EMPLOYMENT TRIBUNALS

Claimant: Miss L Goodwin

Respondent: Elizabeth Hassall Family Law Limited

Heard at: Manchester **On:** 15 January 2019

Before: Employment Judge Whittaker

REPRESENTATION:

Claimant: In person
Respondent: Not in attendance or represented

JUDGMENT

The judgment of the Tribunal is that:

1. The respondent shall pay the claimant the sum of £1,352.24 representing unlawful deductions from wages.

2. The respondent shall pay the claimant the sum of £1,248.22 pursuant to section 38 of the Employment Act 2002.

REASONS

1. The claimant attended in person. No-one appeared to represent the respondent. Furthermore, the respondent failed completely to comply with any of the Case Management Orders which had been made by Employment Judge Ross on 25 September 2018 which included a requirement by the respondent to send the claimant a copy of any documents which were relevant to the claims and issues. Furthermore, the respondent had been ordered to prepare a joint index and a joint bundle of documents and to do so by 2 November 2018. The respondent completely failed to comply with that order. Furthermore, the respondent did not send any Written Representations to the Tribunal or any documents to the Tribunal in connection with the claim of the claimant.

2. The claimant was provided with a contract of employment dated 2 March 2015 which stated that her employer was Acorn Law North West Limited. It specified that

the claimant was employed by that company as a secretary who would work for and report to Elizabeth Hassall who at the time was trading as Elizabeth Hassall Family Law.

3. The claimant told the Tribunal, on oath, and the Tribunal accepted, that Elizabeth Hassall Family Law became a limited company in or about February 2016. The claimant told the Tribunal that there was a champagne celebration held at approximately that time to celebrate the establishment of the respondent company, Elizabeth Hassall Family Law Limited. Furthermore, the claimant told the Tribunal that she was told that upon establishment of the respondent as a limited company that her employment transferred from Acorn Law to the respondent. However, the claimant was never issued with a statement pursuant to section 4 of the Employment Rights Act 1996 notifying her, in writing, of the changes to those essential particulars of her employment. No such statement of change was issued to the claimant, either at the time that the respondent company became her employer or at any time up to the termination of her employment in May 2018.

4. Despite the fact that Acorn Law North West Limited and the respondent company were operating as law firms, there were significant and material failings on the part of both limited companies to comply with section 1 of the Employment Rights Act 1996. That requires an employer to issue to an employee a written statement of particulars of employment. In order to comply with section 1 a minimum list of required particulars is specified. Section 3 of the Employment Rights Act 1996 confirms that those required particulars include a requirement to specify to an employee any disciplinary rules which are applicable to the employee. Alternatively, the written statement may refer an employee to the provisions of a document which specifies such disciplinary rules, ensuring that such document is reasonably accessible to the employee. Alternatively, the employer can specify a procedure which is applicable to the taking of disciplinary decisions relating to the employee, or alternatively refer the employee to the provisions of a document which specifies such a procedure, again ensuring that that procedure is reasonably accessible to the employee.

5. Section 3 goes on to provide that written particulars are also required to be provided to identify a person to whom the employee can apply, if dissatisfied, with any disciplinary decision which is made about them, and equally identify a person to whom the employee can apply for the purpose of seeking redress of any grievance relating to their employment, and also particulars as to the manner in which any such application should be made.

6. The Tribunal finds that none of these particulars were ever supplied to the claimant, either by Acorn Law or by the respondent company, at any time from the beginning of the claimant's employment in 2015 to the time that her employment was ended by the claimant resigning in May 2018. The Tribunal finds that this is a significant and unacceptable failure on the part of the two limited companies, including the respondent, to provide such basic particulars, especially in view of the fact that both firms were operating as law firms and ought therefore to have been fully aware of the legal obligations placed upon them when employees were employed.

7. The contract of employment which was issued to the claimant in 2015 said nothing more than that the claimant would be required to “comply with such rules or procedures regarding disciplinary matters as may be published by the company from time to time”. The claimant told the Tribunal that no such procedures or rules were

ever published or issued by the company, and neither was the claimant at any time made aware of any such rules or procedures either relating to disciplinary matters or relating to grievances. The claimant was advised that in respect of any grievances she should refer them in the first instance to her manager, but she was not issued with any particulars as to what the company would then do if it received such a complaint. There were no details provided to the claimant whatsoever of any rules or procedures which the company would then follow.

8. Furthermore, and this is particularly important, the contract was completely silent about any power or right which the company, including the respondent, had to suspend the employee. There was, therefore, no contractual right on the part of the respondent company to be able to suspend the employee. In an email which Martyn Maund, Director of both Acorn Law and the respondent, sent to the claimant on 1 June 2018, Mr Maund alleged that matters relating to the performance of the claimant were being investigated. However, that letter made no reference whatsoever to the claimant being suspended, and neither did it refer to any alleged right or power on the part of the company to suspend the claimant without pay. In any event it is well recognised that when an employee is suspended pending an investigation that they are suspended on terms where they continue to be entitled to receive pay in accordance with their contract of employment. Mr Maund did not refer to or even purport to refer to any alleged power that he had to suspend the claimant without pay.

9. The claimant vigorously denied that there were any grounds whatsoever to properly or justifiably criticise her performance. The company provided no particulars whatsoever of the manner in which the claimant's performance had in any way been unsatisfactory. The claimant was never called to any disciplinary hearing and was never supplied with any evidence whatsoever to justify any criticisms of her. Even as at the date of hearing on 15 January 2019 the claimant had been provided with no such particulars, and as already indicated above the respondent company provided no such particulars or documents whatsoever to the Employment Tribunal.

10. The claimant brought one single claim pursuant to Part II of the Employment Rights Act 1996. She alleged that the respondent company had failed to pay her last month's wages and that by failing to make those payments the company had made an unlawful deduction from her wages. The claimant produced a wage slip from April 2016 showing gross and net pay. The claimant confirmed that the details shown on that wage slip had not changed. Her net pay was £1,352.24 per month. Her contract of employment provided for payment of those monies each month on or about the 26th of each month. The respondent company failed to pay those wages to the claimant in respect of the final month of her employment. The respondent company had no contractual right or indeed any other right to make any such deduction from the wages of the claimant. The claimant was all times entitled to those wages which ought to have been paid by the respondent company. Those wages remained outstanding as at January 2019, and on that basis the Tribunal found the respondent company to be in breach of its contractual obligations and ordered the company to pay to the claimant the unpaid wages of £1,352.24.

11. Having found that the company had substantially failed to comply with its detailed obligations under section 1 and section 4 of the Employment Rights Act 1996, the Tribunal then considered the provisions of section 38 of the Employment Act 2002. In circumstances where the Tribunal had made an award in favour of the claimant, the Tribunal was obliged to make an additional award against the respondent for failing to

provide appropriate employment particulars under sections 1 and 4 of the Employment Rights Act 1996. The Tribunal was also required to consider whether it should make the minimum award of two weeks' pay or whether in all the circumstances it should make an award of the higher and maximum amount of four weeks' wages. The Tribunal took into account that at all times both the relevant limited companies were operating as law firms. A contract of employment had been issued to the claimant in 2015 but it had failed to meet the minimum requirements of section 1 and section 3 of the Employment Rights Act 1996 as set out above.

12. Equally importantly there was no Notice of Change ever issued to the claimant when the name of her employer changed, and neither were any particulars of any relevant disciplinary or grievance procedure issued to the claimant once she became employed by the respondent in or about February 2016. The Tribunal considered that these failings were real and significant. The failings had occupied a significant part of the hearing time at the Tribunal on 15 January 2019. That ought not to have been the case, particularly as both companies were operating as law firms. There was a link between the two firms. That link was Martyn Maund. He at all times had been a Director of or at the very least very closely associated with the operation of both limited companies, and it was he who personally had responded to the claim which the claimant had issued to the Employment Tribunal. He was the person whose name appeared as being the author of the correspondence which the respondent company entered into with the Employment Tribunal in connection with the claim of the claimant.

13. In all the circumstances, therefore, the Tribunal considered that it was just and equitable to make a further award against the respondent company in the sum of £1,248.22 representing four weeks' wages, the maximum and higher amount permitted. The failures on the part of the respondent company were real and significant and no explanation whatsoever had been provided for such failures.

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Employment Judge Whittaker

Date____30th January 2019_____

JUDGMENT AND REASONS SENT TO THE PARTIES ON

4 February 2019

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): **2413247/2018**

Name case(s):	of **Miss L Goodwin**	v	**Elizabeth Hassall Family Law Limited**

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: **4 February 2019**

"the calculation day" is: **5 February 2019**

"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/publications/employment-tribunal-hearings-judgment-guide-t426

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.