



EMPLOYMENT TRIBUNALS

Claimant: J Warren

Respondent: Plymouth Supported Living Ltd

Heard at: Plymouth **On:** 03 September 2018

Before: EJ Housego

Representation

Claimant: J Martin

Respondent: Did not attend, was not represented and sent no submission

RESERVED JUDGMENT

1. The respondent is ordered to pay to the claimant a basic award of **£3667.50**.
2. The respondent is ordered to pay to the claimant a compensatory award of **£29,851.64**
3. The claim under S13 of the Employments Rights Act is dismissed.

REASONS

1. The Claimant was dismissed by the Respondent on 14 December 2017.
2. The Claimant brought this claim, for unfair dismissal, but the Respondent did not file any response to it, and on 20 June 2018 judgment was entered for the Claimant, and the date set for the hearing converted to this remedy hearing.
3. The Claimant worked at a home for people with learning disabilities. She had enhanced DBS clearance. She would work long shifts and sleep over, on call, for which she was paid a fee. In May 2017 this fee was increased to £60 a night so that it was equal to the minimum wage for the time on stand by.
4. While the earnings of the Claimant were at an hourly rate of £7.80, the number of hours she worked and the number of sleep ins meant that her earnings in the 8 months April to November 2017 were £19,900.99 gross. Divided by 2 x 3 = £29,851.49 a year, and divided by 52 = £574.07 gross weekly pay.
5. The tax on that was £2,445.60, and national insurance was £1735.20. The total deducted was £4,180.80, and so net pay £19,900.99 - £4,180.80 = £15,720.19. This divided by 2 x 3 is £23,580.29 a year net pay, or £453.47 net weekly pay.
6. The Respondent did not follow the ACAS guidance on disciplinary matters. There was a meeting and an appeal. However the allegation made against the Claimant was dropped when the Claimant showed that she could not be the person who had done what was alleged as she was not on duty. Subsequently a second allegation was made. An advocate for the second resident made a statement about what that resident told the advocate, but the Claimant was not allowed to see it, and nor did she know who that advocate was.
7. The Claimant made efforts to get new employment, but satisfactory references were always required, and although the Claimant was successful in getting job offers subject to references, the Respondent repeatedly stopped the Claimant taking up such employments by repeatedly supplying negative references.
8. The Claimant eventually got a job on 11 April 2018, with Guinness Care and Support Ltd. This involved much travelling and fewer paid hours. Her pay for the period 11 April 2018 – 26 August 2018 (19 weeks) was a total of £4585.40 gross (£241.34 weekly) and £4,359.28 net (£335.33 net).
9. The Claimant then got another job, with Sanctuary Housing Association, caring for those with dementia. Her pay is £1,636.74 gross per month, and £1,373.29 net (£377.71 gross and £229.44 net, weekly).

10. The Claimant's date of birth is 05 July 1956. She will work to 66 when she gets her state pension, but she loved her job with the Respondent and would have worked there until 70 years of age. There are no health reasons likely to preclude this. She does not enjoy her work with those with dementia as she did with those with learning difficulties. She found the job with the Respondent very rewarding, but that with those with dementia is very challenging, such as being bitten by residents. As references are required for 5 years for jobs such as she had, and the Respondent gives negative references about the Claimant, given her age there is now no prospect of her being able to find employment similar to that she had with the Respondent.
11. The basic award is for 5 full years, each over the age of 41 and so 7 ½ weeks pay, subject to a maximum of £489. This is **£3,667.50**.
12. The compensatory award commences with loss of statutory industrial rights, for which I award a conventional figure of **£350**.
13. The loss to date is as follows:
 - 13.1. For the period of unemployment from dismissal, 14 December 2017 to 11 April 2018, almost exactly 4 months, or 1/3 year = **£9950.55** gross.
 - 13.2. For the period of period of employment with Guinness Care and Support Ltd (11 April 2018 - 10 July 2018) the Claimant would have earned 13 x £574.07 = £7,462.91 but earned 13 x £241.34 = £3,137.42. The shortfall is **£4,325.49**.
 - 13.3. For the period of employment with Sanctuary Housing Association Ltd to date, 10 July 2018 – 03 September 2018 (8 weeks) the Claimant has earned £377.81 gross weekly = £3,022.48. She would have earned 8 x £574.07 = £4,592.56. The shortfall is **£1,570.08**.
 - 13.4. These 3 figures total **£15,846.12** for loss to date.
14. For future loss, the Claimant was earning £547.07 weekly and she now earns £377.81. The difference is £169.26. This loss will extend to her 66th birthday, 05 July 2022. 4 years less 8 weeks = 200 weeks. That is **£33,852** future loss to age 66.
15. The maximum compensatory award is one year's pay. At £574.07 weekly this is **£29,851.64**. Accordingly the compensatory award is capped at that figure. Loss beyond the age of 66 has not been calculated for this reason. There is also a pension contribution loss (based on the state contributory work pension contribution from the employer which would be the greater on a larger salary) which has also not been calculated for the same reason.
16. I award the amount gross, as it is not possible accurately to assess the tax and NI that would have been deducted from the earnings. It will be for the Claimant to make appropriate returns to HMRC in respect of tax and NI on this sum.
17. I would have awarded an uplift of 15% for failure to follow the ACAS code: there was a procedure followed but the Claimant was not provided with the case against her. As I have awarded the maximum permissible under



S124(1ZA) I do not do so, not take the amount above the maximum.

18. The Claimant sought a sum in respect of night shifts worked before May 2017. Prior to that the amount paid was £35, and it was then increased to £60, so that the sum paid equated to the national minimum wage for the time spent asleep. It may be that recent case law means that this is no longer payable at NMW rates, but whether that is the case or not, the Claimant was paid at £60 a night from May 2017 to December 2017. This is a period exceeding 3 months. There was no reason why a claim could not have been presented before expiry of 3 months (plus early conciliation period) and so the claim is out of time. I set aside the default judgment to that extent, as this is a jurisdictional issue.
19. The recoupment regulations apply to this decision. The period is 14 March 2018 to 11 April 2018, when the claimant was in receipt of employment support allowance, and in respect of which £574.07 has been awarded for each week.

Employment Judge Housego

Date 03 September 2018

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON
7 September 2018

FOR EMPLOYMENT TRIBUNALS

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): **1401419/2018**

Name of case(s): **Miss J Warren** v **Plymouth Supported Living 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: **7 September 2018**

"the calculation day" is: **8 September 2018**

"the stipulated rate of interest" is: **8%**

MISS Z KENT
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

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.