



EMPLOYMENT TRIBUNALS

Claimant: Mrs Syra Costello

Respondent: Natalie Farrar

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

1. The claimant's claim of unfair dismissal succeeds. The remedy to be awarded in relation to that claim will be determined at a remedy hearing before any Employment Judge sitting alone with a time estimate of three hours.
2. The claimant's claim of wrongful dismissal (i.e. that she was dismissed without notice in breach of her contract) succeeds. The respondent is ordered to pay the claimant **£1416.10** by way of compensation for that breach.
3. The claimant's claim that the respondent failed to pay her for holiday accrued but untaken at the date of dismissal succeeds. The respondent is ordered to pay the claimant **£436.92** holiday pay.
4. A date for the remedy hearing will be notified separately. The respondent will be entitled to participate in that hearing only to the extent permitted by the Employment Judge.
5. Not less than 14 days before the remedy hearing the claimant must have provided to the Tribunal and to the respondent a witness statement setting out the compensation she is claiming for unfair dismissal and an updated Schedule of Loss setting out the financial loss she suffered as a result of the dismissal, giving credit for any other earnings or benefits received.

REASONS

1. A summary of this case is set out in Employment Judge Serr's case management orders of the 16 February 2022. In brief, the claimant was employed by the respondent as a carer. The Claimant issued a Claim to the Tribunal on 16 August 2021 claiming unfair dismissal, wrongful dismissal, and outstanding holiday pay.

2. The respondent was required to serve a response to the claim by 15 September 2021 but failed to do so. The respondent is represented by her father. He attended the case management hearing on 16 February 2022. At para 13 of the orders from that hearing Employment Judge Serr ordered that by the 23 February 2022 the respondent should send to the tribunal and the claimant a draft response to the claim with an application under rule 20 of the Employment Tribunal Rules of Procedure 2013 (“the ET Rules”) to extend time for filing a response. On 22 February 2022 Mr Farrar emailed a document setting out a response to the claim in bullet point form. On 16 March 2022 an unless order was issued, requiring the respondent to comply with para 13 of E J Serr’s order in full by sending the tribunal by 30 March 2022 a completed response form and an application for an extension of time for filing that response. The unless order provided that unless para 13 of E J Serr’s order was complied with in full, no further application for an extension of time would be considered.
3. On 30 March 2022, Mr Farrar sent the tribunal a completed response form. There was no application to extend time as required by E J Serr’s order. I am satisfied that the terms of the unless order have not been complied with. The respondent’s response was filed outside the time limit set out in rule 16 of the ET Rules. In the absence of any application under rule 20 of the ET Rules for an extension of time to file the response the draft response sent to the tribunal on 30 March 2022 is rejected under rule 18 of the ET Rules.
4. Rule 21 of the ET Rules provides that where a response has been rejected, an Employment Tribunal Judge shall decide whether on the material available a proper determination of the claim or part of it can be made. I am satisfied that such a determination can be made in relation to the issue of liability for the claims of unfair dismissal, wrongful dismissal and holiday pay. I am also satisfied that a determination of remedy can be made in relation to the wrongful dismissal and holiday pay claims. The amounts set out in my judgment above in relation to those claims were agreed by Mr Farrar at the case management hearing on 16 February 2022 (para 11 of E J Serr’s orders). I am not satisfied that there is enough information in the materials available to enable me to determine the compensation which should be awarded for the claimant’s claim of unfair dismissal. I have directed that there should be a remedy hearing where a judge will decide what compensation should be awarded. The claimant will need at that hearing to provide evidence of the financial losses she suffered as a result of her dismissal. She will need to give credit for any earnings or benefits she received after her dismissal.
5. If the respondent wants to take part in or provide written or documentary information for consideration at that hearing it should write to the Tribunal within 21 days of receiving this judgment setting out what part it wishes to play in the hearing and why allowing it to do so would be in accordance with the overriding objective in rule 2 of the ET Rules.

Employment Judge McDonald
Date: 21 September 2022

JUDGMENT SENT TO THE PARTIES ON
21 September 2022
AND ENTERED IN THE REGISTER

FOR THE TRIBUNAL OFFICE



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990 ARTICLE 12

Case number: **2409159/2021**

Name of case: **Mrs S Costello** v **Natalie Farrar**

Interest is payable when an Employment Tribunal makes an award or determination requiring one party to proceedings to pay a sum of money to another party, apart from sums representing costs or expenses.

No interest is payable if the sum is paid in full within 14 days after the date the Tribunal sent the written record of the decision to the parties. The date the Tribunal sent the written record of the decision to the parties is called **the relevant decision day**.

Interest starts to accrue from the day immediately after the relevant decision day. That is called **the calculation day**.

The rate of interest payable is the rate specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as **the stipulated rate of interest**.

The Secretary of the Tribunal is required to give you notice of **the relevant decision day**, **the calculation day**, and **the stipulated rate of interest** in your case. They are as follows:

the relevant decision day in this case is: 21 September 2022

the calculation day in this case is: 22 September 2022

the stipulated rate of interest is: **8% per annum**.

Mr S Artingstall
For the Employment Tribunal Office

GUIDANCE NOTE

1. There is more information about Tribunal judgments here, which you should read with this guidance note:

www.gov.uk/government/publications/employment-tribunal-hearings-judgment-guide-t426

If you do not have access to the internet, you can ask for a paper copy by telephoning the Tribunal office dealing with the claim.

2. The payment of interest on Employment Tribunal awards is governed by The Employment Tribunals (Interest) Order 1990. Interest is payable on Employment Tribunal awards if they remain wholly or partly unpaid more than 14 days after the **relevant decision day**. Sums in the award that represent costs or expenses are excluded. Interest starts to accrue from the day immediately after the **relevant decision day**, which is called **the calculation day**.
3. The date of the **relevant decision day** in your case is set out in the Notice. If the judgment is paid in full by that date, no interest will be payable. If the judgment is not paid in full by that date, interest will start to accrue from the next day.
4. Requesting written reasons after you have received a written judgment does **not** change the date of the **relevant decision day**.
5. Interest will be calculated as simple interest accruing from day to day on any part of the sum of money awarded by the Tribunal that remains unpaid.
6. If the person paying the Tribunal award is required to pay part of it to a public authority by way of tax or National Insurance, no interest is payable on that part.
7. If the Secretary of State has claimed any part of the sum awarded by the Tribunal in a recoupment notice, no interest is payable on that part.
8. If the sum awarded is varied, either because the Tribunal reconsiders its own judgment, or following an appeal to the Employment Appeal Tribunal or a higher court, interest will still be payable from **the calculation day** but it will be payable on the new sum not the sum originally awarded.
9. The online information explains how Employment Tribunal awards are enforced. The interest element of an award is enforced in the same way.