



EMPLOYMENT TRIBUNALS

Claimant: Mr W O'Carroll

Respondent: Will Nixon Construction Group Limited (in Creditors' Voluntary Liquidation)

Heard at: Manchester (in Chambers)

On: 11 February 2022

Before: Employment Judge McDonald

REPRESENTATION:

Claimant: Not in attendance (case dealt with on papers)

Respondent: Not in attendance (case dealt with on papers)

JUDGMENT ON REMEDY

The judgment of the Tribunal is that:

1. The respondent is ordered to pay the claimant the sum of £1,998 consisting of:
 - (1) £420 for the one week's notice which he did not receive;
 - (2) £1,578 for monies unlawfully deducted from his wages.
2. That sum should be paid to the claimant gross without deduction of tax and national insurance. That is on the basis that he will be accountable to pay any tax or national insurance applicable to it to the appropriate authorities.

REASONS

1. On 23 December 2021 I gave judgment on liability in favour of the claimant. I found that his claims for notice pay and for unlawful deductions from wages succeeded. The claimant did not have all the relevant paperwork with him at that hearing so I was not able to calculate the compensation payable to him. I directed that he provide that further information by 21 January 2022. I listed this hearing in chambers for me to decide whether I could finalise the Judgment on Remedy without the parties needing to attend. I have found that I can do so. I set out below the basis of my calculations.

2. In relation to the notice pay, the claimant is entitled under section 86 of the Employment Rights Act 1996 (“ERA”) to one week’s pay. For these purposes “a week’s pay” has a technical meaning, and I must calculate it by reference to sections 220-235 of the ERA.

3. In my liability judgment I found that the claimant's contracted hours were 35 hours per week but that in practice he worked in excess of that. Section 221 of the ERA provides that where an employee has normal working hours the amount of a week’s pay is the amount which is payable by the employer under the contract of employment, if the employee works throughout his normal working hours in a week. In this case I find that the “normal working hours” were 35 hours per week. That seems to me consistent with the evidence including the fact that the claimant was paid for 35 hours for the two weeks of holiday leave in December 2019. I appreciate that in practice the claimant usually worked more hours than his contractual 35 hours. However, hours over and above those normal contractual hours would only be included in a week’s pay for ERA purposes if they were guaranteed contracted overtime. I do not find that that was the case here. I find therefore that the week’s pay to which the claimant was entitled in lieu of notice was 35 hours x £12 per hour giving a total of £420.

4. In relation to the deduction from wages claims, I am satisfied that the claimant was entitled to payment for 41 hours worked in the week commencing 20 January 2020. That was 27 hours worked plus 14 hours holiday. 41 hours x £12 is £492.

5. For the week commencing 27 January the claimant’s timesheet showed that he worked 45.5 hours. Multiplying that by £12 per hour gives £546. The claimant was also entitled to payment for his week in hand of 45 hours. Multiplied by £12 that gives £546.

6. Adding those three deductions together gives total deductions of £1,578. With the £420 notice pay that makes a total of £1998 payable. That is the gross sum due.

Employment Judge McDonald
Date: 11 February 2022

JUDGMENT AND REASONS SENT TO THE PARTIES ON
15 February 2022

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: **2401152/2020**

Name of case: **Mr W O'Carroll** v **Will Nixon Construction Group 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 judgment day" is: 15 February 2022

"the calculation day" is: 16 February 2022

"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.