



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr S Orchard

**Respondent:** Cyanic Resources Limited

**Heard at:** Manchester

**On:** 7 May 2024

**Before:** Employment Judge Leach

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Did not attend (appearance not entered)

# JUDGMENT

## Unfair Dismissal

1. The complaint of unfair (constructive) dismissal is well founded. The claimant was constructively dismissed. The dismissal date was 3 January 2024. That dismissal was unfair.
2. The respondent shall pay to the claimant the following sums:
  - a. A basic award of **£5139**.
  - b. A compensatory award of **£26,349.45**

NOTE: (i) The calculations of these sums are set out in the Annex attached. (ii) The recoupment provisions do not apply.

## Notice Pay

3. The complaint of breach of contract in relation to notice pay is well founded.
4. The claimant was entitled to receive 6 weeks' notice. He did not. The respondent shall pay to the claimant **£6346.14** as damages for breach of contract. 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 (PENP).

### **Holiday Pay**

5. The complaint in respect of holiday pay is well founded. The respondent made an unauthorised deduction from the claimant's wages by failing to pay the claimant for 10 days of holidays accrued but not taken on the date the claimant's employment ended.
6. The respondent shall pay the claimant **£2,115.38**. The claimant is responsible for paying tax or national insurance.

### **Wages**

7. The complaint of unauthorised deductions from wages is well-founded. The respondent made an unauthorised deduction from the claimant's wages in the period 17 to 25 August 2022.
8. The respondent shall pay the claimant **£1057.69**, which is the gross sum deducted. The claimant is responsible for the payment of any tax or National Insurance.

Employment Judge **Leach**

Date 7 May 2024

JUDGMENT SENT TO THE PARTIES ON

Date: 15 May 2024

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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/employmenttribunal-decisions](http://www.gov.uk/employmenttribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

## **ANNEX – CALCULATION OF UNFAIR DISMISSAL AWARD**

### 1. Basic Award

The claimant's period of continuous employment began on 16 May 2016 (commencement of employment with RSA Bolton Limited – claimant's employment transferred from that associated company to Cyanic resources Limited on 1 March 2017). As at the date of dismissal (3 January 2023) Claimant therefore had 6 years' continuous employment.

Claimant was aged 55 at date of dismissal (DOB 7/8/1967)

Claimant was paid a weeks' pay of £1057.69. This is capped at £571.

Basic Award therefore is  $6 \times 1.5 \times 571 = \mathbf{£5139}$

### 2. Compensatory Award

#### 2.1 Losses from 14 February 2023 to 4 September 2023. (29 weeks)

(Note the period 3 January 2023 to 13 February 2023 is covered by the notice pay (breach of contract) award)  
Claimant did not work during this 29 Week period.

Claimant's net weekly pay was £742.05

$29 \times £742.05 = \mathbf{£21519.45}$

#### 2.2 Losses from 4 September 2023. Claimant secured employment with a gross weekly shortfall of £99.68 upto 1 May 2024 and a reduced weekly shortfall of £58 thereafter. These are gross amounts.

Claimant is awarded **£4330** as compensation for losses from 4 September 2023

#### 2.3 Loss of Statutory Rights

Claimant is awarded **£500**

Total compensatory award therefore £21,519 plus £4330 plus £500 = **£26,349.45**

Note: the amount of compensatory award is under £30,000 and therefore no grossing up required.



## **NOTICE**

### **THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990**

Tribunal case number:**2404166/2023**

**Mr S Orchard v Cyanic Resources 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: 15 May 2024

"the calculation day" is: 16 May 2024

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

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](http://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.