



EMPLOYMENT TRIBUNALS

Claimant: Mrs S McGerty

Respondent: Track Force Recruitment Limited

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

1. The respondent has failed to present a valid response on time. The Employment Judge has decided that a determination can properly be made of those parts of the claim set out below, under rule 21 of the Rules of Procedure.
2. The respondent has made unauthorised deductions from the claimant's wages and is ordered to pay the claimant the gross sum of **£923.04** from 1st to 11th May 2022 (£576.92 per week divided by 5 days = £115.38 per day x 8 days = £923.04). This is a gross sum, which the respondent is ordered to pay to the claimant, who remains liable to account to HMRC for any tax and national insurance due upon it.
3. The claimant was dismissed by reason of redundancy and is entitled to a redundancy payment.
4. Whilst the claimant was employed at the date of termination by the respondent company, she was immediately previously employed from 13 June 2019 until 30 April 2020 by AlphaPay Payroll Limited, commencing her employment with the respondent on 1 May 2020.
5. AlphaPay Payroll Limited was a company under the control (he being the majority shareholder) of Philip Ronnie McKinnell. He was also a majority shareholder in the respondent company (being a person with significant control registered with Companies House). The two companies were accordingly associated companies within the meaning of s.231(b) of the Employment Rights Act 1996, and the claimant can count her prior service with AlphaPay Payroll Limited as continuous service for the purposes of calculating her entitlement to a redundancy payment.
6. Further, or in the alternative, on the balance of probabilities, there was a relevant TUPE transfer of the undertaking carried on by AlphaPay Payroll Limited, to the

respondent , and the claimant's contract of employment was thereby transferred to the respondent on or about 1 May 2020, and her continuity of service was thereby maintained.

7. AlphaPay Payroll Limited was incorporated on 13 June 2019. Prior to that the claimant was employed by Contractor Pay 1001 Limited from 11 September 2017. That was a company under the control of Philip Ronnie Kinnell, he being a majority shareholder in that company (being a person with significant control registered with Companies House). The claimant ceased to be an employee of Contractor Pay 1001 Limited on or about 13 June 2019, prior to a resolution to wind up the company on 4 July 2019 being passed, and the claimant was then employed by AlphaPay Payroll Limited. There was no break in the claimant's employment.
8. AlphaPay Payroll Limited and Contractor Pay 1001 Limited were accordingly also, by virtue of them both being under the control of Philip Ronnie Kinnell, associated companies for the purposes of s.231(b) of the Employment Rights Act 1996, and the claimant's continuity of service was maintained for the purposes of calculating her redundancy pay entitlement.
9. Further , or in the alternative, on the balance of probabilities, there was a relevant TUPE transfer of the undertaking carried on by Contractor Pay 1001 Limited to AlphaPay Payroll Limited, and the claimant's contract of employment was hereby transferred to the respondent on or about 13 June 2019 , and her continuity of service was thereby maintained.
10. In the circumstances, at the date of termination on 11 May 2022 the claimant had 4 complete years of service with the respondent and with her previous associated employers, or transferors, all of it over the age of 41 (her date of birth being 22 July 1975) .
11. She is accordingly entitled to a redundancy payment of 1.5 weeks pay for every complete year of service when the claimant was aged over 40;

 $4 \times 1.5 \times \text{£}571.00 \text{ (capped) = } \text{£}3426.00$
12. The claimant was dismissed in breach of contract in respect of notice. By virtue of the TUPE transfers referred to above, the claimant's statutory minimum notice entitlement was to 4 weeks notice. At £576.92 per week gross, that equates to £2,397.68. The claimant however, mitigated her loss by finding alternative employment at the same rate after 11 (7 working) days of her notice period on 23 May 2022.
13. The respondent is ordered to pay damages to the claimant in the gross sum of **£807.66** (£115.38 per day x 7). This is a gross sum, which the respondent is ordered to pay to the claimant , who remains liable to account to HMRC for any tax and national insurance due upon it.

14. The respondent has failed to pay the claimant's holiday entitlement and is ordered to pay the claimant the sum of **£692.28** (6 days x £115.38 per day). This is a gross sum, which the respondent is ordered to pay to the claimant, who remains liable to account to HMRC for any tax and national insurance due upon it.

15. The Tribunal's awards are accordingly :

| | |
|--------------------|-----------------|
| Arrears of wages | £923.04 |
| Redundancy payment | £3426.00 |
| Notice Pay | £807.66 |
| Holiday Pay | £692.28 |

6. The hearing listed on **17th November 2022** is cancelled.

Employment Judge Holmes
Date: 9 December 2022

JUDGMENT SENT TO THE PARTIES ON
12 December 2022
AND ENTERED IN THE REGISTER

FOR THE TRIBUNAL OFFICE



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990 ARTICLE 12

Case number: **2405566/2022**

Name of case: **Mrs S McGerty** v **Track Force Recruitment Limited**

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: 12 December 2022

the calculation day in this case is: 13 December 2022

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.