



# EMPLOYMENT TRIBUNALS

**Claimants:** Mr Ezekiel Adeyemi (1<sup>st</sup> Claimant)  
Mr Hamid Teimouri (2<sup>nd</sup> Claimant)

**Respondent:** Mr Samuel David O'Carroll

**HELD AT:** Manchester on 9 February 2022

**BEFORE:** Tribunal Judge Holt

**REPRESENTATION:**

**Claimant:** Both in person (by CVP)  
**Respondent:** No attendance

## JUDGMENT

### Employment Tribunals Rules of Procedure 2013 – Rule 21

1. The claims were issued in the Manchester Employment Tribunals on 23 July 2021 (1<sup>st</sup> Claimant) and 8 September 2021 (2<sup>nd</sup> Claimant). The Respondent has failed to present a valid response (on time or at all). The Tribunal Judge has decided that a determination can properly be made of the claims in accordance with rule 21 of the Rules of Procedure.
2. The Respondent entirely failed to pay the 1<sup>st</sup> Claimant and has made unauthorised deductions from the 2<sup>nd</sup> Claimant's wages and therefore must pay:
  - i. The 1<sup>st</sup> Claimant £1,550 (gross); and
  - ii. The 2<sup>nd</sup> Claimant £2,310 (gross).

## REASONS

3. The claims made by the Claimants against Respondent have been linked by the Tribunal and dealt with at the same time because they involve very similar

facts. Each Claimant bring claims for unauthorised deduction of wages in respect of their respective employments with the Respondent.

4. The respondent has failed to respond to the Claims. The Chronology of the proceedings is:

#### CHRONOLOGY

12 April 2021	Mr Adeyemi's employment commenced
16 April 2021	Mr Adeyemi's employment ended
25 May 2021	ACAS received Mr Adeyemi's request (ACAS ref: R141260/21/33)
<b>27 June 2021</b>	<b>ACAS received Mr Teimouri's request (ACAS ref: R150664/21/78)</b>
6 July 2021	ACAS certificate in Mr Adeyemi's claim
23 July 2021	Mr Adeyemi's ET1 claim form (noting that it was in the name of Samuel David O'Carroll)
<b>8 August 2021</b>	<b>ACAS certificate in Mr Teimouri's claim</b>
<b>8 September 2021</b>	<b>Mr Teimouri's ET1 claim form (noting that it was in the name of Samuel David O'Carroll)</b>
<b>7 October 2021</b>	<b>Notice of claim addressed to both Mr Samuel David O'Carroll personally and also O'Carroll Civil Engineering Limited at an address in Hyde.</b>
<b>14 December 2021</b>	<b>A no response letter Mr Teimouri's claim issue against O'Carroll Civil Engineering Limited c/o Mr Samuel David O'Carroll at an address in Manchester (M30) warning that a Judgement may be issued due to the lack of response.</b>
<b>15 December 2021</b>	<b>Mr Teimouri's claim for unfair dismissal struck out by EJ Cookson (because he did not have the requisite 2 years employment history with the Respondent). Nonetheless the other claim was allowed to proceed.</b>

5. The Respondent has not filed an ET3 form, nor communicated with the Tribunal in any way at all.
6. Before hearing the case on 9 February 2022, I checked the Court files for each case and noted that in relation to both cases, the Tribunal had communicated with the Respondent at various business and domestic addresses connected to his role as a director of O'Carroll Engineering Limited, as well as in his private capacity
7. My first decision, therefore, was whether the case could proceed under rule 21 of The Employment Tribunal Rules of Procedure 2013 (as Amended)(see [Appendix 1](#) at the end of this Judgement). In the light of the lack of response from the Respondent, I decided that the cases should both proceed under rule 21(2).
8. Having decided that the Claims should, proceed, I had to decide the following key questions:
- Was the claim presented in time?

- b. Was each claimant a worker?
  - c. Is each claim in respect of wages?
  - d. Has the employer made a deduction in relation to each claim?
  - e. Was the deduction authorised?
  - f. Was it an exempt deduction?
  - g. Does the two-year restriction apply?
  - h. Is there any financial loss attributable to the non-payment
9. In making my decisions on each claim, I also bore in mind of the legal framework which included: S13 of the Employment Rights Act 1996 (“ERA”) (the right not to suffer unauthorised deductions); the meaning of “wages” at S27 of the ERA 1996 and the definition of employees and workers etc at S230 of the ERA 1996.
10. I heard evidence from the Claimants via video-link facilitated by the Tribunal’s virtual platform, having been provided with a file of papers on each case. The documents submitted in advance of the hearing were scant and simply consisted of the ET1 claim form for each Claimant. As noted above, the Respondent had not responded to the claims in any way, including by filing an ET3, communicating regarding the hearing fixed for 9 February 2022, nor otherwise engaged in this process. In particular, I checked the Court files and also had conversations with the Tribunal administration staff who confirmed that the Tribunal has not received any phone calls or emails from the Respondent, including any communication requesting a postponement of the case. The lack of response from the Respondent meant that there were no court bundles/files of evidence.
11. I find that neither Claimant had a written contract with the Respondent, rather the agreements between the Respondent and each Claimant were based on oral agreements. I am satisfied that both Claimants knew the role that they were required to fulfil, the work that they had to complete, and the agreed weekly rate of payment. I find that they fulfilled their work obligations and that the claimed payments remained outstanding.
12. Mr Adeyemi describes himself as a “freelance engineer”. Mr Adeyemi’s case is that he worked for the Respondent for a week 12 to 16 April 2021. He was engaged as a site engineer to work 50 hours a week. The Respondent agreed to pay Mr Adeyemi £1,550 a week gross (which the Claimant believes would have been around £1,240 net). The agreement was that Respondent was supposed to pay the Claimant on a weekly basis once the week’s work had been completed. Thankfully, when the Respondent refused to pay Mr Adeyemi at the end of his first week, Mr Adeyemi was able to secure other employment with another employer on 21 April 2021.
13. The week’s work that Mr Adeyemi completed was at TSL construction site in Luton. He emphasized to me that, in performing his unpaid week’s work, this caused him the inconvenience of travelling from Wolverhampton to Luton every day. I also noted that he claims that he was unable to pay certain bills on account of not being paid his wage for the week in April under review. However, he has never provided any details or interest or bank charges or the like that

he has suffered as a result of the non-payment of wages. I therefore did not make an award in relation to this element.

14. At the hearing Mr Adeyemi confirmed that the Respondent had never paid him anything and so £1,550 (gross) remains outstanding. Given the unchallenged evidence and the fact that Mr Teimouri's evidence of his experience (see below) essentially corroborated Mr Adeyemi's experience, I concluded that Mr Adeyemi had presented his claim in time, had fulfilled his obligations to try to use ACAS to conciliate the claim (as well as having tried to contact the Respondent informally to try to get him to pay up) and I decided that the Respondent must pay Mr Adeyemi £1,550.
15. The outstanding figure claimed by Mr Teimouri was £2,310. He explained that he was engaged as a Site Engineer and due to be paid £1,680 a week by the Respondent and was supposed to be paid weekly. I accept the unchallenged evidence that Mr Teimouri had initially been put into contact with the Respondent through Mr Jarrod Holmes on 9 March 2021 and that Mr Teimouri completed his work engagement with the Respondent at the Fortel site between 9 March and 7 April 2021. I am also satisfied that Mr Teimouri had to badger the Respondent for his pay, and that he was paid for the first 9 days of work that he completed. Nonetheless, Mr Teimouri worked for a further 11 days thereafter but the Respondent failed to pay him and then ignored his communications when Mr Teimouri chased him. Thankfully, Mr Teimouri also found alternative work, on 10 April 2021. The pay owed by the Respondent for the remaining days is what was outstanding as of the date that Mr Teimouri submitted his ET1 claim. I was satisfied by his unchallenged evidence that the £2,310 claim remained outstanding as of the date of the hearing before me.
16. Given the unchallenged evidence, the fact that Mr Teimouri's evidence of his experience is essentially corroborated Mr Adeyemi's experience (set out above), I concluded that Mr Teimouri had presented his claim in time, had fulfilled his obligations to try to use ACAS to conciliate the claim (as well as having tried to contact the Respondent informally to try to get him to pay up) and I decided that the Respondent must pay Mr Teimouri the claimed £2,310.

Decision (Communicated to the Claimants at the hearing on 9 February 2022)

17. The Respondent entirely failed to pay the 1<sup>st</sup> Claimant and has made unauthorised deductions from the 2<sup>nd</sup> Claimant's wages and therefore must pay:
  - i. The 1<sup>st</sup> Claimant £1,550 (gross); and
  - ii. The 2<sup>nd</sup> Claimant £2,310 (gross).

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Tribunal Judge Holt  
Dated 20 February 2022

Appendix 1

**Rule 21 Effect of non-presentation or rejection of response, or case not contested**

- (1) Where on the expiry of the time limit in rule 16 no response has been presented, or any response received has been rejected and no application for a reconsideration is outstanding, or where the respondent has stated that no part of the claim is contested, paragraphs (2) and (3) shall apply.
- (2) An Employment Judge shall decide whether on the available material (which may include further information which the parties are required by a Judge to provide), a determination can properly be made of the claim, or part of it. To the extent that a determination can be made, the Judge shall issue a judgment accordingly. Otherwise, a hearing shall be fixed before a Judge alone. [Where a Judge has directed that a preliminary issue requires to be determined at a hearing a judgment may be issued by a Judge under this rule after that issue has been determined without a further hearing.]
- (3) The respondent shall be entitled to notice of any hearings and decisions of the Tribunal but, unless and until an extension of time is granted, shall only be entitled to participate in any hearing to the extent permitted by the Judge.



## NOTICE

### THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case numbers: **2408556/2021 & 2410975/2021**

Name of cases: **Mr E Adeyemi** v **Mr Samuel David O'Carroll**  
**Mr H Telmouri**

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: 28 February 2022

"the calculation day" is: 1 March 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](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.