



EMPLOYMENT TRIBUNALS

Claimant: Mrs J Orlaite Vykhrystiuk

Respondent: Evri Limited

Heard at: Liverpool

On: 6 September 2024

Before: Employment Judge Aspinall

Representation

Claimant: in person

Respondent: Miss Kight, Counsel

JUDGMENT

The judgment of the Tribunal is:

1. The claimant's complaint of failure to pay outstanding holiday pay on termination of employment fails.
2. The claimant's claim for notice pay fails.
3. The claimant's claim for unauthorised deduction from wages succeeds in part and the respondent is ordered to pay to the claimant £755.84

Short form reasons

1. The claimant's complaint of failure to pay outstanding holiday pay on termination of employment fails. I heard oral evidence from the claimant and scrutinised the 153 page bundle of documents that she had contributed to to seek to support as a litigant in person in substantiating her claim. The claimant was unable to establish that she was due leave beyond the 3.9 days leave that were credited to her in her final payslip in the sum of £375.09 and £94.92 by the respondent.

2. The claimant's claim for notice pay fails. The claimant accepted in oral evidence that she had had a period of unauthorised absence from 29 February 2024 and that she did not communicate with the respondent further until after, having given notice of the disciplinary hearing, it dismissed her in her absence for gross misconduct after hearing on 20 March 2024. Further, the claimant said that she had attempted to resign on 1 March 2024. She is not entitled to the one-week notice pay that she claimed.
3. The claimant's claim for unauthorised deduction from wages was put in two parts. The first part of her complaint was that she had had historic underpayment. She said that she had added up all the hours she had ever worked for the employer and worked them out at a rate of pay of £11.81 per hour and then deducted from that all the wages she'd ever received from the employer and that she had a shortfall. Although I was unable to scrutinise her calculations because she had not provided them to the tribunal she told me that they included over time and times when although the respondent had recorded her as on unpaid leave or off sick, she says she worked. She was unable to provide those dates and details of those occasions today. It was not in the interests of justice to adjourn this hearing for further information to be provided no application for postponement was made by either party.
4. I took the claimant back through payslips for the last four months of her employment and she gave oral evidence that the hours credited on those payslips accurately reflected the hours that she had worked on the correct rates of pay. Accordingly, she was unable to establish that she had been underpaid and, if there had been underpayments prior to that date, then any series of underpayments would have been broken by those last four months which were paid correctly and time would have expired.
5. The second part of her unauthorised deductions complaint was that on termination of employment her payslip wrongly deducted from her pay for the period of unauthorised absence twice. I find as a fact that she did no work for the respondent in March 2024. She was credited in the final payslip with having worked in that month and then a deduction was made in accordance with the clause 16.1 of her contract of employment entitling the respondent to make deductions from salary where there has been unauthorised absence. That deduction was made, in error, twice. I'm grateful to the respondent's counsel for taking us all carefully through the payslips. I supported the claimant as a litigant in person to allow the unauthorised deduction complaint in respect of the double deduction despite the claimant not having expressly pleaded her position that way. I accept her submission that she had not been able to see the payslips until recently and had not fully understood how to read them. The second part of the claim for unauthorised deduction from wages succeeds.
6. The respondent is ordered to pay to the claimant £ 755.84, compensation for the unauthorised deduction ordered gross in accordance with guidance in the employment tribunal remedies handbook. I understand that respondent had already arranged to make a payment of £577 being that amount net of deduction. It will now need to make arrangements to top up its payment to the claimant to the full gross amount ordered.

Employment Judge Aspinall
Date: 6 September 2024

JUDGMENT SENT TO THE PARTIES ON
9 September 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: **6003792/2024**

Name of case: **Mrs J Orlaite** v **Evri Limited**
Vykhrystiuk

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: 9 September 2024

the calculation day in this case is: 10 September 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.