



THE EMPLOYMENT TRIBUNALS

Claimant
Mr E Bainbridge

Respondent
Martin Building Ltd

MADE AT NORTH SHIELDS
EMPLOYMENT JUDGE GARNON

ON 1 March 2019

JUDGMENT (Liability and Remedy) Employment Tribunals Rules of Procedure 2013 –Rule 21

The claim for compensation for untaken annual leave is well founded. I order the respondent to pay compensation to the claimant of £ 1357 gross of tax and National Insurance. The Hearing listed for 28th March 2019 is cancelled.

REASONS

1. The claim was presented on 21 December 2018 and served on 30 January 2019 . A response was due by 27 February but none was received . An Employment Judge is required by Rule 21 to decide on the available material whether a determination can be made and, if so, obliged to issue a judgment which may determine liability and remedy. The claim form contains sufficient to prove the claim on a balance of probability and determine the sum due.
2. The claimant says he was an employee from 13 November 2015 until he was “*made to go self-employed*” on 15 March 2018. Particularly in the construction industry such arrangements are commonplace but I accept the claimant remained classified as a “worker” within the meaning of section 230(3) (b) of the Employment Rights Act 1996.
3. The Working Time Regulations 1998 say in Reg 14 where a worker's employment is terminated during the course of a leave year, his employer shall make him a payment in lieu of untaken leave calculated by a formula which I have no reason to doubt the claimant has correctly applied.
4. The claimant also says he is” *claiming for no contract of work when I was full-time employed...*” . If I were to regard this as a reference under section 11 of the Employment Rights Act 1996 , I cannot deal with it because it has been issued more than three months after the ending of the employment. Neither can I make an uplift to this award under section 38 of the Employment Act 2002 as the respondent was not in breach of the requirements of sections 1 or 4 of the Employment Rights Act 1996 at the time the claim was commenced..

TM Garnon Employment Judge
Date signed 1st March 2019



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): **2503595/2018**

Name of case(s): **Mr E Bainbridge** v **Martin Building Ltd**

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: **4 March 2019**

"the calculation day" is: **5 March 2019**

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

MISS K FEATHERSTONE
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.