



EMPLOYMENT TRIBUNALS

Claimant: Mr O Ahmed

Respondent: (1) Create Construction Ltd (in Administration)
(2) Secretary of State for Business, Energy and Industrial Strategy

Heard at: Manchester Employment Tribunal (by video)

On: 30 March 2023

Before: Employment Judge Dunlop

Representation

Claimant: In person
First Respondent: No attendance
Second Respondent: No attendance

JUDGMENT

1. The claimant's claim of unpaid wages against the first respondent is well-founded. The claimant was entitled to the gross sum of £5,205.48 in respect of unpaid salary and the gross sum of £20,000.00 in respect of an unpaid contractual bonus payment. The claimant has received the sum of £1,504.00 from the Insolvency Service. The first respondent is ordered to pay the claimant the balance of **£23,701.48**.
2. The claimant's claim of breach of contract (unpaid notice pay) against the first respondent is well-founded. The claimant is entitled to the gross sum of £19,000. The claimant has received the sum of £784.00 from the Insolvency Service. The first respondent is ordered to pay the claimant the balance of **£18,216.00**.
3. The claimant's claim in respect of payment for annual leave accrued but untaken at the date of termination of employment against the first respondent is well-founded. The claimant is entitled to the gross sum of £409.23. The claimant has received the sum of £170.05 from the Insolvency

Service. The first respondent is ordered to pay the claimant the balance of **£239.18**.

4. The claimant's claim in respect of breach of contract (unpaid expenses) against the first respondent is well-founded. The first respondent is ordered to pay the claimant the sum of **£213.52**.

REASONS

1. The claimant was dismissed by reason of redundancy on 25 October 2021 due to the collapse of the first respondent, which subsequently entered administration on 27 October 2021.
2. The claimant was not paid his wages for the work he had done in October, nor was he paid notice pay, nor outstanding accrued holiday pay.
3. The claimant brought claims for these sums by way of a claim form presented to the Tribunal on 12 November 2021. He also brought a claim for a Protective Award under s.189 Trade Union and Labour Relations (Consolidation) Act 1992. The Tribunal received numerous claims from other former employees in similar circumstances.
4. By a letter dated 29 November 2021, the Administrators gave their consent for the claimant's Tribunal claim to proceed. That consent was not limited (as is often the case) to the claim for the Protective Award.
5. The Protective Award claims were dealt with first, and, following a hearing on 30 August 2022, a Judgment was issued making a Protective Award in respect of a group of claimants, including Mr Ahmed. The Tribunal then wrote to those claimants who had other claims (and had the Administrators' consent to pursue those claims) to confirm if they wished to do so.
6. This hearing was listed following Mr Ahmed's indication that he wished to pursue his remaining claims against the respondent. Mr Ahmed gave evidence as to his employment and the circumstances of its termination, including the date of termination. I accept he was dismissed by an email sent, and received, on 25 October 2021, notwithstanding that the letter of dismissal attached to that email was dated 21 October 2021.
7. Mr Ahmed gave evidence about the £20,000 bonus payment he says he was due. This is expressly acknowledged in the dismissal letter which stated that he was entitled to "*payment of your outstanding bonus for the completion of Discovery Quay 1 Salford, which when calculated using your contractual bonus clause gives an overdue entitlement of £20,000.*" I find that Mr Ahmed's entitlement to this bonus was contractual, not discretionary, and that his claim is for a quantified sum of £20,000.00.

8. Mr Ahmed also gave evidence about the period for which he did not receive wages, his contractual notice entitlement and his holiday pay entitlement. He produced calculations for these amounts which I was satisfied were accurate, save in respect of holiday where I was satisfied that the calculation was not in accordance with the formula set out at Regulation 14(b) Working Time Regulations 1998. I applied the formula and agreed with Mr Ahmed a slightly reduced figure set out above.
9. Accordingly, I am satisfied on the basis of Mr Ahmed's uncontested evidence that the sums set out in the Judgment are sums owed by the first respondent. Mr Ahmed had kept a record of the sums he has received from the Insolvency Service, and these have been deducted from the sums ordered to be paid by the first respondent, so as to avoid any double recovery.
10. I have explained to Mr Ahmed that the fact that he now has a Judgment does not mean that he will be able to recover those sums in full out of the Administration. The extent to which he will actually receive payment is a matter between him and the Administrators.
11. The second respondent did not employ Mr Ahmed. It is a party to the claim in its capacity as statutory guarantor. For the avoidance of doubt, this Judgment does not purport to place any additional liability on the second respondent.

Employment Judge Dunlop

Date: 30 March 2023

SENT TO THE PARTIES ON

Date: 5 April 2023

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FOR EMPLOYMENT TRIBUNALS

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: **2414485/2021**

**Mr O Ahmed v (1) Create Construction Ltd (in Administration)
(2) Secretary of State for Business, Energy and Industrial Strategy**

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 decision day" is: 5 April 2023

"the calculation day" is: 6 April 2023

"the stipulated rate of interest" is: **8%**

Mr P Guilfoyle
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/collections/employment-tribunal-forms

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.