



EMPLOYMENT TRIBUNALS

Claimant: Mr. S Dolan

Respondent: Eden Bar and Drink Limited

Heard at: Manchester

On: 30 November 2020
(by CVP), 9 July 2021 in
chambers).

Before: Employment Judge Leach

Representation

Claimant: In person (30 November 2020)

Respondent: In person (30 November 2020)

RESERVED JUDGMENT

1. The respondent has made unauthorised deductions from the claimant's wages of the following amounts on the following dates:

Week of 3/4/20	£183.70
Week of 5/6/20	£183.70
Week of 12/6/20	£183.70
Week of 19/6/20	£183.70
Week of 26/6/20	£183.70
For the period 1 to 9 July 2020	£146.06

2. The parties agree that the claimant worked a week in hand and that the respondent owes the claimant £220.

3. The claimant's claim for unauthorised deductions is therefore well-founded and the respondent is ordered to pay to the claimant the sum of **£1,284.56** (gross).

REASONS

1. The claimant claims that he did not receive payment of wages on various dates in 2020 including dates when the claimant was on furlough and the respondent was claiming and in receipt of monies from the Government's Job Retentions Scheme (furlough monies). Furlough monies were claimed and paid to the respondent during a period when the respondent's restaurant was, necessarily, closed.

2. This case was listed for hearing on 30 November 2020. As at that date, judgment had already been issued which: -

- a. Struck out the claimant's complaints of unfair dismissal and for a statutory redundancy payment (on the basis that the claimant did not have 2 year's continuous employment with the respondent);
- b. Granted judgment in favour of the claimant for payment for 5 days accrued, untaken holidays (the respondent had by then accepted that this was owed) amounting to £220.

3. That judgment was sent to the parties on 16 September 2020 and the case listed for hearing in order to determine the remaining complaints.

4. The parties were provided with case management orders (CMOs) that they were to comply with in order to ensure that a fair hearing could take place.

5. At the hearing on 30 November 2020 it was clear that neither party had complied with the CMOs. At that hearing therefore I required the parties to provide further information, ensuring that all information provided by one party was shared with the other party (in compliance with Rule 92 of the Employment Tribunal Rules of Procedure 2013 so that the other party would then have an opportunity to comment. I would then reach my decision based on the information obtained from the parties at the hearing on 30 November and further information received.

6. The parties took some time to provide further information requested and, further, neither party complied with the clear instructions to copy the other party into the information they were providing. Unfortunately, further delay then occurred due to the case file at the Tribunal having been misfiled and it could not be located for a period.

7. When the further information was provided to me on 9 July 2021 it was clear that the respondent had not shared with the claimant, the information sent to the Tribunal. I directed that information be shared and asked each party to provide answers to specific questions. The claimant provided his answers. The

respondent did not.

8. Having considered the representations of the parties at the hearing on 30 November 2020 and the additional written evidence and information provided I make the findings of fact as set out in paragraphs below.

9. The claimant worked a week on hand and is owed wages of £220. The respondent admitted this in his undated letter received by the Tribunal in March 2021.

10. The claimant is owed additional unpaid wages as noted below.

11. The respondent alleges the additional amount owing is £366.17 and is only in relation to 2 weeks in July 2020. The claimant alleges that he is owed wages (at a reduced rate on the basis of amounts owed to him on operation of the Government's Job Retention Scheme) for the week of 3 April and then for 4 weeks throughout June 2020 and the first week of July 2020.

12. The position set out (and admissions made) in writing by the respondent in March 2021 differs from the information provided in the response form and at the hearing on 30 November 2020. The claimant on the other hand has constantly maintained that he is owed wages for 5 weeks that he was on furlough as well as wages for the period 1-9 July 2020.

13. Both parties have provided documentary evidence which they say supports their position. The respondent relies on his accountant. The claimant relies on his own calculations about wages he has not been paid but has also provided evidence from the Government's Universal Credit Service (UCS) and from screenshots of his own bank account.

14. I prefer the claimant's evidence in relation to the amounts owing for 4 weeks in June 2020 and the 1 week in April 2020. I note the information reported to the claimant by "Rachel" of the UCS service Centre at Makerfield specifically about pay advices provided by the respondent to HMRC and that a pay advice for 3 April 2020 is missing from the list of dates "Rachel" sent to the claimant. This supports the claimant's version of events. Further I find that (understandably) the claimant has paid close attention to the amounts owed to him and which have not been paid and that his evidence in relation to these amounts has been consistent throughout.

15. As for the amounts owing for July 2020 I note that in the letter to the Tribunal of March 2021, Mr. Stewart of the respondent sets out the days and hours that he says the claimant worked/attended the respondent's restaurant in July and that a total of £366.17 is owing for July (as against the amount claimed by the claimant of £146.06).

16. Again, I prefer the claimant's version of events from his claim form and

following, even though the respondent has stated that additional amounts are owing for July 2020 (and even though the claimant now looks to be granted judgment for the additional amounts). In preferring the claimant's version of events, I have applied the same reasoning as I have to the other amounts owing. It is clear to me that the claimant has paid much closer attention to the amounts owing to him and the work carried out by him than the respondent has.

17. Accordingly, the sums outstanding and due to the claimant are those set out at the top of this judgment amounting to a total of **£1284.56**.

18. The parties should note that the amount due under this Judgment is in addition to the existing Judgment sent to the parties on 16 September 2020 for five days accrued unpaid holiday entitlement in the sum of **£220**.

Employment Judge Leach

Date: 24 August 2021

RESERVED JUDGMENT AND REASONS SENT TO THE
PARTIES ON

27 August 2021

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: **2409524/2020**

Name of case: **Mr S Dolan** v **Eden Bar and Drink Limited**

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: 27 August 2021

"the calculation day" is 28 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

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.