



EMPLOYMENT TRIBUNALS

Claimant: Mrs C Carrabyne

Respondent: The Secretary of State for Work and Pensions

Heard at: Liverpool

On: 18 May 2018

Before: Employment Judge Robinson
Dr L Roberts
Mr W K Partington

REPRESENTATION:

Claimant: Mr D Campion of Counsel

Respondent: Mr S Redpath of Counsel

JUDGMENT ON RECONSIDERATION

The judgment on reconsideration in this matter is that the claimant should be paid the amended figure of £108,261.68 forthwith as per the schedule set out below.

REASONS

1. Mr Campion has made this application on behalf of Mrs Carrabyne for reconsideration of our remedy judgment. Mr Redpath also now makes a reconsideration application. There is a fair measure of agreement between Mr Campion and Mr Redpath. We have decided that we will reconsider the award made in the decision promulgated on 4 January 2018 and amend it. Using our discretion, we shall also reconsider the payment to the claimant of her future university fees. Mr Redpath pleads that is a double payment to the claimant. That is his belated application for reconsideration. Mr Campion suggests there is no such application before us. However we felt, to deal with that today, would be the most appropriate way forward for both parties.

2. On reconsideration, we conclude we were wrong not to gross up the following awards: the basic award, the award for loss of statutory rights, the interest and also the loss of pension payment. All those sums must now be grossed up. We decided to do that that on this basis. (In the words of Lord Justice Henderson) they are all awards connected to the termination of Mrs Carrabyne's employment in March 2016.

3. That deals with the main part of Mr Champion's application for reconsideration. Dealing now with Mr Redpath's application. We agree with Mr Champion's response to that application, that the university fees should be grossed up too. Our terminology that they were "expenses" was wrong and too loose. That specific amount is again a loss which arises from the claimant's loss of employment. Mr Champion has grossed up those fees in his calculation and we have done so too as set out in the schedule below.

4. Mr Redpath makes another argument with regard to the university fees which we turn to now. He believes that Mrs Carrabyne should not get that sum in addition to the payment we have awarded for future loss. Having reconsidered the evidence we previously heard, and the findings of fact that we made, we conclude as follows.

5. Mrs Carrabyne was happy in her work at the Department. We find, and it is clear from our original judgments on liability and remedy, that on balance, if the respondent had not dismissed her, the claimant was more likely than not to have stayed in work with the respondent. We still believe that was a reasonable conclusion to come to because, for example, reasonable adjustments were in place and the Department was supporting her through her medical issues. In our liability judgment we concluded that it was open to Mrs Bennett, the dismissing officer, not to dismiss the claimant. That decision has caused the claimant to be put on the "employment scrapheap", and for that reason we felt, and still feel, the respondent should pay the appropriate compensation that is just and equitable in all the circumstances.

6. However, although she was disadvantaged on the labour market (as someone who is disabled) the claimant sought new employment immediately she was sacked. Despite an initial period, of about five months from March to August 2016 when she was clearly distressed about her dismissal and also unwell, by August 2016 things were getting better for the claimant, and she was able to start thinking about what she should do in the future. The path that she ultimately took was to see if she could qualify as a psychologist.

7. That is to the claimant's credit. She has not been dilatory whilst seeking to qualify as a psychologist. She has set up her own business, selling cosmetics. We have taken that into account when making deductions for an amount she thought she would earn during the period when she was selling Avon items. We see the cost of her university degree in the same way as someone setting up a new business. The analogy that Mr Champion has given us is an apposite one. By seeking to qualify as a psychologist, which will pay her more than she was being paid with the respondent, she is, not only mitigating her loss, but potentially shortening the period for which this respondent would be liable for future loss to her. We stopped her future loss in December 2020 when it was more likely than not that Mrs Carrabyne would qualify as a psychologist. We may have been persuaded, if she had not started the university degree course, and in view of her medical difficulties, to extend the compensation beyond that date but we did not.

8. We accept that there must be a deduction of ESA. We had previously left that issue open as explained at paragraph 43 of our Remedy Judgment. We also accept the pension contribution figure that Mr Champion has informed us of. We accept that figure is a correct one and Mr Redpath did not demur.

9. We adopt the figures set out at page 27 of the reconsideration bundle. In line with the case of **Moorthy v HMRC[2018] EWCA CIV 847** we will not gross up the injury to feeling award.

10. We accept Mr Champion's reasonable argument that the department should pay forthwith the monies due to the claimant and that we are about to award on this reconsideration. We can make no order for an interim payment, nor prescribe exactly when the sum should be paid save to say this: that the respondent should pay to this claimant the sum of £108,261.68 forthwith. The department is a Government organisation and should be able to find and pay that money to the claimant within a very short period of time, hopefully within two weeks, so that the ESA deductions that Mr Champion has factored in to his calculations remain legitimate. We urge the respondent, via Mr Redpath, to do that. The department has been in breach of its employment duties to the claimant and she should be recompensed as soon as possible.

11. The award in total is £104,860.19 with the judgment interest of 8% from 5 January 2018 to 1 June 2018 being an extra £3,401.49 making a total of £108,261.68.

SCHEDULE

Basic Award	£1,107.69
Loss of statutory rights	£738.46
Open University fees	£17,184.00
Past loss of earnings by Civil Service award	£22,549.41
Future loss of earnings	£35,611.56
Pension contribution	<u>£12,038.40</u>
Total	£89,229.52
Less ESA deductions from 12 March 2016 to 10 June 2016	<u>£21,011.55</u>
Total	£68,217.97
Add interest thereon	<u>£4,615.78</u>
Total	£72,833.75
<i>Grossing up</i>	
Deduct	<u>£30,000.00</u>
	£42,833.75
<i>Grossing up</i>	

Add	<u>£10,708.44</u>
Total	£53,542.19
Add back	<u>£30,000.00</u>
Total	£83,542.18
Add injury to feelings including interest	<u>£21,318.00</u>
Total	£104,860.19
Add judgment interest at 8%	<u>£3,401.49</u>
Total to be paid to the claimant	<u>£108,261.68</u>

12. The recoupment provisions do not apply.

04-06-18

Employment Judge Robinson

JUDGMENT AND REASONS SENT TO THE PARTIES ON

13 June 2018

FOR THE TRIBUNAL OFFICE

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NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): 2401990/2016

Name of Mrs C Carrabyne v The Secretary Of State For
case(s): Work And Pensions

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: 13 June 2018

"the calculation day" is: **14 June 2018**

"the stipulated rate of interest" is: 8%

MRS L WHITE
For the Employment Tribunal Office