Case No. 2415426/2020
Code V

EMPLOYMENT TRIBUNALS

Claimant: Mrs J Rogers

Respondent: Oak Tree Family Residential Limited

HELD AT: Manchester **ON:** 11 January 2020

BEFORE: Employment Judge Newstead Taylor (sitting alone)

REPRESENTATION:

Claimant: Mrs J Rogers (In person)

Respondent: No attendance.

JUDGMENT

1. By consent the Respondent's name is amended to Oak Tree Family Residential Limited.

2. The Respondent has made an unlawful deduction from the Claimant's wages and is ordered to pay to the Claimant the gross sum of £210.00 in respect of the amount unlawfully deducted.

3. The Respondent was in breach of contract for failing to pay the Claimant's agreed mileage and is ordered to pay to the Claimant £18.90, being damages for the breach of contract.

REASONS

1. This is the hearing of the claimant's claim for breach of contract and unlawful deduction from wages. Specifically, the Claimant contends that:

1.1 The respondent unlawfully deducted £210 from her wages in respect of eight hours of mandatory training and 12 hours of work; and

1.2 The respondent failed to pay to the claimant £18.90 for mileage agreed at 45 pence per mile.

2. The respondent did not attend the hearing.

3. In accordance with Rule 47 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the Rules"), the Employment Tribunal may proceed in the absence of a party, but before doing so should consider any information which is available to it, after any enquiries that may be practicable, about the reason for the party's absence.

4. The respondent emailed the Employment Tribunal on 7 January 2021 about the hearing on 11 January 2021. In that email the respondent raised queries about the format of the hearing and referred to certain difficulties between the parties that had involved the police. This email clearly shows that the respondent was aware of the hearing. No further communication was received from the respondent. On 11 January 2021, the clerk to the Employment Tribunal tried to telephone the respondent but the call did not connect. In addition, the clerk to the Employment Tribunal emailed the respondent. No response was received.

5. Further, whilst this case was no doubt of importance to the parties the sum involved was modest, the case was not unduly complex, there was no clear defence on the face of the ET3 and there was no good reason for delay. In all the circumstances, it was consistent with the overriding objective and in the interests of justice to proceed in the respondent's absence.

6. At the beginning of the hearing the Employment Tribunal raised with the claimant the fact that the ET1 cited the respondent's name as Oak Tree Family Residential, whereas the ACAS certificate cited the name as Oak Tree Family Residential Limited. Under Rule 12(1)(f) of the Rules, the Employment Tribunal had to consider whether or not the claim required to be rejected. However, taking into consideration Rule 12(2)(a) of the Rules, the Employment Tribunal considered that this was a minor error and that it was not in the interests of justice to reject the claim. Further, Mrs Rogers confirmed that the word "Limited" should been added to the end of the respondent's name.

7. Unfortunately, no bundle had been prepared for the hearing. Time was taken in the morning for the claimant to provide to the Employment Tribunal those documents she wished the Employment Tribunal to see. The claimant provided the Employment Tribunal with HSBC bank statements for June, July and August 2020, copies of texts between herself and Tracy Hartland and/or Craig Duxbury dated July and September 2020 and emails between herself and a Mr Wignall. The claimant confirmed that she had no further documents that she wished the Employment Tribunal to see.

8. The issue of time limits was considered with the claimant. In accordance with S.23 (2) (a) - (3) of the Employment Rights Act 1996, the claimant has 3 months beginning with the last date of payment of the wages from which a deduction was made to bring a claim for unlawful deduction from wages. Also, the claimant can claim in respect of a series of deductions going back up to 2-

years; s.23 (4A) Employment Rights Act 1996. Further, the claimant has 3 months from the effective date of termination to bring a claim for breach of contract.

9. The claimant gave evidence to the Employment Tribunal that:

9.1 She undertook 6 hours of mandatory training on 12.03.20. At this point the respondent was not fully operational. The claimant expected to be paid for this work either on 31.03.20 or 30.06.20.

9.2 She undertook 2 hours of mandatory training on 12 June 2020. She was due to be paid for this on 30.06.20. She was paid £325 on 30.06.120, but this did not include the 2 hours of mandatory training.

9.3 She worked for 12 hours on 08.07.20. She expected to be paid for this on 31.07.20. She was not paid.

10. The Employment Tribunal noted that the claimant's employment ceased on 24.07.20. She went to ACAS on 04.09.20. She received her certificate on 18.09.20. The ET1 was issued on 29.09.20.

11. In all the circumstances, the Employment Tribunal is satisfied that both the claim for unlawful deduction from wages and the claim for breach of contract have been brought in time. Also, the Employment Tribunal is satisfied that in relation to the unlawful deduction from wages there are a series of payments and that, even if the training undertaken on 12.03.20 was payable on 31.03.20, there are no gaps of greater than three months; Bear *Scotland v Fulton* [2015] IRLR 15.

12. The Employment Tribunal heard sworn evidence from the claimant and made the following findings of fact:

12.1. The claimant was employed as a Family Support Worker by the respondent.

12.2. There is no written contract. The claimant was given a contract but it was in the name of an Anne Duxbury. She was promised a new contract but never received one.

12.3. The claimant's hourly rate was £10.50 per hour for work and for mandatory training.

12.4. There was an oral agreement made between the claimant and Mrs Kerry Ainsworth, a former director, to pay 45 pence per mile for mileage.

12.5. She undertook mandatory training on 12 March 2020. This was first aid training at Heath Hill House. All staff and the directors were present at the training. It lasted for 6 hours. These hours were payable either at the end of March 2020 or in the June 2020 payslip, as the respondent was not fully trading at the time.

12.6. The claimant undertook two hours of mandatory training on 12 June 2020. On 30 June 2020 she was paid £325, but that did not include the two hours of mandatory training. That was the only payment she ever received from the respondent.

12.7. On 8 July 2020 the claimant worked a 12-hour shift. There was documentary evidence in the form of an email showing the claimant's agreement to work on that date, and confirmation from Lee Wignall that she was booked to work on that date.

12.8. The claimant travelled 42 mils for work resulting in mileage of £18.90, being 42 x 0.45.

12.9 The claimant has not received any payments from the respondent in July or August 2020 as shown by her HSBC bank statements.

12.10. The claimant has not received any payments directly from Mrs Kerry Ainsworth in respect of some or all of the £228.90 that she claims.

13. In conclusion, the Employment Tribunal finds that the claimant is owed £210 which has been unlawfully deducted from her wages and £18.90 for breach of contract, being the agreed mileage.

14. An oral judgment and reasons were given at the conclusion of the hearing. The Employment Tribunal chose to provide written reasons along with the judgment in order to assist the respondent in understanding why the hearing proceeded in its absence and why the Employment Tribunal made the findings it did.

Employment Judge Newstead Taylor
25 January 2021

JUDGMENT SENT TO THE PARTIES ON

Case No. 2415426/2020
Code V

1 February 2021

FOR THE TRIBUNAL OFFICE

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.

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NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: 2415426/2020
Mrs J Rogers v Oak Tree Family Residential 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: 1 February 2021

"the calculation day" is: 2 February 2021

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

MR S ARTINGSTALL
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.