



EMPLOYMENT TRIBUNALS

Claimant: Miss R Hannon

Respondent: Sooty's and Sweep's Limited

Heard at: Manchester (in CVP)

On: 12 October 2020

Before: Employment Judge McDonald
(sitting alone)

REPRESENTATION:

Claimant: In person

Respondent: Mr J Chiffers, Counsel

JUDGMENT

The judgment of the Tribunal is that:

1. The claimant's employer and the correct respondent to the claimant claim is Sooty's and Sweep's Limited and that company is substituted as the respondent in place of David Martin Williams.
2. The claimant's complaint that the respondent failed to pay her holiday pay for the holiday year January 2019 to October 2019 succeeds.
3. The respondent must pay to the claimant the gross sum of £960.67 less any deductions for tax and national insurance which it must remit to the appropriate authorities.

REASONS

1. The claimant's claim is for holiday pay for her final holiday year employed by the respondent. I gave oral reasons for my judgment at the hearing and the claimant requested those reasons in writing. I set out those reasons below, starting with the facts, then the law then my calculation of the amount due.

2. In a separate Case Management Summary of today's date I have set out my reasons for deciding that Sooty's and Sweeps Limited should be substituted as the respondent to the claim in place of David Martin Williams.

3. In reaching my decision I heard evidence from the claimant (who was cross examined by Mr Chiffers) and from Mr Martin Williams. I had also had before me a bundle of documents prepared by the respondent and a bundle of pay slips sent to the Tribunal by the claimant. During the hearing the claimant also provided the Tribunal and Mr Chiffers with a copy of her Contract of Employment.

Facts

4. In terms of the facts, it was agreed and apparent from the claimant's contract of employment that her annual holiday year was the calendar year. She left employment on 17 October 2019 and therefore her annual leave entitlement for the holiday year 2019 was pro rata at 0.79 of a full year. In terms of holiday already taken, the claimant's payslip for January 2019 showed that she had taken 22.5 hours' holiday and been paid the net equivalent of £191.25 gross holiday pay. She had not received any other holiday pay relating to the holiday year 2019.

5. The claimant had been on Maternity Leave and received SMP rather than her normal wage from February 2019.

6. The claimant's contract of employment specified 162 hours as her holiday entitlement. Mr Williams in his evidence calculated her entitlement based on that (and taking into account the holiday already paid in January) to be £894.20.

The Law

7. The Working Time Regulations (regulations 13 and 13A) provide a statutory minimum amount of holiday pay which an employer must provide in any holiday year. That requirement is to provide 5.6 weeks of holiday.

8. Under the Working Time Regulations (regulation 14), a worker is entitled to be paid for any holiday untaken at the end of their employment. The formula used to calculate that is $(A \times B) - C$, where A is the leave to which the worker is entitled; B is the proportion of leave year which expired before the termination date, and C is the leave already taken in that holiday year.

9. In terms of the pay used to calculate holiday pay, the starting point is sections 221-224 of the Employment Rights Act 1996. However, in **Bear Scotland & Others v Fulton & Others [2015] ICR 221** the Employment Appeal Tribunal held that items such as discretionary overtime should count for holiday pay to ensure that the holiday pay entitlement under the Working Time Regulations reflected the requirements of EU law. In practice what that means is that where an employee has either normal working hours or no normal hours and the pay varies, a week's pay is calculated using a 12 week average.

Calculation

10. In this case the claimant had taken maternity leave in February 2019 and then not returned to work. That meant the last months in which she had normal pay were

November, December 2018 and January 2019. The payslips for those months showed that the claimant had worked 139 hours in November 2018, 136½ hours in December 2018 and 129.7 hours in January 2019.

11. Taking those payslips together in order to calculate an average of the weekly hours worked, I reach a calculation of 405.25 hours. Dividing that by the number of days in those months, which is 92 in total, gives an average total per day of 4.4 hours per day or 30.8 hours per week. At the agreed rate payable to the claimant of £8.50 that gives average pay of £261.80 per week.

12. In terms of the annual leave to which the claimant was entitled, the 5.6 week for the whole year when reduced to take into account the leaving date of 17 October 2019, gives 4.4 weeks. Multiplying that entitlement by the weekly rate of £261.80 gives £1,151.92. However, from that there must be deducted the £191.25 paid to the claimant for holidays in January. That calculation means that the amount remaining due to the claimant is £960.67. That is the gross amount due and the usual position is that the employer will be responsible for ensuring that any tax or national insurance to be deducted from that is submitted to the proper authorities.

Employment Judge McDonald

Date 15 October 2020

JUDGMENT AND REASONS SENT TO THE PARTIES ON
16 October 2020

FOR THE TRIBUNAL OFFICE

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.



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: **2414523/2019**

Name of case: **Miss R Hannon** v **Sooty's And Sweep's Limited**

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: 16 October 2020

"the calculation day" is: 17 October 2020

"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.