



EMPLOYMENT TRIBUNALS

Claimant: Mr P Wrigley

Respondent: British Telecommunications PLC

UPON THE RESPONDENT'S APPLICATION dated **9 November 2018** to reconsider the judgment dated 1 November 2018 under rule 71 of the Employment Tribunals Rules of Procedure 2013, and without a hearing,

JUDGMENT

The judgment dated 1 November 2018 is varied so that it reads as follows:

The respondent is ordered to pay to the claimant the following:

1. Compensation for unfair dismissal of £13,172.50.
2. An award pursuant to s124 of the Equality Act 2010, made up of:
 - a. compensation in the sum of £398,076.69.
 - b. Interest of £7,988.70.
3. The recoupment regulations do not apply.

REASONS

The parties agree that, in its calculation of compensation the Tribunal erred in showing the period between 1 July 2018 and 6 September 2018 as 6.2 months rather than 2.2 months. This mistake infected the calculation of compensation for past loss for the period to 6 September 2018, causing the compensation and interest awarded to be inflated.

The parties agree that, had the correct figure been used, the compensation awarded pursuant to s124 of the Equality Act 2010 would have been £398,076.69 and not £416,014.58 as stated in the judgment. It is in the interests of justice to vary the judgment accordingly.

The parties agree that the interest awarded under Employment Tribunal (Interest on Awards in Discrimination Cases) Regulations 1996 should be recalculated to reflect the lower amount awarded in respect of past loss.

The Claimant's representative agrees that the calculation date for those purposes remains 1 November 2018, which is the date the amount of interest was originally calculated by the tribunal. This is consistent with the Employment Tribunals (Interest) Order 1990, which provides for post-judgment interest on the award to run from the date the judgment was originally sent to the parties, notwithstanding any variation of the amount of the award on reconsideration (see Articles 5 and 11 of that Order). If the Tribunal were to substitute a new calculation date when calculating interest under the 1996 Regulations that would result in duplication of interest and potential injustice to the Respondent.

The correct amount of interest is, therefore, £7,988.70 and not £8,777.97 as stated in the judgment. It is in the interests of justice to vary the judgment accordingly.

Amended tables showing how the revised figures are reached are annexed.

Employment Judge **Aspden**
28 December 2018

JUDGMENT SENT TO THE PARTIES ON
10 January 2019

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FOR THE TRIBUNAL OFFICE

ANNEX

BREAKDOWN OF COMPENSATION

1. KEY INFORMATION

Claimant's date of birth	1 May 1960
Actual termination date	4 November 2016
Claimant's age at termination	56
Remedy assessment date	6 September 2018

Period between termination and assessment date:		22 months
Gross pay		As at 5 November 2016: n/a From 31 March 2017: n/a From 31 March 2018: n/a From 1 July 2018: £38,766.27 pa
Net monthly pay at termination and net monthly pay Mr Wrigley would have earned had he not been dismissed		As at 5 November 2016: £2,186.93 From 31 March 2017: £2,224.48 From 31 March 2018: £2,288.46 From 1 July 2018: £2,466.46
Monthly value of other employment benefits: Death in service: £93.51 pcm Broadband: £36 pcm		£129.51
Date new job estimated to start		6 September 2019 (subject to 20% chance Mr Wrigley will not find paid employment at all)
Net monthly benefits in mitigation:	Net value of RTIE benefits	From 5 November 2016 and ongoing: £336.57 pcm From 6 September 2019: £
	Estimated net pay from alternative employment based on estimated gross salary of £16,000 pa	From 6 September 2019: £1067 pcm (subject to 20% chance Mr Wrigley will not find paid employment before the date he would have retired)
BTRSS Defined contribution scheme Value of employer pension contributions: agreed at 12% of pensionable pay, which would be £38,766.27 pa gross at 1 July 2018		From 1 July 2018: £387.66 per month

Date by which employer should no longer be liable – claimant’s 65 th birthday when he would have retired	1 May 2025
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UNFAIR DISMISSAL2. **BASIC AWARD**

Basic award (agreed by parties)	£13,172.50
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3. **COMPENSATION FOR DISCRIMINATION**

Pecuniary loss: immediate loss to assessment date (excluding pension loss)			
<i>Loss from 5 November 2016 to 6 September 2018 assessment date</i>			
Loss of net earnings:	From 5 November 2016 to 31 March 2017: number of months (4.8) x net monthly pay (£2,186.93)	£10,497.26	
	From 31 March 2017 to 31 March 2018: number of months (12) x net monthly pay (£2,224.48)	£26,693.76	
	From 31 March 2018 to 30 June 2018: number of months (3) x net monthly pay (£2,288.46)	£6,865.38	
	From 1 July 2018 to 6 September 2018: number of months (2.2) x net monthly pay (£2,466.46)	£5,426.21	
Loss of other benefits ie Death in Service benefit and broadband: number of months (22) x net value (£129.51)	£2849.22		

3.1		Sub-total	£52,331.83		
		Less			
Sums obtained through mitigation post-notice period:			(£7,404.54)		
RTIE benefits: number of months (22) x net value (£336.57)					
3.2		Reductions sub-total	(£7,404.54)		
3.3		Immediate loss from termination to 6 September 2018 sub-total (3.1 – 3.2):		£44,927.29	
Future loss from 7 September 2018 assessment date to 1 May 2025					
Loss of net earnings: number of months (79.8) x net monthly pay (£2,466.46)			£196,823.50		
Loss of other benefits: ie Death in Service benefit and broadband: number of months (79.8) x net value (£129.51)			£10,334.90		
Loss of statutory rights			£ 500		
3.4		Sub-total	£207,658.40		
		Less			
Future mitigation:	RTIE benefits: number of months (79.8) x net value (£336.57)		(£26,858.27)		
	Earnings from alternative employment from 6 September 2019: number of months (67.8) x net monthly pay (£1067) x 80% (to reflect chance claimant will not find work before planned retirement date)		(£57,876.08)		

	3.5	Reductions sub-total	(£84,732.35)		
	3.6	Future loss sub-total (3.4 - 3.5):		£122,926.05	
Pension Loss					
		BTPS			
		Agreed loss	£27,522.24		
		BTRSS scheme (from 1 July 2018)			
		Value of employer contributions to 6 September 2018 = £387.66 pcm x 2.2 months	£852.85		
		Value of employer contributions from 7 September 2018 to 1 May 2025 = £387.66 pcm x 79.8 months	£30,935.27		
		Subtotal of employer contributions	£31,788.12		
		Less value of employer contributions in employment obtained in future from 6 September 2019 to 1 May 2025 based on 3% of gross salary (£16,000 pa) £40 pcm x 67.8 months x 80% (to reflect chance claimant will not find work before planned retirement date)	(£2169.60)		
		BTRSS pension loss subtotal:	£29,618.52		
	3.7	Combined pension loss sub-total:		£57,140.76	
	3.8	Future loss and pension loss sub-total (3.6 + 3.7):			£180,066.81
Injury to feelings and Personal injury					
			3.9	Personal injury	£5,000
			3.10	Injury to feelings	£25,000

3.11	Total award before grossing up (3.3 + 3.7 + 3.9 + 3.10)	£254,994.10
Grossing up – see annex		
3.12	Grossed-up award	£398,076.69

4. **INTEREST**

<p>Injury to feelings</p> <p>Interest at 8% per annum on the sum of £25,000 for the period beginning on 3 November 2016 and ending on the day of calculation (1 November 2018), a period of 729 days.</p> <p>Interest = $£25,000 \times 729/356 \times 0.8\%$</p>	£3994.52
<p>Past losses and personal injury</p> <p>Interest at 8% per annum for the period beginning on the mid-point date (2 November 2017) and ending on the day of calculation (1 November 2018) on the sum of £49,927.29 made up of:</p> <p>Past losses: £44,927.29</p> <p>Personal injury: £5,000</p> <p>The mid point date is the date half-way between 3 November 2016 and the calculation date. In this case the mid point date is as shown above. The period from the midpoint to the calculation date is 365 days.</p> <p>Interest = $£49,927.29 \times 365/356 \times 0.8\%$</p>	£3,994.18
Total interest:	£7,988.70

Total award

Unfair dismissal

£13,172.50

Discrimination

Case No: 2401005/2016

**£398,076.69 +
interest of
£7,988.70 =
£406,065.39**

Breakdown of tax calculation for purposes of grossing up

TAXABLE AMOUNT		
T1 Amount of compensation award before grossing-up		£254,994.10
T2. Element of compensation award within ITEPA s403: £44,927.29+ £180,066.81	£224,994.10	
T3. Less tax free element ie up to £30,000 threshold less £13,172.50 basic award	(£16,827.50)	
T4. Total amount of compensatory award subject to tax		£208,166.60

GROSSING UP		
Element of T4 within personal allowance	n/a	
Basic rate: 20%		
Element of T4 within basic rate tax band: £34,500 less pension income of £17,365.20	£17,134.80	
T5. Grossed up compensation (above figure ÷ 0.8)		£21,418.50
Higher rate: 40%		
Element of T4 within higher rate tax band: £34,501 to £150,000 = £115,499	£115,499	
T6. Grossed up compensation (above figure ÷ 0.6)		£192,498.33
Additional rate: 45%		
Element of T4 within additional rate tax band ie over £150,000 = £208,166.60 - (£115,499 + £17,134.80)	£75,532.80	
T7. Grossed up compensation (above figure ÷ 0.55)		£137,332.36

Compensatory award grossed up to reflect tax liability T5 + T6 + T7 (ie £351,249.19) + non taxable elements of award (ie injury to feelings and personal injury compensation of £30,000 plus tax free element of £16,827.50)	£398,076.69
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NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): **2401005/2016**

Name of case(s): **Mr P Wrigley** v **British Telecommunications Plc**

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: **6 November 2018**

"the calculation day" is: **7 November 2018**

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

MR J PRICE
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.