



EMPLOYMENT TRIBUNALS

Claimant: Mr J Ensby

Respondent: X Green Clean Ltd

Heard at: Manchester

On: 24 January 2020

Before: Employment Judge Holmes

REPRESENTATION:

Claimant: In person

Respondent: Not in attendance

JUDGMENT

It is the judgment of the Tribunal that:

1. The claimant's claim in respect of pay in lieu of untaken holiday succeeds and the respondent is ordered to pay the claimant the sum of **£428.15** in respect of pay in lieu of untaken holiday.
2. The claimant's claim for breach of contract and for one week's notice pay is well-founded and succeeds and the Tribunal awards the claimant **£369.80**.
3. These are gross sums and the appropriate deductions for tax and national insurance should be made from them.

REASONS

1. In this case the claimant, Mr Ensby, brings claims for pay in lieu of untaken holiday, and for notice pay arising out of the termination of his brief employment with the respondent which ended on 24 April 2019. In his claim form presented to the Tribunal on 29 May 2019 the claimant ticked the relevant boxes, and indeed set out in a narrative at the end of that claim form, the circumstances giving rise to the claims that he makes. Those claims are simple and straightforward, and are limited to pay in lieu of untaken holiday and one week's notice pay.

2. The respondent responded to the claims, or rather an organisation representing the respondent, FSB Legal Advice based in Blackpool entered a response to the claims, and in that response the argument was made that the claimant was not entitled to notice pay because he had been dismissed for gross misconduct. The response, however, is silent in relation to his entitlement to holiday pay but the respondent, or its then representative, indicated that it would defend the claims.

3. The claims were originally listed for a hearing on 29 October 2019 , but the respondent sought a postponement of that hearing. There appeared to be some confusion as to whether the respondent was represented or not , and what the respondent knew or did not know about the claims at that time, but the upshot of this was that the hearing listed for 29 October 2019 was in fact postponed , and was relisted for today.

4. The claimant was directed to provide details of his claims, which he did to the Tribunal by an email of 11 November 2019, when he set out the two claims that he is making , and the amounts that he was seeking. That unfortunately appears to have been sent to the Tribunal only, and it is unclear if it was ever sent from the claimant to the respondent, but be that as it may, the claimant had complied with the order as far as the Tribunal was concerned. The respondent, however, on 14 January 2020, sought an order striking out the claimant's claims because he had apparently failed to comply with the Tribunal's order. The Tribunal however responded to that by sending to the respondent on 23 January 2020 the claimant's letter of 11 November 2019.

5. On 23 January 2020, however, the respondent made an urgent application to the Tribunal to postpone this hearing. This application was made by Ms Warren-Beck, the Finance Director, and the basis upon which she made that application was that the claimant had not, in her view, provided sufficient documentation or clarity about the claims that he was making, and that it would not possible for the respondent to respond to the claims properly, and to have a fair trial unless the claimant was ordered to provide the necessary documentation , and other information that was allegedly needed.

6. That application was considered by Employment Judge Holmes who rejected it, and at 17:33 on 23 January 2020 an email was sent to the respondents informing them of the rejection of that application. The application was rejected primarily because the Employment Judge could see no good reason why the respondent should still not attend this hearing. These are straightforward and simple claims involving modest amounts of money, and the suggestion that an adjournment was necessary, even if there were issues in relation to documents and clarity of the claimant's claims, is not a cogent one. This is the typical sort of claim that the Tribunal deals with day in/day out. Usually once the parties are present , even if some documents have to be prepared or copied on the day, it is possible for a Tribunal to determine the claims. On that basis the Employment Judge's view was that the respondent should still attend, and if it turned out that there was more documentation and information needed, a postponement could then be granted. It

seemed to him perfectly sensible for the respondent at least to attend today to see what progress could be made.

7. The Employment Judge was reinforced in that view by documents that the respondent disclosed in support of its application, which, frankly it should not have done, because they were actually documents passing between the parties through ACAS, and indeed one of them is actually marked "without prejudice". Be that as it may, what was clear from that communication is that the respondent in any event admitted that the claimant was entitled to holiday pay. There was a dispute originally about the amount of holiday pay, because the claimant had originally been claiming for some 9.5 days, but after the intervention of an ACAS conciliator and some recalculation, the claimant accepted that he had overcalculated and in fact reduced his claim, as he has before the Tribunal today, to 5.8 days. That calculation is set out in the email communications.

8. It seemed to the Employment Judge, therefore, that there was no defence to the claim for holiday pay because the respondents in fact, subject to a re-calculation, admitted it. Entitlement to pay in lieu of untaken holiday would remain an entitlement whatever the reason for the termination of the employment. The respondents appear, however, to have attempted to use that as some form of leverage to settle, presumably on the basis that if the claimant dropped his notice pay claim they would pay the holiday pay. That is an improper use of the settlement procedure. If a claim is admitted and due it should be paid, and today the claimant has established his entitlement. The respondent has clearly not disputed it, and he is clearly, and always was, entitled to that holiday pay. So there was no reason why the case could not have proceeded on that basis anyway.

9. The only disputed claim therefore that remained was that for notice pay. The claimant's case is simple. He was entitled statutorily, and perhaps even contractually, to one week's notice, and he did not get it. The reason he did not get it, the respondent contends, is that his dismissal was for gross misconduct. That may have been so, but the onus is upon the respondent to prove that. On the face of it, a person is entitled to notice unless his employer establishes as a matter of fact and law that the employee was dismissed, and the respondent was entitled to dismiss, without notice. That has always been an issue in the case: it was the response in fact that the respondent put in in the response that was filed at the very beginning. Consequently the Employment Judge is at a loss to understand why, knowing that is what the respondent would have to deal with, regardless of issues of calculation of holiday pay and things like that, the respondent was not in a position to deal with it today. The postponement that was originally granted was expressly on the basis that the claims could not be dealt with in an hour, and consequently three hours was allowed for this hearing. That would have been ample time for the parties to give evidence about what actually happened, and whether the claimant was rightly dismissed without notice, but the respondent has failed to address that issue and has failed to attend today to produce any evidence in support of it.

10. In those circumstances the Employment Judge considers that as the respondent has failed to attend to argue and present any evidence that the claimant was justifiably dismissed without notice, then his claim for notice pay too succeeds.

11. Consequently, the claimant having confirmed that he did not receive any paid employment during the one week's notice period , and did not receive any state benefits during that period, there is nothing to come off his notice pay claims and consequently both his claims are well-founded and succeed, and the Tribunal makes the judgment in the sums announced above.

Employment Judge Holmes

Date: 31 January 2020

JUDGMENT AND REASONS SENT TO THE PARTIES ON
4 February 2020

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: **2405922/2019**

Name of case: **Mr J Ensby** v **X Green Clean Ltd**

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 February 2020

"the calculation day" is: 5 February 2020

"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.