



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M Spore

**Respondent:** Community Information Services Limited (in creditors' voluntary liquidation)

**Heard at:** Manchester

**On:** 22 November 2022

**Before:** Employment Judge Slater

## Representation

Claimant: Did not attend (relying on written information)

Respondent: Did not attend (no response presented)

# JUDGMENT

1. The claimant was dismissed in breach of contract in respect of notice and the respondent is ordered to pay damages to the claimant in the sum of £5769.20. This is a net sum but is based on the claimant's gross pay because it is likely that upon receipt the claimant will have to pay tax on this amount as Post Employment Notice Pay.
2. The claimant was dismissed by reason of redundancy and is entitled to a redundancy payment of £9707.
3. The claim for a protective award for failure to consult under section 188 Trade Union and Labour Relations (Consolidation) Act 1992 is not well founded.
4. The respondent has made an unauthorised deduction from wages by failing to pay the claimant in lieu of accrued but untaken holiday entitlement and is ordered to pay the claimant the sum of £692.30.
5. The respondent has made an unauthorised deduction from the claimant's wages by failing to pay the claimant for overtime worked and is ordered to pay the claimant the gross sum of £269.70.
6. The respondent is to pay any gross sums for unauthorised deductions from wages less the appropriate deductions for tax and national insurance, if any, for which it must account to HMRC.

7. In accordance with Rule 66 the sums awarded must be paid within 14 days of the date of this judgment.

# REASONS

## Introduction

1. This was a hearing listed to consider the claimant's complaints in relation to a redundancy payment, notice pay, holiday pay, arrears of pay and a protective award.
2. The respondent did not present a response to the claim and commenced winding up in a creditors' voluntary liquidation on 13 September 2022. However, the liquidators provided some information in writing which I have taken into account.
3. The claimant did not wish to attend the hearing since he had recently started a new job, but wished to rely on information he had provided in writing. I take account of the contents of his claim form and subsequent correspondence in reaching my decision.

## Claims and issues

4. In his claim form, the claimant indicated that he was owed notice pay, redundancy pay, holiday pay, and outstanding overtime pay. He also sought a protective award for failure to consult in relation to redundancies and compensation for the stress, time and anguish caused by having to resort to going through this process to claim what's rightfully owed.
5. In relation to the notice pay claim, I have to consider what notice the claimant was entitled to and the amount of damages which should be awarded for a breach of contract consisting of not being given the full amount of notice to which he was entitled.
6. In relation to entitlement to a statutory redundancy payment, I have to calculate the entitlement, using the statutory formula, based on the claimant's age at the effective date of termination, length of service and weekly pay.
7. In relation to holiday pay, I need to decide how much holiday the claimant had accrued, but not taken, at the termination of employment and the amount the claimant should have been paid in lieu of this. Failure to pay this will be an unauthorised deduction from wages.
8. In relation to unpaid overtime, I need to decide how much was owed to the claimant and not paid. Failure to pay this will be an unauthorised deduction from wages.
9. In relation to the claim for a protective award, I must consider whether the requirements in 188 Trade Union and Labour Relations Act 1992 are satisfied.

These include that the employer was proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less.

10. The Tribunal has no power to award compensation for stress, time and anguish in relation to the type of complaints the claimant is bringing.

### **Facts**

11. The respondent produced planners, magazines, guides, brochures and other material. It went into creditors voluntary liquidation, with the commencement of winding up being 13 September 2022, after the claimant had presented his claim.

12. The claimant worked for the respondent from 1 November 2004 until 30 June 2022 as a Graphics Studio Manager. The claimant had completed 17 years' service as at the effective date of termination.

13. The claimant was given notice of termination by reason of redundancy on 14 June 2022 to expire 30 June 2022.

14. The claimant was born on 14 August 1980, so was 41 years' old at the effective date of termination.

15. The claimant was one of 8 employees made redundant by the respondent.

16. The claimant's salary was £30,000 per annum. His gross weekly pay was £576.92. His net weekly pay was £459.83.

17. The claimant was not a member of an employer's pension scheme and did not receive any other benefits.

18. The claimant worked 35 hours per week. I have assumed this was over 5 days a week.

19. The claimant's holiday entitlement was 33 days per calendar year. He had been allowed to carry over 1.5 days from 2021. The claimant had taken 12 days' paid holiday in 2022.

20. The claimant was not consulted about redundancy before being given notice of redundancy.

21. The claimant was entitled to 12 weeks' notice of termination, based on his length of service.

22. The claimant was paid basic salary up to 30 June 2022.

23. The claimant was not paid a statutory redundancy payment.

24. The claimant was owed for overtime worked, but the claimant has not supplied the Tribunal with details of the amount owed.

25. The Statement of Affairs prepared by the liquidators shows a total of £16,421.35 owed to Mr Spore: £675.45 as a preferential creditor and £15,745.90

as an unsecured creditor. The Statement of Affairs does not set out how these amounts have been arrived at. I find that the sum of £675.45 was in respect of holiday pay, since an employee ranks as a preferential creditor for holiday pay.

## **Law**

26. An employer is entitled to terminate an employee's employment without notice if the employee is in fundamental breach of contract. This will be the case if the employee commits an act of gross misconduct. If the employee was not in fundamental breach of contract, the contract can only lawfully be terminated by the giving of notice in accordance with the contract or, if the contract so provides, by a payment in lieu of notice. In accordance with section 86(1) Employment Rights Act 1996 (ERA), the notice to be given to an employee must be at least one week's pay for each completed year of service up to a maximum of 12 weeks (although the contract can provide for a longer entitlement to notice).

27. Section 13(1) of the Employment Rights Act 1996 provides that an employer shall not make a deduction from wages of a worker employed by him unless the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract or the worker has previously signified in writing his agreement or consent to the making of the deduction. An employee has a right to complain to an Employment Tribunal of an unlawful deduction from wages pursuant to Section 23 of the Employment Rights Act 1996. "Wages" include payments in respect of holiday pay and overtime.

28. An employee dismissed by reason of redundancy, who has been continuously employed for at least two years, is entitled, by section 135 ERA, to be paid a statutory redundancy payment calculated in accordance with the formula set out in section 162 ERA. This is (a) one and a half week's pay for each year of employment in which the employee was not below the age of forty one, (b) one week's pay for each year of employment in which the employee was not below the age of twenty two, not falling in (a); and (c) half a week's pay for each year of employment not within (a) or (b). A maximum of 20 years is taken into account. A week's pay is subject to a statutory cap which, at the time the claimant was dismissed, was £571: section 227 ERA.

29. Section 188 Trade Union and Labour Relations Act 1992 (TULR(C)A 1992) sets out the duty on employers to consult employee representatives when they are proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less. A complaint may be made to an employment tribunal about a failure to comply with this duty by one of those people identified in section 189(1) TULR(C)A 1992. If the complaint is successful, the Tribunal may make a protective award, which is an order for the employer to pay remuneration for a protected period.

## **Conclusions**

### Breach of contract (notice pay)

30. Since the claimant had completed 17 years' service, he was entitled to 12 weeks' notice under the statutory provisions in section 86 ERA. The claimant has not claimed that he was entitled, under his contract, to more than 12 weeks' notice.

The claimant was given, and paid, for 2 weeks' notice. The respondent was, therefore, in breach of contract by not giving the claimant his full entitlement to notice and I award damages for the balance of the notice period, being 10 weeks' pay.

31. Damages should be calculated on a net basis but, since the claimant is likely to have to pay tax on this amount as Post Employment Notice Pay, I use his gross weekly pay to calculate the damages so the amount, after payment of tax, is likely to equate approximately to the net amount. The claimant's gross weekly pay was £576.92. I order the respondent to pay damages of 10 x £576.92 for breach of contract, which is £5769.20.

#### Statutory redundancy payment

32. The claimant was dismissed by reason of redundancy. He was, therefore, entitled to be paid a statutory redundancy payment, calculated in accordance with the statutory formula.

33. The claimant had completed 17 years of service by the effective date of termination and was 41 years old when dismissed. His gross weekly pay was £576.92. This is above the statutory cap of £571 which applied at the time, so £571 is used in the calculation of the payment which is as follows:

$$17 \times £571 = £9707.$$

#### Protective award

34. The respondent was not proposing to dismiss as redundant 20 or more employees at one establishment. The duty to consult under section 188 TULR(C)A 1992 did not, therefore, arise. The respondent was not in breach of the duty to consult. The claimant's claim for a protective award is not well founded.

#### Unauthorised deduction from wages (holiday pay)

35. The claimant worked for half of 2022 so had accrued half of his annual leave entitlement of 33 days' holiday i.e. 16.5 days. He had taken 12 days' leave in 2022, leaving a balance of 4.5 days accrued but untaken. In addition, he carried forward 1.5 days from 2021. This makes a total of 6 days for which he should have been paid in lieu on termination of employment. On the basis that the claimant worked 5 days per week, 6 days is the equivalent of 1.2 weeks. I calculate the gross payment which should have been made for holiday as follows:

$$1.2 \times £576.92 = £692.30.$$

#### Unauthorised deduction from wages – overtime

36. The claimant has not told the Tribunal how much he considers he is owed for overtime. However, from the Statement of Affairs produced by the liquidators, I can see the total amounts which the liquidators have calculated to be due to the claimant: £675.45 as a preferential creditor and £15,745.90 as an unsecured creditor. I have found that the preferential debt is in respect of holiday. This means that the unsecured debt of £15,745.90 must be in respect of notice pay,

redundancy pay and wages owed (the overtime, since the claimant was paid normal wages up to the date of termination). The total of notice pay and redundancy pay, in accordance with my calculations, is £5769.20 + £9707.00 = £15,476.20. To arrive at the amount owed for overtime, I deduct this from the total unsecured debt: £15,745.90 - £15,476.20 = £269.70. I conclude that the amount of pay owed to the claimant for overtime worked was £269.70 and the respondent made an unauthorised deduction from wages by not paying this to the claimant.

Employment Judge Slater  
Date: 22 November 2022

JUDGMENT & REASONS SENT TO THE PARTIES ON  
28 November 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](http://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 ARTICLE 12

Case number: **2405486/2022**

Name of case: **Mr M Spore** v **Community Information Services Limited (In Creditors' Voluntary Liquidation)**

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: 28 November 2022

**the calculation day** in this case is: 29 November 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](http://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.