



# EMPLOYMENT TRIBUNALS

**Claimant:** Emily King

**Respondent:** Alder Rose Mortgage Services Ltd

**Heard at:** Liverpool **On:** 19 March 2021

**Before:** Employment Judge Ord

**Representation:**

Claimant: In person

Respondent: In person

## JUDGMENT

The respondent has made an unlawful deduction from the claimant's wages and is ordered to pay to the claimant the gross sum of £853.84 in respect of the amount unlawfully deducted, subject to such deductions as it is required to make for tax and national insurance.

## Reasons

### Claim

1. By a claim form dated 5 January 2021, the claimant brought a claim for unpaid holiday pay together with solicitor's fees of £100.00 and £200.00 for charges for borrowing money.
2. The respondent sought to bring an employer's contract claim (counterclaim). However, the tribunal has no jurisdiction to hear this claim. An employer's contract claim may only be brought in the tribunal where the claimant brings a claim for breach of contract (Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994). No such claim was brought by the claimant.

### Issue

3. The issue is whether the respondent was entitled to make deductions from the claimant's accrued holiday pay on termination of her employment.

### Evidence

4. I did not have a bundle of documents for the hearing. However, I did have various individual documents before me from both the claimant and the respondent, which I was referred to at the hearing, including the claimant's contract of employment and her final wage slip. I also had the court file. I heard oral evidence on oath from both the claimant and the respondent.

### Findings of Fact

5. The claimant started employment with the respondent on 2 March 2020 as a Business Development Manager. She initially worked a five-day week (usually Monday to Friday) at a gross annual salary of £19,000. Her salary was increased to £21,000 in July 2020 and this equated to a gross daily rate of £80.77.
6. The claimant's contract of employment provided for holiday entitlement and holiday pay at paragraph 10 of Schedule 1: *Particulars of Employment*. It stated: *The Holiday Year commences on the 1<sup>st</sup> day of January.... The Employee will be entitled to 23 Days plus bank holidays of paid annual leave...*
7. The claimant's last full day of work was on 25 November 2020. On the morning of 26 November, the claimant went into work for a short period but then left. Her grandmother was very ill and she was upset. She did not return to work either that day, the next day being the 27<sup>th</sup> or the following Monday being the 30<sup>th</sup>. The claimant did not inform the respondent that she was sick and neither did she take those days as annual leave. Her absence was unauthorised.
8. The claimant was paid her salary on the 28<sup>th</sup> day of the month. On the 28 November she was paid for the whole month of November. However, she had not worked on Friday 27 or Monday 30 November, which were normal working days for the claimant.
9. The claimant sent an e-mail to the respondent on 1 December 2020 informing the respondent that she was resigning with immediate effect. The e-mail also requested that the respondent pay the claimant her outstanding holiday pay in her final salary for December.
10. The claimant's final pay slip dated 28 December 2020 showed that the claimant's gross outstanding holiday pay was £1,015.38. This was not disputed. It also showed a reduction of £161.54, which was two day's gross pay for the days of the 27 and 30 November that she had not worked.

11. Furthermore, the payslip showed that a deduction of £870.87 had been made for “CeMap”, which related to the cost of training that the respondent sought to recover from the claimant. By offsetting this sum from holiday pay, the claimant’s December pay was reduced to zero.
12. There is nothing in the claimant’s contract of employment which authorises a deduction from wages for training costs. The claimant had not given any written authorisation for the deduction to be made.
13. The claimant sought legal advice from solicitors regarding her contract of employment and the deductions from her wages and those solicitors sent an e-mail to the respondent. She incurred legal costs with respect to this. There was no other representation from solicitors or otherwise.
14. The claimant did not refer to any written evidence in support of her disputed claim of £200.00 for charges for borrowing money.

### **The Law**

15. Section 13 of the Employment Rights Act 1996 (ERA) provides:
  - (1) An employer shall not make a deduction from wages of a worker employed by him unless:
    - a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker’s contract, or
    - b) the worker has previously signified in writing his agreement or consent to the making of the deduction.
  - (2) ...
  - (3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for purposes of this Part as a deduction made by the employer from the worker’s wages on that occasion.
16. Section 27(1) of the ERA relates to the meaning of “wages” and provides:
  - (1) In this Part “wages”, in relation to a worker, means any sums payable to the worker in connection with his employment, including –
    - a) ....holiday pay....
17. Section 24(2) of the ERA relates to consequential losses incurred due to an unlawful deduction of wages and provides that, where the tribunal has made a declaration that there has been an unlawful deduction:
  - it may order the employer to pay to the worker .....such amount as the tribunal considers appropriate in all the circumstances

to compensate the worker for any financial loss sustained by him which is attributable to the matter complained of.

18. Section 14 of the ERA refers to “excepted deductions” and provides:

- (1) Section 13 does not apply to a deduction from a worker’s wages made by his employer where the purpose of the deduction is the reimbursement of the employer in respect of –
  - a) An overpayment of wages, ...

19. The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 set out when costs may be claimed. Schedule 1 rule 76 provides that:

- (1) A tribunal may make a costs order....and shall consider whether to do so, where it considers that-
  - a) A party...has acted vexatiously, abusively, disruptively or otherwise unreasonably.....

### **Conclusions**

20. It was agreed that the accrued gross amount of holiday pay due to the claimant on termination of employment was £1,015.38.

21. The claimant received an overpayment of two days wages in November due to her unauthorised absence. Therefore, the respondent was entitled to deduct two day’s pay in the gross sum of £161.54 from her holiday pay. This reduced the claimant’s gross holiday pay to £853.84.

22. The respondent was not entitled to make any deduction for the training costs.

23. Consequently, there was an unauthorised deduction from the claimant’s wages in the gross sum of £853.84 and her claim to this extent succeeds.

24. With respect to the claim for £200.00 of charges, this was not proven and accordingly, it is not appropriate in all the circumstances to require the respondent to compensate the claimant for this sum. This aspect of the claim therefore fails.

25. With respect to costs, there was no evidence that the respondent acted vexatiously, abusively, disruptively or otherwise unreasonably. Therefore, there is no basis to make any costs order and this aspect of the claim fails.

**Case No:2400329 /2021**  
**Hearing Code V**

Employment Judge Liz Ord

Date: 24 April 2021

JUDGMENT SENT TO THE PARTIES ON

27 April 2021

FOR THE TRIBUNAL OFFICE

Notes

1. The hearing code "V" in the heading to this judgment indicates that the hearing took place on a remote video platform. Neither party objected to the format of the hearing.



## NOTICE

### THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: 2400329/2021  
Miss E King v Alder Rose Mortgage Services 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: 27 April 2021

"the calculation day" is: 28 April 2021

"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/collections/employment-tribunal-forms](http://www.gov.uk/government/collections/employment-tribunal-forms)

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.