



# THE EMPLOYMENT TRIBUNALS

**Claimant:** Mr D Clark

**Respondent:** Mike Rogerson Estate Agents Limited

**Heard at:** North Shields Hearing Centre      **On:** Thursday 25<sup>th</sup> April 2019

**Before:** Employment Judge Johnson sitting alone

***Representation:***

**Claimant:** In Person

**Respondent:** No attendance No Appearance

## JUDGMENT

The claimant's complaint of unauthorised deduction from wages is well-founded and succeeds. The respondent is ordered to pay to the claimant the sum of £1,378.96 being wages unlawfully deducted. This a net amount and the respondent shall be responsible for the payment of any income tax and national insurance contributions.

## REASONS

1. This matter came before me this morning by way of a private preliminary hearing, the original purpose of which was to consider the claims brought by the claimant, identify the issues arising from those claims and to make such case management orders as were appropriate to ensure that the case was fully prepared for a final hearing. Notice of the case management hearing was sent to the parties under cover of a letter from the employment tribunal dated 27<sup>th</sup> February 2019, that letter having sent to the respondent with the claim form ET1 and the response form ET3. I am satisfied that the respondent received all those documents, because it completed and returned to the employment tribunal the response form ET3. Since then the respondent has sent additional correspondence to the employment tribunal. I am satisfied that the respondent was aware of today's preliminary hearing. By 10.30am this morning no-one had attended on behalf of the respondent, although the employment tribunal file shows that there are solicitors instructed by the respondent.

2. In its response form ET3, the respondent indicates that it intends to defend the claim on the basis that the claimant tendered his resignation and left the respondent's employment without giving the appropriate period of notice. The response form indicates that the respondent is entitled to withhold wages from the claimant in those circumstances.
3. The claimant claims the total sum of £1,378.96, made up of unpaid wages in the sum of £1,105.80 and unpaid overtime in the sum of £273.16. The respondent does not deny that it has not paid the claimant his entitlement and overtime. The respondent does not deny in its response form that the claimant has done this work.
4. By letter dated 10<sup>th</sup> April 2019 from the employment tribunal to the respondent's solicitors, the respondent was informed that the employment tribunal could not consider an employer's contract claim in this case, as the claimant has not brought a breach of contract claim himself. His claim is one of unauthorised deduction from wages contrary to section 13 of the Employment Rights Act 1996. In the absence of any breach of contract claim by the claimant, the respondent cannot present a contract counter-claim. I am satisfied that, having been told this, the respondent has decided not to defend these proceedings and not to attend today's hearing. In accordance with the Overriding Objective (to deal with the case justly) I am satisfied that it is proportionate in all the circumstances to dispose of the claimant's claim today.
5. I heard evidence from the claimant. Mr Clark confirmed that he was employed by Mike Rogerson Estate Agents Limited. I am satisfied that the title of these proceedings to be amended to show the correct name of the respondent and that there is no need for re-service in this case.
6. The claimant confirmed that his employment with the respondent began on 8th October 2018 and ended when he resigned without notice on 20<sup>th</sup> November 2018. The claimant told me that he was paid his wages for October in the sum of £1,246.00. The claimant confirmed that he had not received any wages for November, which he calculates to be the sum of £1,105.80. The claimant also confirmed under oath that he had worked 32 hours overtime during the relevant period. I was not satisfied that the claimant was entitled to any enhanced hourly rate for overtime and decided that he should be paid for the 32 hours at his standard rate. The total sum owed for wages is £1,105.80 and the total owed for over-time is £273.16. I order the respondent to pay to the claimant the total sum of £1,378.96, being wages unlawfully deducted. That is a net amount and the respondent should be responsible for the payment of any income tax and national insurance contributions thereon.

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**EMPLOYMENT JUDGE JOHNSON**

**JUDGMENT SIGNED BY EMPLOYMENT  
JUDGE ON 7 May 2019**

**Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.



## NOTICE

### THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): **2500150/2019**

Name of case(s): **Mr D Clark** v **Mike Rogerson Estate Agents 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: **7 May 2019**

"the calculation day" is: **8 May 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](http://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.