



EMPLOYMENT TRIBUNALS

Claimant: Mr D Byrne

Respondent: Advanced Plant Hire Ltd

Heard at: Manchester (by CVP)

On: 15 December 2023

Before: Employment Judge Barker

REPRESENTATION:

Claimant: In person

Respondent: no attendance

JUDGMENT

The judgment of the Tribunal is as follows:

Wages

1. The complaint of unauthorised deductions from wages is well-founded. The respondent made unauthorised deductions from the claimant's wages in the period 13 January 2023 to 10 February 2023, a period of four weeks. The claimant did not receive proper payment of wages during that period. The respondent paid the claimant £200 during that period which is accounted for in the sum below. The claimant's weekly wages were £649.80.
2. The respondent shall pay the claimant £2599.20 - £200 = **£2399.20**, which is the gross sum deducted. The claimant is responsible for the payment of any tax or National Insurance.

Notice Pay

3. The complaint of breach of contract in relation to notice pay is well-founded. The claimant's employment is found by the Tribunal to have ended on 10 February

2023, which was the last day when the claimant had any contact with the respondent.

4. The respondent shall pay the claimant **£1949.40** as damages for breach of contract, representing three weeks' notice pay at £649.80 per week. This figure has been calculated using gross pay to reflect the likelihood that the claimant will have to pay tax on it as Post Employment Notice Pay.

Holiday Pay

5. The Tribunal found that in the twelve-month period up to 10 February 2023, the respondent did not allow the claimant to exercise the right to paid annual leave under the Working Time Regulations 1998. The claimant had 28 days or 5.6 weeks accrued but untaken holiday at that date.
6. The respondent shall pay the claimant £649.80 x 5.6 weeks = **£3638.88**. This is the compensation the Tribunal considers just and equitable in all the circumstances under regulation 30(4).

Redundancy Payment

7. The site at which the claimant worked has closed down. The employment offered to the claimant by the respondent was not suitable alternative employment. He was therefore made redundant. Under section 163 Employment Rights Act 1996 it is determined that the claimant is entitled to a redundancy payment of **£2569.50**. This is based on three years' service and the claimant being age 60 on the date his employment ended, had he been provided with proper notice of termination of employment.

Unfair Dismissal

8. The complaint of unfair dismissal is well-founded. The claimant was unfairly dismissed. He is awarded the sum of £34,420 subject to the application of the recoupment of benefits provisions set out below.
9. Given the lack of any process or proper notice of termination of employment, the Tribunal has considered the possibility of an uplift for failure to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015. However, as the Tribunal's decision is that the claimant was dismissed by reason of redundancy, this uplift does not apply.
10. The respondent shall pay the claimant the following sums:
 - (a) A basic award of **£nil, on the basis that the claimant has been awarded a statutory redundancy payment.**
 - (b) A compensatory award of **£34,420. This is made up of the following sums:**

- a. Loss of earnings from the date of what should have been the end of the claimant's notice period (3 March 2023) to the date of the hearing (15 December 2023), 41 weeks, net wages at a calculated sum of £514 per week = £21,074 and
 - b. Future loss of earnings for a period of 6 months from the date of the hearing (to 15 June 2024) of £514 x 26 weeks = £13364
11. The Employment Protection (Recoupment of Benefits) Regulations 1996 apply as the claimant received Universal Credit from April 2023:
 - a. The total monetary award (i.e. the compensatory award plus basic award) payable to the claimant for unfair dismissal is **£34,420**
 - b. The prescribed element is **£21,074**.
 - c. The period of the prescribed element is from 3 March 2023 to 15 December 2023.
 - d. The difference between (1) and (2) is **£13364**.
12. In making payment to the claimant for unfair dismissal, the respondent is to pay the sum for future loss of earnings straight away (£13364) and the remainder of the unfair dismissal award is to be paid subject to the respondent being served with a recoupment notice for any sums of Universal Credit that the Secretary of State seeks to recoup from the rest of the unfair dismissal award.

Failure to provide a written statement of employment particulars

13. When the proceedings were begun the respondent was in breach of its duty to provide the claimant with a written statement of employment particulars. There are no exceptional circumstances that make an award of an amount equal to two weeks' gross pay unjust or inequitable. In accordance with section 38 Employment Act 2002 the respondent shall therefore pay the claimant **£1299.60**.

Pension

14. The claimant told the Tribunal that he had been informed by the respondent that he had been registered in a workplace pension but that he had been provided with no further information about this. This issue is not within the Tribunal's jurisdiction, but is likely within the jurisdiction of the Pensions Ombudsman (enquiries@pensions-ombudsman.org.uk or on 0800 914 4487).

Enforcement

15. Information for the claimant on how to apply for payment of this award is provided in an advice leaflet enclosed with this judgment.
16. Once the claimant has taken reasonable steps to recover the payment, if it is not paid and the employer is not insolvent, the claimant can apply to recover the redundancy payment from the National Insurance Fund. If the employer is

insolvent, the claimant can apply to recover the redundancy payment and other amounts such as holiday pay and notice pay from the National Insurance Fund.
<https://www.gov.uk/your-rights-if-your-employer-is-insolvent/your-rights>

Employment Judge Barker
15 December 2023

Judgment sent to the parties on:

21 December 2023

For the Tribunal:

Note

Reasons for the judgment were given orally at the hearing. Written reasons will not be provided unless a party asked for them at the hearing or a party makes a written request within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions

Judgments (apart from judgments under rule 52) 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.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>

Claimant: Mr D Byrne

Respondent: Advanced Plant Hire Limited

**ANNEX TO THE JUDGMENT
(MONETARY AWARDS)**

Recoupment of Benefits

The following particulars are given pursuant to the Employment Protection (Recoupment of Benefits) Regulations 1996, SI 1996 No 2349.

The Tribunal has awarded compensation to the claimant, but not all of it should be paid immediately. This is because the Secretary of State has the right to recover (recoup) any jobseeker's allowance, income-related employment and support allowance, universal credit or income support paid to the claimant after dismissal. This will be done by way of a Recoupment Notice, which will be sent to the respondent usually within 21 days after the Tribunal's judgment was sent to the parties.

The Tribunal's judgment states: (a) the total monetary award made to the claimant; (b) an amount called the prescribed element, if any; (c) the dates of the period to which the prescribed element is attributable; and (d) the amount, if any, by which the monetary award exceeds the prescribed element. Only the prescribed element is affected by the Recoupment Notice and that part of the Tribunal's award should not be paid until the Recoupment Notice has been received.

The difference between the monetary award and the prescribed element is payable by the respondent to the claimant immediately.

When the Secretary of State sends the Recoupment Notice, the respondent must pay the amount specified in the Recoupment Notice to the Secretary of State. This amount can never be more than the prescribed element of any monetary award. If the amount is less than the prescribed element, the respondent must pay the balance to the claimant. If the Secretary of State informs the respondent that it is not intended to issue a Recoupment Notice, the respondent must immediately pay the whole of the prescribed element to the claimant.

The claimant will receive a copy of the Recoupment Notice from the Secretary of State. If the claimant disputes the amount in the Recoupment Notice, the claimant must inform the Secretary of State in writing within 21 days. The Tribunal has no power to resolve such disputes, which must be resolved directly between the claimant and the Secretary of State.



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990 ARTICLE 12

Case number: **2404367/2023**

Name of case: **Mr D Byrne** v **Advanced Plant Hire Limited**

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 December 2023

the calculation day in this case is: 22 December 2023

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

For the Employment Tribunal Office