



EMPLOYMENT TRIBUNALS

Claimant: Mr J Nwosu

Respondent: L J Health and Wellbeing Limited

Heard at: Liverpool
By video hearing

On: 2 May 2024

Before: Employment Judge Aspinall

Representation

Claimant: in person

Respondent: no attendance

JUDGMENT

The judgment of the Tribunal is:

1. The claimant's complaint of unauthorised deduction from wages succeeds.
2. The respondent is ordered to pay to the claimant £ 444.85 made up as set out below.
3. The claimant's complaint of unfair dismissal is dismissed on withdrawal as he did not have two years' service.

REASONS

4. By a claim form dated 27 November 2023 the claimant brought complaints for unauthorised deduction from wages and unfair dismissal. The unfair dismissal complaint has been dismissed today because he did not have two years service. The respondent was sent notice of the claimant given until 25 January 2024 to submit its response. The respondent failed to submit a response on time. On 31 January 2024 the respondent sent a response form, out of time and without an accompanying application to extend time setting out the grounds for that application including the reasons why the form was sent late.

5. Notice of today's hearing was sent to the claimant and respondent by post on 27 March 2024. It was sent to the address given in the claim form which was the same address confirmed by the respondent in the response form that was submitted late. The respondent failed to attend today's hearing. Efforts were made to contact the respondent by email contact to its website, it had not provided a direct email address in its response form sent late, and by telephone. The respondent did not respond. I decided it was in the interests of justice to proceed with the hearing in the respondent's absence.

7. I had regard to Rule 18 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 and decided to reject the response because it was received late and was not accompanied by an application for an extension of time.

8. I then clarified the claim with the claimant. He was able to quantify his claim by oral evidence and documents sent to the tribunal; three timesheets and copies of payments received from the respondent on his banking app. As the claim was quantifiable I decided it was in the interests of justice to proceed to determine the complaint today. I converted the hearing to a public hearing for the purposes of determining the complaint.

9. I heard oral evidence from the claimant on oath. I made the following brief findings of fact: the claimant was employed by the respondent limited company for around three months in summer 2023. He worked as a care support worker under supervision from the senior nurse on shift. If he worked weekdays he was paid the hourly rate of £10.50, if he worked weekends was paid the hourly rate of £11.20. Each time he worked he completed a timesheet and had it signed off by the senior nurse on shift. He was paid by direct bank transfer to his bank and the payments appeared as receipts from LJ Health and Well-being Limited. He was paid two weeks in arrears. On Tuesday 22 August 2023 the claimant worked a 7 hour shift and on Sunday 27 August the claimant worked a 6 ½ hour shift . Both those shifts appeared on a timesheet which he had signed by senior nurse Diane Wycherley. On Saturday 26 August the claimant worked 14 hours which appeared on a timesheet signed by senior nurse A Backhouse. On Tuesday, 29 August 2023 the claimant worked an 8 hour shift and on 1 September 2023 he worked a 5 ½ hour shift both of which shifts appeared on a timesheet signed by senior nurse Johnson. I saw the three timesheets attesting to those hours of work signed by the senior nurses. 1 September 2023 was the last shift the claimant worked for the respondent and the date on which his employment with them came to an end. The claimant pursued the respondent for payment of his outstanding shifts. His calls went unanswered. He attended at the Dunkirk Drive address for the respondent at Ellesmere Port and met with the mother of the person he understood to be the director of the business, Mr Liam Jackson. Mr Jackson's mother telephoned Mr Jackson with whom the claimant spoke. Mr Jackson asked him to send the timesheets by screenshot on the phone and assured the claimant he would be paid for them. The claimant sent the timesheets that day and has not been paid. His calls to Mr Jackson go unanswered. On 10 November 2023, having still not been paid, he contacted ACAS and entered a period of early conciliation. He achieved an early conciliation certificate on 27 November 2023 and commenced proceedings in the employment tribunal that same day. When he commenced proceedings he forgot to put the word limited at the end of the respondent's title. He was at all times employed by LJ Health and WellBeing Limited. The claimant seeks £444.85 unauthorised deduction from wages properly payable to him.

10. The relevant law was contained in section 13 Employment Rights Act 1996 and in applying the law I had regard to the overriding objective in rule 2 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. In deciding whether or not to proceed to give judgment today I had to balance the rights of the respondent with those of the claimant and consider flexibility in proceedings, proportionality and the appropriate use of judicial time. Given that the respondent had failed to respond in time, failed to make an application for an extension of time in which to file its response and in the late response it filed indicated that it was not refusing to pay but that it had not had

timesheets, I decided to proceed to judgment today. I determined that the appropriate respondent is LJ Health and Well-being Limited and amended the respondent's title to these proceedings accordingly. The company search revealed Mr Jackson to be a director of that company and gave a registered office address. The respondent's position in not having had a chance to protest about the amounts the claimant claims (to any extent that it would be permitted to do so by a judge), is protected in that it may seek reconsideration of this decision and I direct that my administrative colleagues please include with this judgment, as usual, notes on applications for reconsideration. I have provided these written reasons for my decision of my own volition so that the respondent, who chose not to attend, can see what happened today in its absence.

11. In applying the law on unauthorised deductions I find that the claimant was due wages properly payable to him for the following shifts at the following rates giving a total of £444.85 which I have ordered the respondent to pay to the claimant.

Tuesday, 22 August 2023	7 hours at £10.50	£73.50	
Sunday, 27 August 2023	6 ½ hours at £11.20	£72.80	
Saturday, 26 August 2023	14 hours at £11.20	£156.80	
Tuesday, 29 August 2023	8 hours of £10.50	£84.00	
Friday 1 September 2023	5 ½ hours at £10.50	£57.75	= £ 444.85

12. There is a history of failure by the respondent to respond to tribunal correspondence in time. I am therefore directing that this judgment be sent to the address given in the claim form at 2 Dunkirk Drive Ellesmere Port, and also to the registered office address for the respondent limited company for the attention of Mr Liam James Jackson at first floor management suite, brought shopping Park, Bretton, Chester, England CH4 0DE.

Employment Judge
Date: 2 May 2024

JUDGMENT SENT TO THE PARTIES ON
10 May 2024

FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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 ARTICLE 12

Case number: **2412092/2023**

Name of case: **Mr J Nwosu** v **L J Health and Wellbeing 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: 10 May 2024

the calculation day in this case is: 11 May 2024

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.