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# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs F Jungeling

**Respondent:** Academies Enterprise Trust

## JUDGMENT ON RECONSIDERATION OF REMEDY

Of the Tribunal's own motion and having regard to the representations of the parties the judgment sent to them on 9 March 2017 is reconsidered and varied as follows:-

1. The Respondent shall pay the Claimant a basic award for unfair dismissal, compensation for unlawful discrimination, statutory interest and an uplift under section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 of £32,632.56 for the reasons and as calculated below.
2. The Respondent shall pay to the Claimant costs of £1,200.
3. The recoupment provisions do not apply.

## REASONS

### *Introduction*

1 On 21 March 2017, the Respondent wrote to the Tribunal pointing out two errors of law and one of arithmetic in its approach to the calculation of loss. The first of these was that the Tribunal had ordered interest for the full period of loss on an item of special damage (the loss of a bursary) when the correct approach is to award interest from a mid-point date in accordance with regulation 6 of the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996. The second was that it had wrongly applied an ACAS uplift under section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 to the basic award for unfair dismissal when this is not permitted under section 124A of the Employment Rights Act 1996.

2 The arithmetical error relates to grossing up. The Respondent's suggested

approach results in a higher award under this head than that adopted by the Tribunal and it accepts that it is correct.

3 These errors have a combined effect on the calculation of the judgment as a whole.

4 On a preliminary review the Employment Judge considered that the Respondent's submissions were correct and invited the Claimant's comments on this. He also suggested that the issues were capable of being dealt with on paper. The Claimant wrote to the Tribunal on 12 April 2017 agreeing to a reconsideration on the papers and raised no objection to the points identified by the Respondent. In the circumstances, the Tribunal has taken this opportunity to reconsider the amount of the judgment of its own motion.

***The arithmetic of the revised calculation***

5 The revised calculation is based on the findings of fact set out in the Reasons sent to the parties on 9 March 2017 but having regard to the points of law and arithmetic mentioned above:

***Basic award for unfair dismissal***

5.1  $9 \times 1.5 \times £142.49$  = £ 1,923.62

5.2 Less 10%, £192.36 = **£ 1,731.26**

***Past losses:***

5.3 Earnings:  $61 \times £142.49$  = £ 8,691.89

5.4 Pension:  $61 \times £28.29$  = £ 1,725.69

5.5 Health insurance: = £ 1,134.00

5.6 After-school clubs: = £ 2,198.63

5.7 Discovery holiday club: = £ 851.93

5.8 Expenses: = £ 50.00

5.9 Loss of statutory rights: = £ 350.00

5.10 Sub-total: = £15,002.14

5.11 Less 10%, £1,500.21 = £13,501.93

5.12 Bursary: = £ 2,000.00

5.13 Sub-total: = £15,501.93

Less:

5.14 Actual earnings to date: = £ 8,407.16

5.15 Actual pension to date: = £ 897.89

5.16 Total of past losses: = £ 6,196.88

**Future loss**

5.17 Loss of earnings: 26 x £142.49 = £ 3,704.74

5.18 Health insurance: = £ 567.00

5.19 Loss of income from clubs = £ 1,525.28

5.20 Expenses: = £ 100.00

5.21 Sub-total = £ 5,897.02

Less:

5.22 10% Polkey reduction = £ 589.70

5.23 Actual earnings = £ 4,203.58

5.24 Total future loss: = £ 1,103.74

6 **Interest** We have assessed compensation for injury to feelings and aggravated damages ("general damages") at £16,000. Interest runs on this and on our award for the loss of a bursary, £2,000 (which is not subject to a *Polkey* reduction), from the date of dismissal (this results in a slight credit for the Respondent which we judge to be *de minimis*):

**Calculation: (£16,000 x 8%)/52 x 61 = £1,501.54**

7 We have assessed interest on past loss at half-rate, 4%, for ease of calculation. We have excluded the basic award and the university bursary from this:

**Calculation: (£6,196.88 x 4%)/52 x 61 = £290.78**

8 **The ACAS uplift:** We have taken the following awards into account in calculating the ACAS uplift:

8.1 Past loss: = £ 6,196.88

8.2	Future loss:	= £ 1,103.74
8.3	General damages	= £16,000.00
8.4	Interest	= <u>£ 1,792.32</u>
8.5	Total:	= <b>£25,092.94</b>

**Calculation: £25,092.94 x 20% = £5,018.59**

9 **Grossing up** The total of our awards, including the basic award and the ACAS uplift, is £31,842.79. This takes the Claimant above the tax free limit of £30,000 and, therefore, £1,842.79 of this award will be subject to tax and National Insurance as part of the Claimant's current income. To address this, we make an additional award of £789.77 ((£1,842.79 x 100)/70 = £2632.55) - £1842.79) based on an estimated statutory deductions rate of 30%; we have had to estimate as the parties did not provide or agree figures on this.

### **Summary of awards**

10 For the reasons given above we make the following awards:

10.1	Basic award:	= £ 1,731.26
10.2	Past loss:	= £ 6,196.88
10.3	Future loss:	= £ 1,103.74
10.4	General damages	= £16,000.00
10.5	Interest	= £ 1,792.32
10.6	ACAS uplift	= £ 5,018.59
10.7	Grossing up	= <u>£ 789.77</u>
	Grand total:	= <b>£32,632.56</b>

### **Payment on account**

11 The Tribunal notes that the Respondent paid £33,306.16 to the Claimant's solicitors on 27 March 2017 in respect of the Tribunal's awards. The Respondent is entitled to further credit for any sum it has paid directly to the Inland Revenue on account of the Claimant's liability for income tax & National Insurance.

Employment Judge Foxwell

26 April 2017