



EMPLOYMENT TRIBUNALS

Claimant: Mr J Middleton

Respondent: Northern Exports Limited

Heard at: Manchester Employment Tribunal (by CVP)

On: 20 May 2022

Before: Employment Judge Mark Butler

Representation

Claimant: Self-representing

Respondent: No attendance

JUDGMENT

1. The Respondent has made an unlawful deduction from the Claimant's wages.
2. The Respondent is ordered to pay the Claimant the gross sum of £1,100.16 in respect of financial loss attributable to the unlawful deduction from wages, pursuant to section 24(2) of the Employment Rights Act 1996.
3. It is declared that the respondent has failed to compensate the claimant in relation to the claimant's entitlement to holiday leave that had accrued as at the termination of the claimant's employment pursuant to the Working Time Regulations 1998 (SI 1998/1833).
4. The respondent is ordered to pay the gross sum of £2,380 to the claimant in respect of the accrued leave entitlement.
5. The total gross sum payable to the claimant is £3,480.16.
6. As this is a gross figure, the claimant will need to account for any tax liabilities that arise from having received this sum.

REASONS

Introduction

1. The claimant brought claims for unpaid holiday pay and unauthorised deductions from his wages by a claim form dated 13 December 2021. This followed ACAS early conciliation that started on 11 November 2021 and which concluded on 15 November 2021.
2. A notice of claim was sent to the respondent's by post on 15 March 2022. This was sent to the registered address of the respondent as recorded on the Companies House register. Included in this notice was that this case was being heard remotely (by CVP) on 20 May 2022.
3. The notice of hearing also explained that if the respondent wanted to defend the claim then it was to complete a response form and submit it to the tribunal by 12 April 2022. It was further explained that a judgment may be issued against a respondent who does not submit a response in time.
4. At the time of this hearing, no response had been presented by the respondent.
5. There has been no communication by the respondent with the tribunal during the life of this case. There was no indication that the respondent would be attending today's hearing.
6. Efforts were made by my clerk before the start of this hearing to contact the respondent to check whether they would be in attendance. However, the email address which the claimant had provided for the respondent was providing a bounce-back. And, the phone number that the tribunal had, which matched that registered on yell.com, had been disconnected.
7. The respondent knew of today's hearing since 15 March 2022. And the tribunal had made all reasonable efforts to contact the respondent with a view to it attending today. In those circumstances and given that no response had been entered in this case, I made decision to proceed with today.
8. The claimant gave oral evidence in this case. He explained that the losses outlined below make up the entirety of his claim. He explained that there were other losses but those would be difficult to quantify and therefore does not bring those as part of this claim.

Law

9. Unlawful deduction from wages: section 13 Employment Rights Act 1996
 - (1) an employer shall not make a deduction from wages of a worker employed by him...
 - (3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion

10. Section 23 ERA provides a right for a worker to present a complaint to Employment Tribunal that their employer has made an unlawful deduction from their wages, contrary to section 13.
11. Regulations 14 and 16 (1) and (5) of the Working Time Regulations provides as follows:

14 Compensation related to entitlement to leave

(1) This regulation applies where –

(a) a worker's employment is terminated during the course of his leave year, and

(b) on the date on which the termination takes effect ("the termination date") the proportion he has taken of the leave to which he is entitled in the leave year under regulation 13 and regulation 13A differs from the proportion of the leave year which has expired.

(2) Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave in accordance with paragraph (3).

16 Payment in respect of periods of leave

(1) A worker is entitled to be paid in respect of any period of annual leave to which he is entitled under regulation 13[and regulation 13A]1, at the rate of a week's pay in respect of each week of leave.

.....

(5) Any contractual remuneration paid to a worker in respect of a period of leave goes towards discharging any liability of the employer to make payments under this regulation in respect of that period; and, conversely, any payment of remuneration under this regulation in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

Findings of Fact

12. The claimant, at the point of dismissal was 6 months into the period of which his annual leave is calculated. He had accumulated an entitlement to 14 days holiday leave at the point of dismissal. The claimant had taken no holiday leave during this period.
13. The claimant worked 8 hours per day. And was paid at the gross rate of £21.25 per hour.
14. The claimant, at the conclusion of his employment with the respondent was owed holiday pay in the gross figure of £2,380 (8 hrs x £21.25 x 14 days).
15. The claimant was subject to a series of underpayments in his wages. He was underpaid as follows:
 - a. On 06 April 2021, he should have received a gross payment of £850, but was paid the gross figure of £849.68. He was underpaid by the gross figure

- of £0.32.
- b. On 14 May 2021, he should have received a gross payment of £850, but was paid the gross figure of £290.72. He was underpaid by the gross figure of £559.28.
 - c. On 08 July 2021, he should have received a gross payment of £850, but was paid the gross figure of £730.72. He was underpaid by the gross figure of £119.28.
 - d. On 19 July 2021, he should have received a gross payment of £850, but was paid the gross figure of £849.80. He was underpaid by the gross figure of £0.20.
 - e. On 06 August 2021, he should have received a gross payment of £850, but was paid the gross figure of £849.80. He was underpaid by the gross figure of £0.20.
 - f. On 10 August 2021, he should have received a gross payment of £850, but was paid the gross figure of £430.72. He was underpaid by the gross figure of £419.28.
 - g. On 13 August 2021, he should have received a gross payment of £850, but was paid the gross figure of £849.80. He was underpaid by the gross figure of £0.20.
 - h. On 24 August 2021, he should have received a gross payment of £850, but was paid the gross figure of £849.80. He was underpaid by the gross figure of £0.20.
 - i. On 03 September 2021, he should have received a gross payment of £850, but was paid the gross figure of £849.80. He was underpaid by the gross figure of £0.20.
 - j. On 10 September 2021, he should have received a gross payment of £850, but was paid the gross figure of £849.80. He was underpaid by the gross figure of £0.20.
 - k. On 17 September 2021, he should have received a gross payment of £850, but was paid the gross figure of £849.80. He was underpaid by the gross figure of £0.20.
 - l. On 27 September 2021, he should have received a gross payment of £850, but was paid the gross figure of £849.80. He was underpaid by the gross figure of £0.20.
 - m. On 15 October 2021, he should have received a gross payment of £850, but was paid the gross figure of £849.80. He was underpaid by the gross figure of £0.20.
 - n. On 25 August 2021, he should have received a gross payment of £850, but was paid the gross figure of £849.80. He was underpaid by the gross figure of £0.20.
16. The claimant during his employment with the respondent was underpaid by the total gross figure of £1,100.16.

Conclusions

- 17. The respondent is ordered to pay the claimant the gross sum of £2,380 for holiday pay outstanding on the conclusion of his employment with the respondent.
- 18. The respondent is ordered to pay the claimant the gross sum of £1,100.16 for unlawful deductions from wages.
- 19. The total gross sum payable to the claimant is £3,480.16.
- 20. As this is a gross figure, the claimant will need to account for any tax liabilities that arise from having received this sum.

Employment Judge **Mark Butler**
Date 20 May 2022

JUDGMENT SENT TO THE PARTIES ON
24 May 2022

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.



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: **2415176/2021**

Name of case: **Mr J Middleton** v **Northern Exports 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 judgment day" is: 24 May 2022

"the calculation day" is: 25 May 2022

"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/publications/employment-tribunal-hearings-judgment-guide-t426

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.