



# EMPLOYMENT TRIBUNALS

**Claimant:** L Roberts

**Respondent:** Logo Design Grp Ltd

**Heard at:** Plymouth **On:** 05 September 2018

**Before:** EJ Housego

## Representation

Claimant: J Munro, solicitor

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

# RESERVED JUDGMENT

1. The respondent is ordered to pay to the claimant notice pay of **£2,269.24.**
2. The respondent is ordered to pay to the claimant a basic award of **£13,203.**
3. The respondent is ordered to pay to the claimant a compensatory award of **£22,670.09**
4. The respondent is ordered to pay to the claimant in respect of age discrimination the sum of **£172,070.06.**
5. The total sum ordered to be paid by the respondent to the claimant is **£210,212.19.**

# REASONS

1. The Claimant worked for 30 years in the same job, and was a senior designer with the respondent. He was dismissed by the managing director of the respondent on 09 May 2017. He was asked to attend a meeting in a pub after work and told that he was to lose his employment. He was not required to work a notice period, and so his employment ended immediately. The only reason was his age. The purported reason of redundancy was not the reason for the dismissal. The respondent subsequently advertised for someone to do the work he had been doing.
2. The Claimant brought this claim, for age discrimination and for unfair dismissal, but the Respondent did not file any response to it, and on 24 May 2018 at a preliminary hearing judgment was entered for the Claimant, and the date set for the hearing converted to this remedy hearing.
3. The claimant was entitled to 12 weeks notice pay, but was paid for only 8 weeks. On 04 September 2017 he obtained employment with a large car dealership delivering cars. He had tried to get similar work to that with the respondent, but had not found this possible. The industry in which he worked has a problem with age discrimination, and I find that the claimant made all reasonable efforts to mitigate his loss, but that he will now not find it possible to regain his earnings with the respondent of £29,500 a year (£567.31 weekly), and will work at national living wage levels until his retirement age of 67.
4. I award loss of income 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. The first amounts to be paid are in respect of injury to feelings, and so not subject to tax or national insurance.
5. The claim for **notice pay** is for 4 weeks pay, he having been paid for 8 weeks instead of the 12 to which he was entitled, having worked in excess of 12 years in his employment. The weekly pay was £567.31, and multiplied by 4 this is **£2,269.24**.
6. The **basic award** is for 20 full years, 14 being over the age of 41 and so at 1½ weeks for each of those years (21 weeks' pay) plus 1 week for each of the earlier years, the week's pay being subject to a maximum of £489. This is because of S86 of the Employment Rights Act: the basic award is calculated as if the claimant had received the notice to which he was entitled. The pay of the claimant was £567.31 weekly and so above the cap. The basic award is 21 + 6 = 27 weeks' pay at the maximum of £489. This is **£13,203**.
7. The **compensatory award** commences with loss of statutory industrial rights, for which I award the conventional figure of **£350**.

8. The loss to date is calculated on the difference between the present earnings and £29,500 a year (£567.31 weekly). He now earns £274.05 weekly, gross, so the weekly shortfall is £293.26.
9. The claimant was dismissed on 09 May 2017. He was paid for 8 weeks, and the next 4 weeks forms the notice pay claim. The period for which he was paid, or is covered by the notice pay claim ends on 01 August 2017. The claimant started his new job on 04 September 2017, and so the period of no income was 5 weeks.  $5 \times £567.31 = \mathbf{£2,836.55}$ .
10. For the remainder of the period to the date of hearing the loss was at the difference in pay, £293.26. The period is exactly one year:  $52 \times £293.26 = \mathbf{£15,249.52}$ .
11. I decide to award the future loss as compensation for age discrimination. The compensatory award is therefore  $£350 + £2,836.55 + £15,249.52 = \mathbf{£18,136.07}$ .
12. I award an uplift of 25% for failure to follow the ACAS code. There was no process followed at all, and the dismissal was age discrimination, and nothing else. 25% of £18,136.07 is **£4534.02**, making the total compensatory award **£22,670.09**.
13. The compensation for age discrimination commences with injury to feelings. I agree with the claimant's solicitor that this is a mid Vento band case. The claimant has a propensity to depression, which he thinks caused by thyroid medication. I take this into account. He was on Citalopram at the date of his dismissal, but was reducing his dosage and anticipating coming off medication completely. The dismissal affected him greatly, and his GP was put on double the standard dose of Venlalic XL Prolonged Release Tablets. This is a powerful medication for prevention of recurrence of major depressive episodes, treatment of generalised anxiety disorder, treatment of social anxiety disorder or treatment of panic disorder, with or without agoraphobia. This gives some idea of the level of effect of this on the claimant. His dosage has now reduced to the standard dose of 75mg. He has now largely come to terms with what happened, though plainly and understandably feels very aggrieved that his career was cut short, at a time when he feels his work was very good. Bearing in mind the value of money, the level of personal injury awards, the need for an amount awarded not to seem so low that public respect for discrimination awards is diminished nor so large as to seem to be unjustified riches, I consider that the sum of **£15,000** is appropriate.
14. The claimant has lost income from today until his 67<sup>th</sup> birthday. His date of birth is 23 August 1962 and so he is now 56. That is 11 years. His loss is £293.26 a week, so £15,249.52 a year. Case law has varied between discount for early receipt and enhancement of the loss as inflation may exceed the return on cautious investment. I award 10 years loss of earnings. The sum is £152,495.20. In addition the claimant would have had the benefit of pension contributions of 3% of that lost salary, £4,574.86, so that the award for age discrimination loss of earnings is **£157,070.06**.
15. The total award for age discrimination is therefore **£172,070.06**.

16. The recoupment regulations do not apply to this decision. The claimant has not claimed any benefit since being dismissed.

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Employment Judge Housego

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Date 05 September 2018

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

28 September 2018

FOR EMPLOYMENT TRIBUNALS



## NOTICE

### THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): **2404024/2017**

Name of case(s): **Mr L Roberts** v **Logo Design GRP 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: **28 September 2018**

"the calculation day" is: **29 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](http://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.