



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Dariusz Drop & Mrs Karen Drop

**Respondent:** Jintana Ltd

**HELD AT:** Manchester (In Chambers)      **ON:** 6 August 2021

**BEFORE:** Employment Judge Newstead Taylor  
(sitting alone)

## JUDGMENT ON RECONSIDERATION

1. The Respondent's application for reconsideration is granted.
2. Paragraph 1 of the Judgment, dated 13 January 2021, is varied as follows:

“The Respondent has made an unlawful deduction from Mr Drop's wages and is ordered to pay to Mr Drop the gross sum of **£782.40**, in respect of the amount unlawfully deducted.”
3. Paragraph 2 of the Judgment, dated 13 January 2021, is varied as follows:

“The Respondent has made an unlawful deduction from Mrs Drop's wages and is ordered to pay to Mrs Drop the gross sum of **£965.22**, in respect of the amount unlawfully deducted.”
4. Paragraphs 32, 33, 34, 36 and 37 of the written reasons, dated 5 February 2021, are amended in accordance with this Judgment on Reconsideration and Reasons.

# REASONS

## Chronology:

1. On 13 January 2021, I issued a written Judgment (“the Judgment”) in the following terms:
  - “1. The Respondent has made an unlawful deduction from Mr Drop’s wages and is ordered to pay to Mr Drop the gross sum of £913.15, in respect of the amount unlawfully deducted.*
  - 2. The Respondent has made an unlawful deduction from Mrs Drop’s wages and is ordered to pay to Mrs Drop the gross sum of £1,019.88, in respect of the amount unlawfully deducted.”*
2. The figures in the Judgment differed to those confirmed orally at the hearing on 11 January 2021 for the reasons set out in the Notes section of the Judgment. At paragraph 2 of the Notes section, I stated that *“If either party considers there to be any error in the recalculated sums then they can either ask for a reconsideration of the judgment under Employment Tribunal Rules 70-72 and/or submit an appeal.”*
3. On 19 January 2021, the Respondent emailed the Employment Tribunal (“the Tribunal”) stating *“The attached amended figures are incorrect and do not reflect what the claimants have been paid. Both claimants have already been paid for wk20 by baqs on 30/6/2020.”*
4. On 25 January 2021, the Claimants requested written reasons, which were provided on 9 February 2021.
5. On 23 February 2021, the Tribunal wrote to the parties in the following terms:
  - a. *“The Respondent’s request of 19 January 2021 pre-dates the written reasons sent out on 9 February 2021.*
  - b. *Does the Respondent wish to pursue the issue in light of the full written reasons?*
  - c. *If the Respondent does, please email full details to the Employment Tribunal and the claimant of the alleged error.”*
6. On 3 March 2021, the Respondent emailed the Tribunal stating:

*“Please check amended calculations in my last email.*

*Those are correct. Your calculations were changed after the end of the hearing. Had you correctly calculated them then we wouldn’t have this problem.*

*Remuneration for holidays paid to the claimants in week 16/20 July needs to be deducted from the total claim.*

*So please, either send amended and correct calculations.”*

7. On 19 March 2021, Regional Employment Judge Franey directed that the application cannot be considered unless it is copied to the claimant so they have an opportunity to respond.
8. On 24 March 2021, the Respondent emailed the Tribunal the allegedly correct calculations, namely £782.40 owed to Mr Drop and £877.27 owed to Mrs Drop. The Respondent copied Mr Drop into the email.
9. On 1 April 2021, Mr Drop emailed the Tribunal confirming that the Claimants considered that the calculations in the Judgment were correct.
10. On 17 July 2021, the Tribunal emailed the parties setting out my provisional view on the Respondent's Reconsideration application, listing it for a hearing on the papers on 6 August 2021 and inviting any further representations by 30 July 2021.
11. No further representations were received.

### **The Law:**

12. Rules 70 to 73 Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 set out the principles and procedure for Reconsideration applications. Pursuant to Rule 70, a judgment will only be reconsidered “...where it is necessary in the interests of justice to do so.” The wording ‘necessary in the interests of justice’ in Rule 70 allows Employment Tribunals a broad discretion to determine whether Reconsideration of a judgment is appropriate in the circumstances. However, as stated in **Outsight VB Ltd v Brown 2015 ICR D11, EAT**, this discretion must be exercised having regard not only to the interests of the party seeking the Reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation. Also, a Tribunal considering a Reconsideration application must seek to give effect to the overriding objective to deal with cases ‘fairly and justly’ and should be guided by the common law principles of natural justice and fairness.

### **Conclusions:**

13. I am satisfied that all of the money paid for holiday pay in Mr Drop's 20 July 2020 payslip and some of the money paid for holiday pay in Mrs Drop's 20 July 2020 payslip was double counted. This was because both the monies paid under the 20 July 2020 payslips and the monies due for the Claimants' accrued, but untaken, holidays were included in full in the Claimants' total losses without any credit being given for the sums paid in the 20 July 2020 payslips for holiday pay, see paragraphs 3 and 4 of the Notes section of the Judgment.

14. I have reconsidered the calculations and confirm that:

- a. Mr Drop's pay slip, dated 20 July 2020, details payment of basic wages totalling £175.71 and holiday pay totalling £134.90.
- b. Mrs Drop's pay slip, dated 20 July 2020, details payment of holiday pay only totalling £124.01.
- c. Neither Mr nor Mrs Drop took any holiday whilst on furlough or at all. Accordingly, they are entitled to be paid their wages in full up to 20 July 2020 and their holiday pay on top. Mr Drop's final week's wages were £175.71 which he was paid. Mrs Drop's final week's wages were her furlough wages of £76.48.
- d. Mr Drop's accrued but untaken holiday whilst on furlough amounted to £138.72. However, under payslip 20 July 2020 he was paid £134.90 of holiday pay and, therefore, a set off should be undertaken. In this regard I note that the respondent seeks to deduct only £113.69, according to Mr Siddall's email dated 24 March 2021, as follows  $£138.72 - £113.69 = £25.03$ .
- e. Mrs Drop's accrued but untaken holiday whilst on furlough amounted to £171.93. However, under pay slip 20 July 2020 she was paid £124.01 of which £76.48 was her final week's furlough wages. This leaves a balance of £47.53 paid for holiday pay. This should be offset against the amount of accrued but untaken holiday as follows:  $£171.93 - £47.53 = £124.40$ .
- f. These corrections affect the ACAS uplift which is a percentage calculation as follows.
  - i. Mr Drop  $£350.52 + £25.03 / 100 \times 15 = £56.33$ .
  - ii. Mrs Drop  $£382.40 + £124.40 / 100 \times 15 = £76.02$ .
- g. The total correct amounts are as follows:
  - i. Mr Drop:  $£350.52 + £25.03 + £56.33 + £350.52 = £782.40$ .
  - ii. Mrs Drop:  $£382.40 + £124.40 + £76.02 + £382.40 = £965.22$ .

15. Accordingly, I am satisfied that it is in the interests of justice to vary the Judgment in accordance with the calculations set out at paragraph 14 above.

JUDGMENT SENT TO THE PARTIES ON  
10 August 2021

FOR THE TRIBUNAL OFFICE

Note

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](http://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 numbers: **2415213/2020 & 2415214/2020**

Name of cases: **Mr D Drop** v **Jintana Limited**  
**Mrs K Drop**

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 judgment day" is: 10 August 2021

"the calculation day" is: 11 August 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/publications/employment-tribunal-hearings-judgment-guide-t426](http://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.