



EMPLOYMENT TRIBUNALS

Claimant: Ms R Head

Respondent: Mrs J Head

JUDGMENT

No valid response being received by the Tribunal in the time prescribed

And the respondent having failed to comply, or to comply fully, with the terms of an Unless Order made on 24 March 2022, and sent to the parties on 28 March 2022

IT IS THE JUDGMENT OF THE TRIBUNAL THAT:

1. The claimant's claim of unlawful deductions from wages is well – founded and succeeds. The respondent failed to pay the claimant's wages in respect of the period from 25 May 2021 to 28 June 2021 , 5 weeks at the rate of £8.91 per hour, plus £5 per week, £116.38 per week, a total of **£581.90** , which sum the respondent is ordered to pay her.
2. The claimant's complaint of failure to pay to the claimant an amount due to the claimant under regulation 14 (2) or regulation 16 (1) of the Working Time Regulations 1998 is well-founded . The respondent failed to pay the claimant in respect 20.09 hours of untaken holiday at the hourly rate of £9.31, a total of **£187.11**.
3. The respondent dismissed the claimant without notice, and she is entitled to damages for breach of contract in the sum of 4 weeks' notice pay, at the weekly rate of £116.38, **£465.52**, which sum the respondent is ordered

to pay her.

4. The respondent unfairly dismissed the claimant. She is entitled to compensation. She was continuously employed for 4 years, below the age of 41, so is entitled to a basic award of 4 weeks pay at the rate of £116.38, **£465.52**, which sum the respondent is ordered to pay her.
5. The claimant is entitled to a compensatory award. She seeks loss of earnings for a further period of 4 months after the expiry of her notice, which the Tribunal awards. 16 weeks pay at £116.38 makes a loss of earnings of **£1862.08**.
6. Further, the claimant is entitled to an award in respect of loss of statutory rights which the Tribunal also makes in the sum of **£250.00**
7. The total compensatory award is therefore:

Loss of earnings	£1862.08
Loss of statutory rights	£ 250.00

Total: **£2112.08**

8. Further, the respondent dismissed the claimant in contravention of the relevant ACAS Code of Practice on disciplinary matters. Pursuant to s. 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 the Tribunal uplifts the awards for breach of contract and the compensatory award for unfair dismissal by 10% ,

Increase in damages for breach of contract	£116.38
Increase in compensatory award	£211.21

Total uplift: **£357.59**

9. Further, the respondent failed to provide the claimant with written reasons for her dismissal, contrary to s.92 of the Employment Rights Act 1996. The Tribunal accordingly awards the claimant two weeks pay, the sum of **£232.76**, which sum the respondent is ordered to pay her.

10. The Recoupment Regulations do not apply.

REASONS

1. By a claim form presented on 26 October 2021 the claimant brings various claims against her former employer, who is also her mother. The procedural history of the claims is set out in the Tribunal's previous Orders and Case Management Summary.

2.This judgment is now issued following the respondent's failure to comply with some or all of the provisions of an Unless order made on 24 March 2022. The respondent had failed effectively to present a response within the prescribed time limit, and has not complied with the Tribunal's orders as to how to make application for the response to be accepted out of time.

3. For those reasons alone, the respondent is not permitted to respond to the claims, which have proceeded as undefended. In any event, whilst the proposed response that the respondent has sought to present late does dispute that the claimant was dismissed, it wholly fails to address the claimant's claims for unpaid wages, holiday pay, and failure to provide written reasons for dismissal.

4.The Employment Judge has accordingly proceeded to determine these claims, upon the evidence adduced by the claimant , and her clarification of the claims.

1.The claimant's length of service.

5.At the outset it is important to be clear as to the claimant's length of service. This affects the length of notice to which she was entitled, and the calculation of any basic award for unfair dismissal. Whilst the claimant had made references in her documents to 5 years of service, and had sought 5 weeks notice pay, she accepted, as the first page of the contract of employment that she produces shows, that her employment by the respondent started on 17 November 2017, and not earlier as she had suggested claim form.

2.The terms of the employment – pay and hours.

6.Next, the Tribunal needed to clarify the terms upon which the claimant was employed in terms of hours and pay. Whilst the claimant had made reference to 13 hours per week, she agreed that the contracted hours were 12.5 per week, although she did on occasion do more. As to her rate of pay, the claimant considered that it was the appropriate National Minimum Wage figure. In her documents she had utilised the hourly rate of £8.91, which the Employment Judge noted was the National Living Wage applicable at the time. Whilst he did query whether this was the right figure, he had, of course, overlooked that for workers over the age of 23 the National Living Wage indeed is the appropriate level of NMW. He apologises for any confusion.

7.Additionally, the claimant contends that she was also entitled to £5 per week "for petrol". On examination, however, the claimant was not required to provide receipts or evidence of actual expenditure. Further this amount was payable whether she used more or less petrol in any given week, it was a flat rate. The Employment Judge was accordingly satisfied that this was not an item of "expenses", in respect of which the Tribunal would not have jurisdiction under the deductions from wages legislation, but formed part of the claimant's wages.

8. Accordingly, the Employment Judge's calculation is that the claimant's weekly pay was:

$$£8.91 \times 12.50 = £111.38 + £5.00 = £116.38$$

3.The deductions from wages claim.

9. The claimant's first claim is that she was unpaid from 25 May 2021 to 28 June 2021, her dismissal being on 29 June 2021. That is a period of 5 weeks. She was, it is correct, on holiday for the last three days of her employment, but is entitled to be paid for those holidays.

10. Accordingly, the claimant was entitled to be paid :

$$5 \times £116.38 = \quad \quad \quad \mathbf{£581.90}$$

This is the sum that has been unlawfully deducted from her wages, and which the respondent will be ordered to pay.

The holiday pay claim.

11. The claimant's next claim is for pay in lieu of accrued, but untaken holiday. Whilst the claimant took three days holiday just prior to the end of her employment, she confirmed she had not taken any other holiday since November 2020, which would be the start of the holiday year.

12. She has claimed £187.11 in this regard, but the Employment Judge is not quite sure how she has calculated this sum, and overlooked asking her. This appears to equate to 20 hours at the hourly rate of £9.31. Depending upon how many days per week the claimant worked she may have had a total entitlement in the holiday year of 30.7 hours (for a 7 day week) , or 43 hours (for a 5 day week). Either way, it seems probable that the claimant had an outstanding holiday entitlement of at least 20 hours in that holiday year, and if she is content with the claimed amount of £187.11, that will be the award of the Tribunal.

13. If, however, she now seeks a higher sum, she will need to show how this is calculated, and the respondent notified of this increased claim.

The notice pay – breach of contract – claim.

14. The claimant's case is simple. She went on holiday, and whilst on holiday, before she was due to return, she discovered that her pay for the preceding 5 weeks of working had not been paid into her bank account. She sent a text to the respondent querying this, and expressly asking "I need to know if I need to get a job", to which the respondent replied "Yes u do". When the claimant further

texted her that day asking that the respondent ring her, and had she cancelled the claimant's money, the respondent's reply was "Done everything got a new pa". This was a reference to the respondent employing a new PA , personal assistant, which she clearly did on 29 June 2021, as he has disclosed to the claimant a contract of employment for a new PA, with that start date on it.

15. Her case is thus that she was dismissed by the respondent in that text exchange, such dismissal being, of course, without notice.

16. Whilst the respondent has not been permitted to respond to the claim, the burden of proving that there was a dismissal does rest with the claimant. The respondent has sought to contend that the claimant had resigned, or, rather that the respondent thought that she had.

17. The Tribunal is quite satisfied that the claimant had not resigned. In those circumstances, the only conclusion open to the Tribunal is that the claimant was, by the non – payment of her wages, and the exchange of texts, summarily dismissed on 29 June 2021.

18. Assuming the contract (a complete copy of which is not before the Tribunal) does not provide for anything more generous, having been employed for 4 years, the claimant's notice entitlement under s.86 of the Employment Rights Act 1996 was four weeks.

19. The Tribunal accordingly awards the claimant four weeks pay – 4 x £116.38, a total of 465.52.

The unfair dismissal claim.

20. The next claim is that for unfair dismissal. The Tribunal having found that there was a dismissal, the burden then falls upon the respondent to show that the reason for the dismissal was one of the potentially fair reasons set out in s.98 of the ERA. It follows that as the respondent is de-barred from responding to the claim, she cannot do so. In any event, in order to do so, she would have to adduce some evidence, and she has produced none.

21. To the extent that the respondent may have sought to argue that the dismissal was by reason of the respondent's mistaken belief that the claimant had resigned, which would have to be "some other substantial reason", in addition to the respondent having to adduce evidence to establish that was the case, the Tribunal would then have to go on to consider whether, even if for a potentially fair reason, the dismissal was in fact fair in all the circumstances. Given the complete lack of any attempt by the respondent to discuss the matter with the claimant, and check whether she was in fact resigning, that would be most unlikely.

22. That is, however, academic, as the respondent cannot respond to the claim, and it must succeed.

Remedy for unfair dismissal.

23. The claimant is therefore entitled to a remedy. The first part of the Tribunal's award will be a basic award. This is calculated by reference to the claimants age and length of service. In this case she was 39 at the date of her dismissal, and is entitled to one week's pay for every complete year of service:

$$4 \times \text{£}116.38 = \text{£}465.52$$

24. In terms of compensatory award, this will be based upon the claimant's loss earnings. She had not specified a specific sum, but in her letter to the respondent of 21 September 2021 (Document "K" to "M" in the bundle) the claimant did at item 6 seek loss of potential earnings "for last wage or payment on 23 June 2021 until present day".

25. It was explained to the claimant that the award for notice would overlap with the first period of her loss of earnings. Any losses thereafter would fall under the compensatory award. She was asked how further forward she wished to seek loss of earnings. She indicated some 4 months, following which she then began to work in her husband's business. That would be a further 16 weeks, at £116.38per week, a total of £1862.08.

26. Although not claimed by the claimant , as she is probably unaware of it, the Tribunal will, where any employee has been unfairly dismissed, make an award to reflect the fact it will take them a further 2 years of employment to acquire the statutory rights not to be unfairly dismissed, or for a redundancy payment. That is generally a round figure, with some relationship to the level of pay the claimant was receiving. The Tribunal proposes an award of £250 in this instance.

The claim in respect of failure to provide written reasons for dismissal, s.92 of the Employment Rights Act 1996.

27. The claimant also claims under s.92 of the ERA in respect of the failure of the respondent to provide written reasons for dismissal. A pre-requisite of liability is that the claimant has made such a request, and the claimant clearly did so in her letter to the respondent of 21 September 2021 (Item "K" to "M" in her bundle). She expressly made the request at item 2 on the first page. There is, it seems, no time limit upon which the request must be made (though, the later it is made, the less likely it will be that to refuse it is unreasonable) , and the respondent did not provide any such written reasons prior to the claims being issued.

28. Again, there appears to be no answer to this claim , and no mention is even made of it in the draft response.

29. The claim succeeds, and the Tribunal awards, as it must (there is no discretion or exception permitted), the claimant two weeks pay, i.e £232.76.

Uplift.

30. Again, probably because she was not aware of it, the claimant has not sought an uplift in any awards pursuant to s. 207A of the Trade Union and Labour Relations (Consolidation) Act 1992, for failure to comply with any relevant ACAS Code of Practice. She has, however, made express reference to the lack of any protocol or grievance procedure.

31. Clearly, the respondent followed no process whatsoever, and then would not engage with the claimant in her attempts to discover why she had been dismissed, and had not been paid. The failure to offer even a basic level of process before deciding to dismiss is a serious breach of the most basic standards of the ACAS Code on Disciplinary and Grievance Procedures 2015.

32. S.207A entitles a Tribunal to increase awards to which it applies (which will be the breach of contract and unfair dismissal compensatory awards in this case) by between 10% and 25%.

33. Whilst this employment was a domestic setting, between mother and daughter, the respondent cannot wholly disregard her obligations as an employer. Whilst doubtless unfamiliar with the law, and being new to employing people, the respondent clearly has had access to some advice, as she prepared the claimant's, and then her successor's, contracts of employment.

34. That said, this was a domestic context, and a formal and elaborate process, with a meaningful appeal process was unlikely to be appropriate or feasible. There would be no one else that the claimant could appeal to. For those reasons, the Tribunal considers that, serious though it was, to award the maximum uplift would be unduly harsh. The damage was done when the respondent basically fired the claimant by text, and that is where the real issue lies. For those reasons, the Tribunal will award an uplift of the damages for breach of contract, and the compensatory award, of 10%, but no more.

Summary.

35. The awards of the Tribunal accordingly are:

1. Unlawful deductions from wages	£581.90
2. Holiday pay	£187.11 .
3. Notice pay	£465.52

4.Unfair dismissed :

Basic award **£465.52**

Compensatory award

Loss of earnings :£1862.08

Loss of statutory rights :£250.00

The total compensatory award is therefore: **£2112.08**

5.Uplifts the awards for breach of contract and the compensatory award for unfair dismissal by 10% ,

Increase in damages for breach of contract £116.38

Increase in compensatory award £211.21

Total uplift: **£357.59**

6. Failure to provide written reasons for dismissal **£232.76**

36. The claimant did not receive any relevant benefits. She was on Universal Credit, prior to her dismissal, and there were no changes because of it. The Recoupment Regulations do not apply.

Employment Judge Holmes
DATE : 17 May 2022

JUDGMENT SENT TO THE PARTIES
ON : 17 MAY 2022

FOR THE TRIBUNAL OFFICE



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: **2414228/2021**

Name of case: **Miss R Head** v **Mrs Janet Head**

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: 17 May 2022

"the calculation day" is: 18 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.