



EMPLOYMENT TRIBUNALS

Claimants: Miss A Mullan & Others
(see attached schedule)

Respondent: Soundbars Ltd

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

1. A full list of claimants and claim numbers is attached as a Schedule to this Judgment.
2. The claims brought by Miss Patrycja Farcinkiewicz are struck out.
3. The claims brought by the other claimants in respect of redundancy payments are not well-founded and are dismissed.
4. The claims brought by the other claimants in respect of their wages, notice and holiday pay are well-founded to the extent set out below in each case. The claimants are reminded that there may be tax and/or national insurance liabilities in respect of these sums.

Miss Mullan

5. The respondent has made an unauthorised deduction from the claimant's wages and is ordered to pay the claimant the gross sum of **£720.00**.
6. The claimant was dismissed in breach of contract in respect of notice and the respondent is ordered to pay damages to the claimant in the gross sum of **£300.00**.
7. The respondent has failed to pay the claimant's holiday entitlement and is ordered to pay the claimant the gross sum of **£140.00**.

Miss Hey

8. The respondent has made an unauthorised deduction from the claimant's wages and is ordered to pay the claimant the gross sum of **£680.59**.

9. The claimant was dismissed in breach of contract in respect of notice and the respondent is ordered to pay damages to the claimant in the gross sum of **£369.45**.
10. The respondent has failed to pay the claimant's holiday entitlement and is ordered to pay the claimant the gross sum of **£172.38**.

Mr Simpson

11. The respondent has made unauthorised deductions from the claimant's wages and is ordered to pay the claimant the gross sum of **£1,658.34** (made up of £1,480.50 for unpaid wages at the end of employment and £177.84 in respect of a national minimum wage shortfall at the start of employment).
12. The claimant was dismissed in breach of contract in respect of notice and the respondent is ordered to pay damages to the claimant in the gross sum of **£423.08**.
13. The respondent has failed to pay the claimant's holiday entitlement and is ordered to pay the claimant the gross sum of **£211.53**.

Mr Watts

14. The respondent has made unauthorised deductions from the claimant's wages and is ordered to pay the claimant the gross sum of **£1,888.71** (made up of £1,749.83 for unpaid wages at the end of employment and £138.88 in respect of a national minimum wage shortfall at the start of employment).
15. The claimant was dismissed in breach of contract in respect of notice and the respondent is ordered to pay damages to the claimant in the gross sum of **£500.00**.
16. The respondent has failed to pay the claimant's holiday entitlement and is ordered to pay the claimant the gross sum of **£250.00**.

Mr Ashworth

17. The respondent has made an unauthorised deduction from the claimant's wages and is ordered to pay the claimant the gross sum of **£344.82**.

REASONS

1. This has been a determination on the papers under Rule 21 of the Employment Tribunals Rules of Procedure 2013, because the respondent has failed to present a response to the claims.
2. These are claims by a group of claimants, who were all employed by the respondent, Soundbars Ltd. The details of the claimants' names and each individual case number are set out in the Schedule attached to this judgment.

Case Nos: 2410568/2019 & Others
(see attached schedule)
Code P

3. On 6 August 2019 Miss Mullan presented a claim on her own behalf and on behalf of six others. On the same day, Mr Simpson presented a claim on his own behalf.
4. On 9 August 2019 Miss Hey presented a claim on her own behalf and on behalf of five others (although it appears that she perhaps intended to submit it only on her own behalf). There is overlap in the names appearing as claimants between the claim submitted by Miss Mullan and the claim submitted by Miss Hey. Mr Simpson appears in both groups as well as in his own individual claim. Overall, it appears that there are only six individual employees involved in this action, although 14 case numbers have been generated.
5. The respondent did not enter a response to any of the claims. As at today's date, the respondent's Company's House records do not indicate that it is insolvent.
6. The Tribunal took steps to ask the claimants to provide full details of the amounts that they were claiming and the basis of their claims. Due to the duplication between the case files, the delay/failure of some of the claimants to respond, and the general administrative backlog at the Tribunal, this has taken a very lengthy period of time. Some of the claimants have been asked for, and provided, the information on more than one occasion, which was no doubt both confusing and frustrating for them.
7. One claimant, Miss Farcinkiewicz, not responded at all. A suggestion was made in correspondence from Miss Mullan that she was a foreign student and may now have left the UK. Where the Tribunal has no information on which to assess sums owed, no award can be made. As the Tribunal has sought this information on several occasions, it appears likely that Miss Farcinkiewicz is no longer pursuing her claim. For that reason, I have struck out her claim in its entirety.
8. Miss Mullan's claim set out the sums Miss Mullan said were owed to her. It did not set out sums owed for any of the other claimants. Similarly, Miss Hey's claim set out details of money she believes she was owed, but did not set out calculations in respect of other claimants. Mr Simpson's claim set out calculations in respect of what he said was owed to him. The claims also indicated the redundancy payments were being claimed, although no calculations were given.
9. From the material in the claim forms (including copy documents annexed to Miss Hey's claim) and subsequent information provided to the Tribunal by all of the claimants (except Miss Farcinkiewicz) I make the following findings of fact:
 - 9.1 The respondent opened a bar, which traded as "George's Bar and Kitchen" on 24 June 2019. Miss Mullan was recruited as the general manager, the other claimants were recruited as either front-of-house or kitchen staff.
 - 9.2 The respondent closed the bar on 24 July 2019, making all staff redundant with immediate effect.
 - 9.3 The kitchen staff were paid monthly and the front-of-house staff (including Miss Mullan) were paid weekly. The front-of-house staff were paid on 24 July 2019 for

work done up to 14 July 2019. They were not paid for work done during the period 15-24 July 2019. The kitchen staff had been paid for the work they had done in June but were not paid for the work they had done from the 1-24th July.

9.4 During their first week of employment, in June, the kitchen staff had worked very long hours. This meant that, although they were paid for their contracted hours, the respondent failed to ensure that they were paid at national minimum wage rates for all of the hours that they worked.

9.5 None of the staff were paid any notice pay, accrued holiday pay or any redundancy payments. This is confirmed in a letter dated 24 July 2019 to Miss Hey from Mr Steven Meador, at that time a director of the business, noting that business has ceased to trade with immediate effect and will be unable to pay "any remaining wages, notice or holiday pay."

10. I find that none of the employees were entitled to redundancy payments as they had not been employed for the two years necessary to be entitled to a redundancy payment.

11. In respect of the sums owed to individual claimants, I make the following findings:

Miss Mullan

1. Miss Mullan was paid £10.00 per hour (gross) and was employed from 24 June to 24 July 2019. She worked irregular hours.
2. She worked 72 hours between 15 and 24 July, for which she was not paid. The amount owed for this period is £720.00 (gross).
3. Miss Mullan had 14 hours of accrued but untaken holiday pay at the end of her employment. This equates to £140.00 (gross).
4. Miss Mullan was entitled to one week's notice. I accept her calculation of the amount owed based on an average of her hours in previous weeks. She is owed £300.00 (gross).

Miss Hey

5. Miss Hey was paid £8.21 per hour (gross) and was employed from 24 June to 24 July 2019. She worked for 45 hours per week.
6. She was not paid for all the hours she worked. I accept her calculation of the underpayment as being £680.59 (gross), equating to just under 83 hours for which she was not paid.
7. Miss Hey was entitled to one week's notice pay, which equates to £369.45 (gross). That is 45 hours at £8.21 per hour.
8. Miss Hey has claimed for 28 days' holiday pay. I believe that is a mistake as that is what she would have been entitled to if she had worked for a whole year, but she only worked for a month. I therefore find she was entitled to 2.33 days' holiday pay. Miss Hey worked

a 45-hour week, which equates to a nine-hour day. This means she is owed £172.38 in unpaid holiday pay. (This calculation assumes a 5-day working week, but if she did not then her holiday entitlement would be calculated as a fraction of her working week, and would give the same result.)

Mr Simpson

9. Mr Simpson has made errors in respect of his dates of employment in his claim form. I find that he was employed from 24 June 2019 to 24 July 2019 like the other claimants. He was a member of the kitchen staff, and was paid £22,000 per annum, which equated to an hourly rate of £9.40 per hours (gross) for a 45-hour working week.
10. Mr Simpson was not paid for the month of July. He asserts that his contract provided that he would be paid in full until the end of the month “even if the company failed”. The would be an unusual term in the contract, and I have not seen a copy of the contract. I am not prepared to award Mr Simpson the full amount claimed. I am prepared to award him 3.5 weeks’ wages at 45 hours per week, which compensates him for the unpaid wages for the period he worked. The unpaid wages are therefore £1,480.50 (gross).
11. Mr Simpson had 22.5 hours of accrued but untaken holiday pay at the end of his employment. This equates to £211.53 (gross).
12. Mr Simpson was entitled to one week’s notice pay, which equates to £423.08 (gross). (I would note that, along with the sums due for the 1-24th July set out above this effectively compensates Mr Simpson for the full amount he would have earned during July).
13. Mr Simpson worked 78 hours in his first week. No overtime was paid, which meant that he was paid at a rate below the applicable national minimum wage. The deficit between what he was paid and what he would have been paid at the national minimum wage for 78 hours is £177.84.

Mr Watts

14. Mr Watts was paid a salary of £26,000 per annum. He worked a 45 hour week which gives an hourly rate of £11.11 per hour (gross).
15. Mr Watt appears to assert that the respondent failed to pay him for five weeks’ of work. This does not correspond with what other claimants have said and does not appear to correspond with his own case that he was paid at a rate which worked out to be less than the national minimum wage in the first week. I find that, like Mr Simpson, Mr Watt did 3.5 weeks of unpaid work, which equates to £1,749.83
16. Mr Watt had 22.5 hours of accrued but untaken holiday pay at the end of his employment. This equates to £250.00 (gross).
17. Mr Simpson was entitled to one week’s notice pay, which equates to £500.00 (gross).

18. Mr Simpson worked 78 hours in his first week. No overtime was paid, which meant that he was paid at a rate below the applicable national minimum wage. The deficit between what he was paid and what he would have been paid at the national minimum wage for 78 hours is £138.88.

Mr Ashworth

19. Mr Ashworth only provided details in respect of unpaid wages. He says that he is owed £344.82, although he does not provide any details as to how this has been calculated.

20. I am satisfied that Mr Ashworth will have had a period of unpaid work at the end of his employment, as that has happened to all of the claimants in this case. It seems to me that Mr Ashworth is very unlikely to be trying to inflate his claim – he has claimed a much smaller amount than the other claimants. In those circumstances, and given that the respondent has not responded to any of the claims, I am prepared to accept Mr Ashworth's calculation.

Employment Judge Dunlop
Date: 16 March 2021

JUDGMENT SENT TO THE PARTIES ON

22 March 2021
AND ENTERED IN THE REGISTER

FOR THE TRIBUNAL OFFICE

SCHEDULE

Mullan Claimants	
Name	Case No
Miss Alanna Nicole Mullan	2410568/2019
Mr Marc Jamie Pater Ashworth	2410569/2019
Miss Alanna Nicole Mullan	2410570/2019
Mr Mark Adam Watts	2410571/2019
Miss Jessica Danielle Hey	2410572/2019
Mr Matthew Adam Simpson	2410573/2019
Miss Patrycja Farcinkiewicz	2410574/2019
Hey Claimants	
Name	Case No
Miss Jessica Hey	2410677/2019
Mr Marc Jamie Pater Ashworth	2410678/2019
Miss Alanna Nicole Mullan	2410679/2019
Mr Mark Adam Watts	2410680/2019
Mr Matthew Adam Simpson	2410681/2019
Miss Patrycja Farcinkiewicz	2410682/2019
Simpson	
Mr Matthew Simpson	2410648/2019



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: 2410568/19 & Others
Miss A Mullan & Others v Soundbars 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: 22 March 2021

"the calculation day" is: 23 March 2021

"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/collections/employment-tribunal-forms

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.