



EMPLOYMENT TRIBUNALS

Claimant: Mr Xavier Barber

Respondent: The Arches Garage Limited

Heard at: Liverpool

On: 10 April 2024

Before: Employment Judge Aspinall

Representation

Claimant: no attendance

Respondent: Mr and Mrs Thorne, proprietors

JUDGMENT

The judgment of the Tribunal is:

1. The respondent is ordered to pay to the claimant £ 347.33 being 5 days unpaid wages for 2,3,4,7 and 8 August 2023 at £ 69.46 gross per day

REASONS

2. By a claim form dated 30 September 2023 Mr Barber brought a claim for 10 days unpaid wages. He said in his claim form that he had worked for the respondent as a mechanic for 10 days on a trial in August 2023 and that he had then been dismissed. He said that being dismissed and not being paid his outstanding wages caused him financial hardship and distress. In his claim form he wanted to claim an award for injury to feelings for that distress.

3. The respondent defended the claim saying that Mr Barber had not worked 10 days, had been unreliable so that it had had to dismiss him and that his work had been of a poor standard so that it had been put to cost in putting right damage done to a customer's vehicle.

4. The claimant and respondent were each sent notice of today's hearing and, yesterday, sent a link to join the hearing by video. The claimant did not attend today. We waited. Efforts were made by my clerk to contact him at the mobile

number he had put on his claim form. It was ringing out. My clerk left a voicemail message but the claimant did not come back to us

5. I opened the hearing today and explained to Mr and Mrs Thorne that there were a number of options open to me. I could postpone the hearing, but that would put Mr and Mrs Thorne to additional cost in having to come back on another occasion and I'd not had any information from the Mr Barber at all as to why a postponement would be needed. The Tribunal Rules, rule 30A, say that I can postpone where there are exceptional circumstances, and it would be up to Mr Barber to tell me what those were. The second option would be to dismiss the claim under rule 47 which says that when someone fails to attend I may dismiss the claim but must first take into account any information which is available and make enquiries that may be practicable about the reason for his absence. I had made enquiries through my clerk and got no information. I could dismiss all of his claim.

6. At that point I asked Mr and Mrs Thorne what they would like me to do. Mr Thorne said that he would like the claim dismissed but also said he had no malice towards the claimant who was an ex-serviceman but that would not feel fair as he accepted he did owe the claimant some money for days that he had worked. Mrs Thorne was able to confirm that the claimant had worked on second, third, fourth, seventh and eighth August 2023 and had not been paid for those days. She said that they had tried to contact Mr Barber about his pay and had raised the concerns they had about damage he had done to a customer's vehicle and it was at that point that Mr Barber had said he was going to bring a tribunal claim and that they had heard nothing further from him after that. Mr and Mrs Thorne accepted that they owed him £347.33 and said they would be willing to pay that to him.

7. I talked to Mr and Mrs Thorne about any argument they might want to run that the costs to the customer's car should be offset against the wages they owed Mr Barber. I explained that in order to be able to offset or deduct amounts from someone's wages they would have to have a clause in a signed contract allowing them to make that deduction. Mrs Thorne confirmed there was no such signed contract in place because Mr Barber had only been on a trial period. Mr and Mrs Thorne accepted that they could not offset the cost they had been put to in putting right the damage done to the customers vehicle.

8. I considered the relevant law. First of all I interpreted the claim form, in Mr Barber's absence, as bringing a claim under Section 13 of the Employment Rights Act 1996 for an unauthorised deduction from wages properly payable to him. His claim form also mentioned what I will call "consequential loss" that is extra costs he was put to as a result of his financial hardship. He also wanted to bring a claim for "injury to feelings" for his distress.

9. The section 13 complaint for unpaid wages is a valid complaint. The claim for "consequential loss" would need Mr Barber to have attended and met his burden of proof in showing me how that loss flowed from the non-payment of his wages. He has not done that today and has provided no information or reason for his absence. I dismiss any claim for consequential loss because he is not here to prove it, under rule 47.

10. His claim for an award for injury to feelings is not a valid claim. Injury to feelings can only be awarded in certain types of claim, none of which are indicated

in his claim form. I have no authority to make an award for injury to feelings in relation to an unpaid wages claim. It is not a valid claim and is dismissed.

11. Accordingly, the judgement of the tribunal is that, by consent, the respondent having admitted that five days wages were due to the claimant, is ordered to pay him £ 347.33

12. That brings Mr Barber's complaint to an end but there is the practical matter of how to get the money to him. Mr and Mrs Thorne say he has not been responding to their calls but Mrs Thorne knows he is on Facebook. I have suggested that they could message him through Facebook and tell him that the Tribunal has ordered them to pay him some wages and that he needs to get in touch to confirm his bank details. If they are the same bank details that they hold for him from last year he can just reply to say so. I hope that Mr Barber will make contact with Mr and Mrs Thorne and receive his wages.

Employment Judge Aspinall

Date: 10 April 2024

JUDGMENT SENT TO THE PARTIES ON

22 April 2024

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.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990 ARTICLE 12

Case number: **2409660/2023**

Name of case: **Mr X Barber** v **The Arches Garage 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: 22 April 2024

the calculation day in this case is: 23 April 2024

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.