



EMPLOYMENT TRIBUNALS

Claimant: Mrs J Dickinson

Respondent: Bela Care Limited

Heard at: Manchester Employment Tribunal (by video)

On: 26 January 2024

Before: Employment Judge Dunlop

Representation

Claimant: In person

Respondent: Mr Y Ndhlovu (part of hearing only)

JUDGMENT

1. The correct name of the respondent is “Bela Care Limited”.
2. The claimant’s claim of unauthorised deductions from wages is well-founded. That means it succeeds.
3. The respondent is ordered to pay the claimant the gross sum of £1,832.25.

REASONS

1. Oral reasons for this decision were provided on the day. I am providing these written reasons on my own initiative, given that the respondent was not present for the full hearing.
2. By a claim form presented on 2 August 2023 Mrs Dickinson made a simple claim of unfair wages in the sum of £1,236.32. She did not state whether that was a gross or net sum, nor how it had been calculated. The claim was served on “Bela Day Care”.

3. A notice of claim and notice of hearing were issued by the Tribunal, listing the final hearing to take place at 10am today by video link.
4. On 5 October 2023 the respondent presented a response to the claim. This was presented by Mr Yendie Ndhlovu, who I understand to be the owner of the business. At box 6.1 the respondent had ticked 'no' to the question 'Do you contest all or part of the claim?'. This ought to have triggered the claim to be referred for a Judgment without a hearing, under rule 21, but this appears not to have happened. In a part of the form dealing with conciliation, the response stated "*the amount told is not verified but this is being checked by our admin office. We are willing to pay the correct balance once established in three instalments for affordability*".
5. Neither party submitted any documents or witness evidence to the Tribunal in advance of the hearing, despite the notice of hearing requiring this.
6. The start of the hearing was delayed whilst my clerk attempted to contact Mr Ndhlovu, who had not logged on. Eventually, Mr Ndhlovu joined the hearing on his mobile.
7. When I admitted the parties from the lobby I could see and hear Mr Ndhlovu. It was apparent he was driving a vehicle with passengers. He told me he was about to pull over. I indicated he should do that and waited a minute or so for him to do so. He then exited the vehicle, telling the passengers he would be with them momentarily after he had spoken to me.
8. Given the nature of the business, I asked Mr Ndhlovu whether the people in the van were service users of the respondent, and whether they were vulnerable adults. He confirmed that they were. He said that he had been aware of the video hearing, but had been required to fulfil a contractual obligation to drive these service users due to another member of staff calling in sick. I informed Mr Ndhlovu that I considered it would be inappropriate to allow him to remain in the hearing any longer in the circumstances. He acknowledged this and disconnected from the call.
9. I considered whether I should adjourn the hearing to another day to potentially enable the respondent to play an active part. I decided that was not appropriate in this case for several reasons:
 - 9.1 The respondent has not put forward any substantive defence to the claim;
 - 9.2 The amounts are relatively small and there would be prejudice to Mrs Dickinson if she was expected to wait any longer for a hearing;
 - 9.3 Given Mr Ndhlovu's casual attitude towards the hearing this morning, including his failure to make any contact with the Tribunal before being 'chased' to attend, I have no confidence that re-listing the hearing would result in him attending. I also note that Mrs Dickinson told me that Mr Ndhlovu completes the minibus run every morning; she believes the story about sickness is made up. Given Mr Ndhlovu's failure to communicate with the Tribunal and apparent lack of concern on the call to me, I am inclined to believe that too. (Although I would have made

the decision to proceed with the hearing even on the basis that Mr Ndhlovu's account was accurate).

10. Having decided to continue the hearing I heard oral evidence from Mrs Dickinson. She explained that she approached the respondent for a job and then worked for a short period of time as a care coordinator. She received no contract of employment or payslips. She was not paid regularly and is unaware of any deductions being made for NI or tax. She left the role after about 7 weeks because, understandably, she did not consider it feasible to continue working under those circumstances.
11. Mrs Dickinson kept a record of the hours she worked during her employment between 1 May and 21 June 2023. That came to 234 and three quarter hours. She told me the agreed payment rate was £11 per hour. The total gross amount she should have earned would therefore be £2,582.25.
12. She received two payments by bank transfer, one on 27 May for £300, and another on 3 June for £450. Taking these off the sums owed (and working on the basis that no tax or Ni had been deducted) would leave a gross unpaid sum of £1,832.25.
13. As I have said, Mrs Dickinson had claimed £1,236.32 in her claim form. She wasn't able to assist me with exactly how she had calculated this when she presented her claim almost 6 months ago. She did say that it was calculated as a net amount, but that it had been estimate as she wasn't sure what tax and NI would apply. She asked me to award £1,832.25 as per the calculations above.
14. I have decided to award the full amount of £1,832.25. It is not unusual for the sums involved in wages claims to change and, to the extent necessary, it is appropriate to allow Mrs Dickinson to amend her claim in order to claim the increased sum. I accept her evidence that she has been treated very badly by the respondent which has flouted its legal obligations as an employer. The fact that proper pay records have not been kept, meaning that Mrs Dickinson did not find it easy to understand how much she is owed, is not something which she should be penalised for. Balancing the prejudice to each party of allowing, or not allowing, the claim to proceed for the increased amount, I find the balance is in favour of the claimant.
15. Mrs Dickinson agreed that the name of the respondent should be amended to "Bela Care Limited" as that is the legal title of the company which employed her. I note that Mr Ndhlovu is the sole director of that company, according to Companies House records.

Employment Judge Dunlop

Date: 26 January 2024

SENT TO THE PARTIES ON

Date: 2 February 2024

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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.

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/>



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: 2407792/2023

Mrs J Dickinson v Bela Care Limited

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: 2 January 2024

"the calculation day" is: 3 January 2024

"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.