



EMPLOYMENT TRIBUNALS

Claimants: Mr C Hardy (1)
Mrs J Craig (2)
Miss D Morris (3)
Mr N Enchine (4)

Respondent: Orange Eyewear Ltd

Heard at: Manchester (by CVP)

On: 25 March 2022

Before: Employment Judge Phil Allen (sitting alone)

REPRESENTATION:

Claimants: Each attended and represented themselves

Respondent: Did not attend, no response having been submitted

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

1. The claims were issued in the Manchester Employment Tribunals between 10 November 2021 and 9 December 2021. The respondent has failed to present a valid response on time in any of the claims. At a hearing, at which the claimants each gave evidence, the Employment 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 has made an unauthorised deduction from each of the claimants' wages and is ordered to pay each claimant the following gross sum:
 - a. Mr Hardy, **£692.30**;
 - b. Mrs Craig, **£1,153.94**;
 - c. Miss Morris, **£1,080.76**; and
 - d. Mr Enchine, **£880**.
3. Each of the claimants was dismissed by reason of redundancy and is entitled to a statutory redundancy payment of:
 - a. Mr Hardy, **£4,673.03**;
 - b. Mrs Craig, **£2,448**;
 - c. Miss Morris, **£9,186.46**; and
 - d. Mr Enchine, **£880**.

RESERVED JUDGMENT AND REASONS

Case Numbers: 2414463/2021
2414846/2021
2415016/2021
2415135/2021

4. Each of the claimants was dismissed in breach of contract in respect of notice and the respondent must pay damages to each claimant as follows:
 - a. Mr Hardy, **£3,115.35**;
 - b. Mrs Craig, **£2,307.68**;
 - c. Miss Morris, **£6,484.62**; and
 - d. Mr Enchine, **£1,906.67**.

5. The respondent has failed to pay each claimant their holiday entitlement and must pay each claimant the following gross sum:
 - a. Mr Hardy, **£3,115.35**;
 - b. Mrs Craig, **£2,699.99**;
 - c. Miss Morris, **£5,295.77**; and
 - d. Mr Enchine, **£4,488**.

6. The respondent breached each of the claimants' contracts of employment by deducting employee pension contributions from them, and failing to pay to a pension scheme for the benefit of the employee either the employee pension contributions or the employer pension contributions to which they were contractually entitled, and the respondent must pay damages to each claimant as follows:
 - a. Mr Hardy, **£77.88**;
 - b. Mrs Craig, **£491.94**;
 - c. Miss Morris, **£433.12**; and
 - d. Mr Enchine, **£321.76**.

REASONS

Introduction

1. The claimants were all employed by the respondent. They were dismissed by email. They all claimed that the respondent had failed to pay sums which were due.

Claims and Issues

2. Each of the claimants claimed:
 - a. Unauthorised deduction from wages, as the respondent failed to pay the sums due for the period when they had been employed (after the end of September 2021);
 - b. A statutory redundancy payment;
 - c. Breach of contract, as the respondent had neither given notice of dismissal nor made any payment in lieu of notice;
 - d. Holiday pay, as they had not been paid in lieu of accrued but untaken annual leave on termination; and
 - e. For breach of contract as the respondent had failed to pay to the pension scheme operated for their benefit, the pension contributions due for a period prior to the termination of their employment.

RESERVED JUDGMENT AND REASONS

Case Numbers: 2414463/2021
2414846/2021
2415016/2021
2415135/2021

Procedure

3. The claimants each attended the hearing, represented themselves, and gave evidence under oath about their own personal circumstances. Each claimant had provided the Tribunal with relevant documents for the hearing.
4. The hearing was conducted by CVP remote video technology.
5. The respondent did not attend the hearing and was not represented, despite having been notified of it. The respondent had not presented a response in any of the claims.
6. Each of the claimants was given the opportunity to explain their case for each of the sums claimed.
7. Judgment was reserved and accordingly the Tribunal provides the Judgment and reasons outlined below.

Facts

8. Each claimant was employed by the respondent. The start of their employment was: 25 August 2002 for Miss Morris; 19 May 2012 for Mr Hardy; 4 December 2017 for Mrs Craig; and 3 December 2018 for Mr Enchine. Mrs Craig provided a contract of employment which stated that an employee would be automatically enrolled on the company's pension scheme with a specific percentage contribution to be contributed by the company.
9. Each of the claimants was on furlough throughout much of 2020 and 2021. Furlough ceased shortly prior to dismissal, but none of the claimants returned to undertaking active work for the respondent (despite appropriate enquiries being made). The claimants were paid until the end of September 2021 as usual. The respondent ceased to make pension contributions to the pension schemes of each of the claimants 17 weeks prior to 14 October 2021 (contributing neither employer contributions, nor the employee contributions which had been deducted from wages).
10. On 14 October 2021 each of the claimants received an email from Mr Enrico Vivezi, the sole director of the respondent. In the email he introduced himself and addressed the impact which Covid-19 had in the business. He then said *"As I am sure you are now aware Furlough has now ended, and unfortunately the various ongoing negotiations to move this company forward are still ongoing, and with that said I am not in any position to hold this company going forward and unfortunately after many hours, weeks and months of discussion I have to put the company into Administration. Bearing all the above in mind, as you were an employee of the company of course you will be owed monies i.e redundancy etc...please do forward me any information you would like me to pass to the admin. In the meantime the admin have requested me to ask you to arrange all items belonging to the company to all be returned..."*
11. Some of the claimants did respond to Mr Vivezi. He directed them to the administration. Property was returned. Despite what was said in the email, the respondent did not enter into administration. The company remains active on Companies House as at the date of this hearing, without any record of it having entered into administration. It must be assumed that the company is, and has remained since the 14 October 2021, solvent, as otherwise the respondent's director would have been in breach of his statutory obligations.

RESERVED JUDGMENT AND REASONS

**Case Numbers: 2414463/2021
2414846/2021
2415016/2021
2415135/2021**

12. No further payments have been made to any of the claimants. The claimants have not been paid any salary due for the period in October when they were in employment. The pension contributions due have not been made. Payments in lieu of accrued but untaken annual leave have not been made. No notice of termination of employment was given, nor has there been any payment made in lieu of notice. No redundancy payments have been made, despite the respondent ceasing to employ the claimants.

13. Shortly after notifying the claimants by email as described, Mr Vivezi (and therefore the respondent) ceased to be contactable by the claimants. They were provided with no means of contacting the respondent, nor were they provided with any details for the administrators to whom Mr Vivezi had referred in his email.

14. Three of the claimants have never received a P45 from the respondent. Mr Enchine did receive a P45 in January 2022 which stated that the date his employment ended was 14 January 2022.

15. None of the claimants gained other employment during the period which would have been their notice period (after 14 October 2021). None of the claimants were paid any benefits in that period. Mr Enchine did so shortly afterwards.

The Law

16. Claims for unlawful deductions from wages are considered under section 23 of the Employment Rights Act 1996, relying upon the right not to suffer unauthorised deductions from wages under section 13.

17. A breach of contract claim can only be brought in the Employment Tribunal if the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 applies. That Order only applies to claims by an employee and where the claim arises or is outstanding on the termination of the employee's employment.

18. The right to a redundancy payment is determined under Part XI of the Employment Rights Act 1996. The right to pay in lieu of accrued but untaken annual leave is provided for in the Working Time Regulations 1998.

Conclusions – applying the Law to the Facts

19. One issue which was to be determined by me following the conclusion of the hearing, was when it was that the claimants' employment terminated. The earliest any of their employment could have terminated was 14 October 2021. Some of the claimants took the view that the email sent to them did not constitute the termination of their employment, as it did not say that their employment was being terminated. Mr Enchine, not unreasonably, proposed that his employment did not terminate until the date recorded on his P45.

20. I have considered carefully whether or not the claimants' employments were terminated on 14 October 2021. The email was certainly not as clear as it could have been, containing as it did no clear statement of termination and no stated termination date. It appeared to link the end of employment to an administration which did not in fact occur. Nonetheless, I have found that the employment of each of the claimants was terminated on 14 October 2021 by the email sent. Read it in its entirety, my finding is that the email did in practice inform each claimant that their employment had ended on the day of the e-mail. The requirement to return company property reinforced that. I fully understand why Mr Enchine, in

**RESERVED JUDGMENT AND
REASONS**

**Case Numbers: 2414463/2021
2414846/2021
2415016/2021
2415135/2021**

particular, argued for a later termination date, but I view the date on his P45 as being a further example of the poor conduct of the respondent, rather than being something which in practice showed that he remained employed for the period of three months following this email (without being asked to undertake any work or doing so).

21. In the light of my decision regarding the termination date, each of the claimants was due the salary earned up to 14 October 2021 and the failure to pay those sums was an unauthorised deduction from wages. For each of the claimants, in the hearing I established with them the sum claimed for that period; and the sums identified (up to 14 October 2021) are those awarded.

22. I accept that all of the claimants had their employment terminated by reason of redundancy. Each of the claimants was entitled to statutory redundancy pay and received no redundancy payment. With each of the claimants I identified the sum claimed and the basis upon which it had been calculated. Save as explained below, each of the claimants has been awarded the sum claimed, which I am satisfied was the sum to which they were entitled based upon the required formula using length of service, age, and a week's pay. For Mrs Craig, the amount of a week's pay used in the statutory calculation has been capped at £544 using the maximum amount in place at the time, rather than the full week's pay of £576.92 she had used in her own calculation. For Mr Enchine, the amount awarded reflects the 14 October 2021 termination date, rather than the amount claimed based upon a later termination date.

23. All of the claimants were entitled to notice and the failure to give notice was a breach of contract, which has not been remedied by any payment. The period of notice to which Miss Morris (twelve weeks) and Mr Hardy (nine weeks) was entitled reflected the statutory minimum notice as a result of their length of service. The four weeks notice claimed by Mrs Craig and the one month claimed by Mr Enchine, represented their contractual entitlements.

24. Each employee provided details of the amount of holiday which they said they had accrued but not taken as at the date of termination. The sum awarded is based upon each claimant's own evidence. For those who contended that holiday pay from 2020 had been carried over to 2021 (Miss Morris, Mr Hardy and Mr Enchine), I accept the contention that the untaken and unpaid holiday was carried over as contended in circumstances where those individuals were unable to take leave because they were on furlough, and no agreement had been reached regarding dates for leave. I have not deducted anything for time spent on furlough in 2020 or 2021. For Mr Enchine, I have calculated his entitlement based upon the 28 days per annum claimed, but pro-rata'ed for the period of 2021 for which I have found he was employed (giving a total of 51 days, for which the order is based upon the rate of £88 per day). Mr Hardy's total was 45 days, based upon 25 days per annum (pro-rata'ed for the period of employment in 2021).

25. The one other issue which arose during the hearing was the question of pension contributions. A failure to make payments due to a pension scheme, is a matter which is enforced by the Pensions Regulator and it does not fall within the jurisdiction of this Tribunal. However, this Tribunal is able to determine claims for breach of contract (which are outstanding on termination of employment). Deducting sums from an employee's pay to pay to a scheme and then failing to do so, is a breach of contract. Where the claimants sought the sum deducted as damages for the breach, I have awarded that sum.

26. For the employer's pension contributions not paid, the position was less clear-cut. Nonetheless I accept Mrs Craig's argument that the term of her employment contract which I have recorded above, meant that a failure to pay those sums was also a breach of her contract.

**RESERVED JUDGMENT AND
REASONS**

**Case Numbers: 2414463/2021
2414846/2021
2415016/2021
2415135/2021**

The contractual term imposed a contractual obligation. Whilst the other claimants either did not have a contract or could not point to the same specific clause, I have nonetheless implied into each of their contracts the same term as appeared expressly in Mrs Craig's contract, meaning that there has been a breach of contract when the respondent failed to pay such sums to a scheme. The damages sought of the sum which should have been paid, is an award I am accordingly able to make.

27. For each claimant the sum awarded as damages for breach of contract regarding pension, is the total pension contributions (both employer and employee) which they contended had not been paid (albeit that the loss for the breach could have been a higher amount reflecting the lost benefit).

28. I would add that this is a case where I have carefully considered imposing a financial penalty on the respondent under section 12A Employment Tribunals Act 1996. The way in which the respondent failed to pay the sums due, including falsely explaining that the sums should be sought from an administrator who did not exist and then ceasing to be contactable, as well as failing to give notice and dismissing by email, are aggravating features. However I have exercised my discretion not to impose such a penalty, not because of any aspect of the respondent's entirely unacceptable conduct, but because I was concerned that any such penalty might reduce the chance that the claimants themselves would receive the sums due to them (or at least some part of those sums). I would emphasise that, in my view, the way in which the respondent dismissed these employees and failed to pay the sums due, was entirely inappropriate and unlawful, with aggravating features.

Employment Judge Phil Allen
Date: 25 March 2022

JUDGMENT SENT TO THE PARTIES ON
29 March 2022
AND ENTERED IN THE REGISTER

FOR THE TRIBUNAL OFFICE



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: **2414463/2021 & Others**

Name of case: **Mr C Hardy** v **Orange Eyewear Ltd**
& Others

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: 29 March 2022

"the calculation day" is: 30 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

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.