



EMPLOYMENT TRIBUNALS

Claimant: Mr David Denton

Respondent: Govdata Limited

HELD AT: Liverpool

ON: 29 May 2018

BEFORE: Employment Judge Shotter

REPRESENTATION:

Claimant:

Respondent:

JUDGMENT ON RECONSIDERATION

The judgment of the Tribunal is that –

1. The Judgment promulgated on 22 March 2018 is varied to include compensation for failure by the respondent to provide a statement of terms and conditions of employment under Section 1 of the Employment Rights Act 1996 as amended. In accordance with Section 38 the respondent is ordered to pay to the claimant compensation in the sum of £958.00 (£479 statutory cap x.2).

REASONS

1. This is a Reconsideration to consider the claimant's application set out in an email sent 4 April 2018 and the respondent's response to it sent 25 May 2018.

2. Paragraph 36 of the 22 March 2018 promulgated judgment confirmed the claimant was provided with a contract of employment six-months after starting as a full-time employee on 15 June 2016. The Judgment does not make it clear that the claimant was issued with a statement of terms and conditions of employment before this date; he was not and the earliest date when the respondent complied with Section 1 of the Employment Rights Act 1996 ("the ERA") was 15 June 2016.

3. Section 1 ERA provides that, not later than two months after the beginning of an employee's employment, the employer must give him or her a written statement of his or her employment particulars. The particulars that must be included in that statement are set out in S.1(3) (particulars of employment), S.1(4) (particular terms of employment) and S.3(1) (disciplinary procedures and pensions). The claimant was not provided with this information until 15 June 2016.

4. Section 38 of the Employment Act 2002 states that tribunals **must** award compensation to an employee where, upon a successful claim being made under any of the tribunal jurisdictions listed in Schedule 5, it becomes evident that the employer was in breach of its duty to provide full and accurate written particulars under S.1 ERA – Ss.38(1)–(3). No compensation was awarded to the claimant, when it should have been.

5. Under rule 70 schedule 1 of the Employment Tribunals Rules of Procedure a Tribunal may reconsider any Judgment where it is necessary in the interests of justice to do so. In this case the Tribunal found it is in the interests of justice to reconsider the decision in accordance with the claimant's application as set out in the email of 4 May 2018. The Tribunal's discretion must be exercised judicially and with regard not just to the interests of the parties seeking the reconsideration, but also to the other parties, and the requirement for finality to the litigation and giving effect to the overriding objective.

6. Section 38 of the Employment Act 2002 states that Tribunals must award compensation to an employee where, upon a successful claim being made under any of the tribunal jurisdictions listed in Schedule 5, it becomes evident that the employer was in breach of its duty to provide full and accurate written particulars under S.1 ERA – Ss.38(1)–(3).

7. Compensation under S.38 is available only where 'the employment Tribunal finds in favour of the employee'. The Tribunal found in favour of the claimant.

8. The Tribunal must award the 'minimum amount' of two weeks' pay and may, if it considers it just and equitable in the circumstances, award the 'higher amount' of four weeks' pay – S.38(2), (3) and (4). The Tribunal does not have to make any award under S.38 if there are exceptional circumstances which would make an award or increase unjust or inequitable – S.38(5). As the respondent had provided a statement of terms in accordance with Section 1 outside the two-month period it is not just and equitable to order 4-weeks pay as the respondent had made some attempt to comply with its statutory obligations. It is just and equitable to award the minimum 2-weeks gross pay, there being no exceptional circumstances such an award unjust and inequitable.

9. A 'week's pay' is calculated in accordance with Ss.220–229 ERA and is limited to the maximum under S.227 (£479 in 2016) – S.38(6). The date of calculation is the effective date of termination of employment – S.38(7). The claimant was in receipt of salary amounting to £5000 gross per annum and the statutory cap of £479 must be applied.

10. In conclusion, the Judgment promulgated on 22 March 2018 is varied to include compensation for failure by the respondent to provide a statement of terms and conditions of employment under Section 1 of the Employment Rights Act 1996 as

amended. In accordance with Section 38 the respondent is ordered to pay to the claimant compensation in the sum of £958.00 (£479 statutory cap x 2).

Employment Judge Shotter
29.5.18

JUDGMENT AND REASONS SENT TO THE PARTIES ON
15 June 2018
FOR THE TRIBUNAL OFFICE

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): 2405186/2016

Name of Mr D Denton v Govdata Limited
case(s):

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: 15 June 2018

"the calculation day" is: **16 June 2018**

"the stipulated rate of interest" is: 8%

MRS L WHITE
For the Employment Tribunal Office