



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr R Succu

**Respondent:** Red Ninja Ltd

**HELD AT:** Liverpool

**ON:** 8 October 2018

**BEFORE:** Employment Judge Tom Ryan

**Appearances:**

**Claimant:** In person

**Respondent:** No attendance

## JUDGMENT

The judgment of the tribunal is that:

1. The response submitted to the tribunal on 11 September 2018 is rejected.
2. The application by the respondent for a postponement of the hearing is refused.
3. The claimant's complaints of unauthorised deductions from wages, unpaid holiday pay and breach of contract are well-founded.
4. The respondent is ordered to pay the claimant compensation in respect of those complaints collated as follows:

Unauthorised deduction from wages

Salary for the month of March 2018 (gross)	£2,500.00
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Unpaid holiday pay

Three days' gross pay (based on weekly pay of £576.92)	£346.15
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Unpaid contractual notice pay

Four weeks' net pay (based on weekly pay of £455.40)	£1,821.40
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5. The respondent is ordered to pay the resulting sum of £4,667.55 to the claimant on or before 16 October 2018.

## **REASONS**

1. By a claim presented to the tribunal on 20 July 2018 the claimant alleged that the respondent had made unauthorised deductions from his wages by failing to pay salary for the month of March 2018, notice pay or accrued but outstanding holiday pay.
2. The claim was served upon the respondent which was required to submit a response by 24 August 2018. It failed to do so. A response was submitted on 11 September 2018. The response disputed the claims but did not set out any basis upon which it was entitled to do so maintaining only that it had a counterclaim for breach of contract. No explanation was given for the late service of the response nor was any application for an extension of time to serve a response made.
3. The respondent by an email of the same date applied for a postponement of the hearing on the ground that it was trading in the United States of America until December. Again, no factual basis was given to establish why the proceedings could not be conducted by someone acting on behalf of the respondent.
4. Accordingly, I considered whether the response should be accepted having regard to the provisions of rule 18 of the Employment Tribunal Rules of Procedure 2013. In the absence of an explanation for the delay in serving the response nor any application for an extension of time to do so, I rejected the response. In doing so I had regard to the overriding objective, the failure to plead any basis to contest the claims on their merits and the fact that the respondent has the right to request a reconsideration of the rejection of the response and indeed this judgment.
5. The attention of the respondent is drawn to rules 19, 20 and 21 which set out the procedure for a respondent whose responses been rejected to apply for reconsideration, an extension of time and the effect of rejection of a response on the proceedings.
6. Substantially, for the same reasons I rejected the application to postpone the hearing. In addition, I did so for the matters set out in paragraph 3 above.
7. In reaching those conclusions I had regard to the fact that a claimant is entitled to establish a claim and the respondent a counterclaim if they can do so but the tribunal will enter judgment for both parties leaving any matters of set-off to be resolved between them.
8. Although the claimant provided me with an argument for maintaining that the counterclaim was manifestly ill founded I did not make the decisions to reject the response (and the counterclaim which is included within it) or to refuse the application to postpone for that reason. Because the response has been rejected and the counterclaim is therefore treated as not having been made it would be

open to the respondent, for example, to pursue its counterclaim as a freestanding claim for breach of contract in the civil courts. I therefore consider that its rights were fully protected in respect of the counterclaim.

9. Furthermore, proceeding in this way protected the claimant's rights to have a remedy for the elements of his claim since they had not been separately disputed upon their merits.
10. The claimant produced before me a witness statement and a small bundle of documents. His account was that he had not been paid for his final month's salary. Mr Omar for the respondent had not suggested this was because of any breach of contract but the lack of the means to pay.
11. I accepted the claimant's account that he had worked for that month. His annual salary was £30,000. He was entitled to £2500 per month which I awarded gross and which may be taxable in his hands.
12. I also accepted the claimant's account that he was not given contractual notice. The contract provided for four weeks' notice. I derived the claimant's net weekly pay using the payslip for February 2018 which the claimant produced before me. The sum set out above reflects four weeks' net pay.
13. The claimant accepted that he had taken all of his contractual holiday entitlement in the holiday year 1 April 2017 to 31 March 2018 except for, so far as he recalled, three days. He was unable to access his records showing the amount of holiday he had taken since his access to his email account had been deleted upon termination. I thought it probable that the claimant's account of three days holiday owing to him was truthful and likely to be accurate and therefore awarded him three days' gross pay on that basis.

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Employment Judge

8 October 2018

JUDGMENT AND REASONS SENT TO THE PARTIES ON

10 October 2018

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FOR THE TRIBUNAL OFFICE

## NOTICE

### THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): **2413575/2018**

Name of **Mr R Succu** v **Red Ninja Ltd.**  
case(s):

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: **10 October 2018**

"the calculation day" is: **11 October 2018**

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

MRS L WHITE  
For the Employment Tribunal Office

