A Johnson: employment commenced October 2018.
average weeks pay £145.03; $26/52 \times 5.6$ accrued holiday £406.08

Mr M Davies: employment commenced 20 January 2019.
average weekly pay £124.69; $16/52 \times 5.6$ accrued holiday pay £214.85

Miss N Stenson: employment commenced 8 April 2019.
average weeks pay £169.94; $5/52 \times 5.6$ accrued holiday pay £91.50

Mr R Owen: employment commenced 20 January 2019.
(average weeks pay £131.19; $16/52 \times 5.6$ accrued holiday pay £226.05]

Ms J Lyle: employment commenced 15 June 2018. average weeks pay £68.38; $47/52 \times 5.6$ accrued holiday pay £346.10

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Employment Judge Benson

Date 7 February 2020

JUDGMENT SENT TO THE PARTIES ON

28 February 2020

FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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.

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NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case numbers: **2410407/2019 & Others**

Name of cases: **Miss L Crabbe & Others** v **Asel Fashion Ltd (In Voluntary Liquidation)**

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: 28 February 2020

"the calculation day" is: 29 February 2020

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

MR S ARTINGSTALL
For the Employment Tribunal Office

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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.