



# EMPLOYMENT TRIBUNALS

**Claimants:** (1) Mrs D Davies

(2) Mr R Davies

**Respondents:** (1) THDD Limited (in voluntary liquidation)

(2) The Secretary of State for Business & Trade

**Heard at:** Manchester, by CVP

**On:** 5 April 2024

**Before:** Employment Judge Holmes (sitting alone)

## Representatives

For the claimants:

In Person

For the first respondent:

No appearance or representation

For the second respondent :

Written representations

## JUDGMENT

It is the judgment of the Tribunal that:

1. The first respondent failed in breach of reg. 15 of the Working Time Regulations 1998 to pay the claimants their holiday pay.

2. In the case of the first claimant, the amount that the first respondent failed to pay in respect of 5 days holiday pay is the total sum of **£636.21** which sum the first respondent is ordered to pay her. This is a net sum and the first respondent is responsible for accounting to HMRC for any tax and national insurance due upon it.

3. In the case of the second claimant, the amount that the first respondent failed to pay in respect of 5 days holiday pay is the total sum of **£340.69** which sum the first respondent is ordered to pay him. This is a net sum and the first respondent is responsible for accounting to HMRC for any tax and national insurance due upon it.

4. The Tribunal postpones the hearing of the claims for arrears of pay.

5. The claimants are by **19 April 2024** to provide to the Tribunal and the respondents further information as to their case on the date of termination of their employments.

6. Further, they will by that date make and send to the Tribunal and the respondents further witness statements setting out the circumstances of the termination of their employments, in particular the date thereof, and will disclose to the Tribunal and the respondents any further documents relied upon by them in support of their case on the date of termination.

7. The second respondent shall by **13 May 2024** make any further written representations as to the claimants' claims for arrears of pay as further clarified by the claimants as ordered by the Tribunal.

8. The second respondent shall also by that date indicate whether a further hearing is required to determine the claimants' remaining claims.

9. No judgment is made against the second respondent, in relation to the awards for holiday pay.

## **REASONS**

1. By a claim form presented on 18 October 2023 the claimants, who are husband and wife, and were both employed by the first respondent until (at least) 14 July 2023, brought claims of failure to pay holiday pay and for arrears of wages.

2. The first respondent is in voluntary liquidation, and has not entered a response. The second respondent was not originally a party, but sent in a response as an interested party. The Tribunal (although this was not expressly stated, which it should have been) joined the second respondent as a party by letter of 12 January 2024, and she has been treated as a respondent ever since.

3. The claimants have made application to the second respondent for payments for which she is responsible, and certain payments (notice pay) have been made. The second respondent, however, has not made payments in respect of the claimants' claims for arrears of pay, or holiday pay as the information provided by the Liquidator suggested that the claimants had taken all the holiday they were entitled to, and hence no further holiday pay was due to them, and did not provide any information about what arrears of pay may be due to them that established that they had any further entitlements to arrears of pay.

4. The second respondent accordingly could not pay the amounts claimed, and was made a party to these claims. In her response she set out her position, but has taken no further part in the proceedings. The response is treated as her written representations.

5. The claimants have made witness statements and produced a bundle containing quite a lot of documentation. The effect of this has been to demonstrate that the suggestion made by the Liquidator (based upon information provided by Lee Williams, the Director of the first respondent) that the claimants had exhausted their holiday entitlement is wholly incorrect.

6. In particular, the dates and duration of holidays that the claimants took in Italy and Denmark in 2023 were disputed, the claimants contending that they had not been on leave for as long as Lee Williams had claimed.

7. The claimants' witness statements and the documents that they produced have satisfied the Tribunal that, at the date of the termination of their employments (for these purposes taken as 14 July 2023) , they had an untaken holiday entitlement of 5 days.

8. They are each accordingly entitled to pay in lieu of untaken annual leave, for 5 days pay. The first claimant was paid at the rate of £48,000 per annum, £4,000 per month, gross, which equates to £2,916.00 net per month. That is a net weekly pay £636.21. The first claimant worked (apparently from a contract in which a 39 hour week is provided, but which the Tribunal has not seen) a 5 day week, so her entitlement to pay in lieu of untaken leave for 5 days is £636.21, net, which sum the first respondent is ordered to pay her.

9. The second claimant was paid at the rate of £21,000 per annum, £1,750 per month, gross, which equates to £1,476.36 net per month. That is a net weekly pay £340.69. The second claimant (under a similar contract) worked a 5 day week, so his entitlement to pay in lieu of untaken leave for 5 days is £340.69, net, which sum the first respondent is ordered to pay him.

10. Turning to the claims for arrears of pay, these were less clear. From the Schedule of Loss document , each claimant claims one month's pay. Payslips have been included in the bundle, and the claimants confirmed that they were each paid up until the end of June 2023. They were paid monthly. From the Schedule of Loss, however, it appeared that they were claiming for the whole of the month of July 2023.

11. It appears as first blush that their employments ended on 14 July 2023, when they were locked out of their workplace. There was, however, the claimants explained, no formal notification of their position, and they were very unclear in the ensuing weeks just what their status was. Work was still being done, particularly by Mr Davies, for Lee Williams, the Director of the first respondent, but in what capacity is unclear.

12. Thus whilst 14 July 2023 might be the date of termination (it is certainly the earliest date, there being no evidence in support of Lee Williams' claim that they had been given notice earlier) the claimants' employment may not have ended until later than that date. On their ET1 claim form (there is only one form for both claimants) the claimants have stated 31 August 2023 as the date on which their employments ended. Quite why is unclear. In box 9 the claimants have stated that they seek "unpaid July 2023 wages".

13. It thus seemed that the claimants were claiming wages beyond 14 July 2023, up until the end of July 2023, and possibly beyond that date, and they confirmed that they were.

14. That may not have been clear to the second respondent, but the details of the claims that the claimants submitted to the second respondent have not been provided to the Tribunal. A copy of their claims would be of assistance.

15. Be that as it may, the problem for the claimants has been that the Insolvency Practitioner for the first respondent has (on false information, the claimants assert, provided by Lee Williams) told the second respondent that the claimants were given notice on 14 June 2023, and their employments ended on 30 June 2023. It is unclear on what basis the second respondent has calculated the notice pay that has been paid, but the date of termination may not have been necessary for that calculation.

16. The position therefore is that , at present, the date of termination of the claimants' employments is unclear, which affects their entitlement to unpaid wages. This is not their fault, of course, given the complete lack of transparency in the dealings of the first respondent , and it seems, possibly also the Insolvency Practitioner, with the claimants, and the inaccurate information provided to the second respondent by, ultimately, Lee Williams.

17. The Tribunal needs to determine when the employments ended. It would, the Employment Judge considered, be pointless to pick a particular date, and make awards on that basis, only for the second respondent then to seek to have any judgment reconsidered. Rather, it was preferable, which the claimants accepted, that they seek to assemble and present to the Tribunal and the respondents (the first, of course, not being entitled to participate as no response was received from it) their evidence as to the date of termination of their employments.

18. Once that is done, the second respondent can make any further representations about that issue (and provide any evidence of her own, such as the claimants' applications to the Fund) that she wishes. The Employment Judge can then make a determination of the issues, and make appropriate judgments. Whether a further hearing will be necessary is unclear at present, but will be addressed once each side has presented their further evidence and representations.

19. To elaborate on the date of termination, there are number of possibilities. The first, and earliest, is 14 July 2023, when the claimants were locked out of the workplace. That, however, as a matter of law, without more, would not of itself amount to a termination. There appears to have been no communication with Lee Williams at that time explaining what the position was, but the claimants will doubtless in their further evidence set out what communications, if any , they had with Lee Williams following the lockout, and what, if anything was said about their employment position.

20. The claimants have claimed, it seems , wages up until the end of July 2023. The basis upon which they have done so is unclear. From what was said in hearing this may be because they feel that they have a moral entitlement to be paid up until that date, and Mr Davies said that he considered he was still "working for" Lee Williams in that period. A moral entitlement, however, is not a legal one, and the Tribunal will have to determine as a matter of fact and law when the employment ended.

21. Mention was made in the hearing of a letter from the Liquidator, but this was not available to be produced to the Tribunal. Mrs Davies said that she thought this was dated 2 August 2023, and received around 6 August 2023. It is unclear whether this said anything about the termination of the claimant's employment. Clearly, it would be of assistance for the Tribunal to have sight of that document.

22. Whilst not mentioned in the hearing, from Companies House, it appears that the resolution to wind up the first respondent was passed on 10 August 2023. That may be the date by which, on any view, the claimants' employments must have come to an end.

23. Without express words of termination, orally or in writing, determining the date of termination is not easy. A termination does not usually take effect until communicated to the employee, but a termination by conduct can be inferred from all the circumstances. The Tribunal needs, therefore, to know as much as possible about the circumstances.

24. To the extent that the claimants are unable to provide any documents or information because the Liquidator has not co-operated, the Tribunal can, of course, exercise its powers to order disclosure against a non-party under rule 29 of its rules of procedure and will do so if this becomes necessary. It is hoped, however, that it will not be, and clarification of the date of termination can be provided, to enable the Tribunal to calculate the claimants' entitlement to unpaid wages.

25. In relation to the second respondent, whilst she has been joined as respondent, now that the Tribunal has determined the liability of the first respondent to make the payments in respect of holiday pay, it is anticipated that the second respondent will make the payments without being ordered to do so. It is not, therefore proposed to make any judgment against the second respondent. In the event that any issues arise, and the claimants consider that a judgment against the second is required, application can be made by them for a judgment, and the Tribunal will consider any further representations that the second respondent may then wish to make. This, of course, will also apply to the claims for arrears of pay.

Employment Judge Holmes

DATE: 9 April 2024

JUDGMENT SENT TO THE PARTIES ON  
Date: 12 April 2024

FOR THE TRIBUNAL OFFICE



## NOTICE

### THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990 ARTICLE 12

Case numbers: **2411240/2023 & 2411241/2023**

Name of case: **Mrs D Davies** v **1. THDD Limited (In  
Mr R Davies** voluntary liquidation)  
**2. The Secretary of State  
for Business & Trade**

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: 12 April 2024

**the calculation day** in this case is: 13 April 2024

**the stipulated rate of interest** is: **8% per annum**.

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](https://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.