EMPLOYMENT TRIBUNALS

Claimants
Mr P G Harris
Mr S R Kirkpatrick
Ms L R Stewart

Respondent
Priory Coach and Bus Ltd

JUDGMENT OF THE EMPLOYMENT TRIBUNAL AT A REMEDY HEARING

HELD AT NORTH SHIELDS ON 10 January 2019
EMPLOYMENT JUDGE GARNON (sitting alone)

Appearances
For Claimant: Ms S Doughty Solicitor
For Respondent: Mr J McHugh of Counsel (for the first part of the hearing only)

JUDGMENT

On each claim I award compensation in the sums set out below . The Recoupment Regulations do not apply:

To Mr Harris **£48708.50** being
A Basic Award of £11002.50
A Compensatory Award of £28600
An increase under s 207A of the Trade Union and Labour Relations (Consolidation Act 1992 as amended of £ 7150
An increase under s 38 Employment Act 2002 of £1956

To Mr Kirkpatrick **£49442** being
A Basic Award of £11736
A Compensatory Award of £28600
An increase under s 207A of the Trade Union and Labour Relations (Consolidation Act 1992 as amended of £ 7150
An increase under s 38 Employment Act 2002 of £1956

To Ms Stewart **£37282.60** being
A Basic Award of £6100.92
A Compensatory Award of £23499.04
An increase under s 207A of the Trade Union and Labour Relations (Consolidation Act 1992 as amended of £ 5874.96
An increase under s 38 Employment Act 2002 of £1807.68

The Recoupment Regulations do not apply.

REASONS

1.Procedural History and Postponment Request

1.1. Two claims were presented on 8 March 2018 and that of Ms Stewart on 9 March. The first two were posted in separate envelopes on 9 March, a Friday. The third was posted on Monday 12 March. They were addressed to the registered office of the respondent as confirmed by a Companies House search. A response was due by 6 April 2014 in the first two claims and 9 April in the third. None were received. The claim papers were never returned by Royal Mail.

1.2. On 12 April 2018 I gave judgment on liability under Rule 21 of the Employment Tribunals Rules of Procedure 2013 (the Rules) that the claims of unfair dismissal were well founded and ordered a 3 hour hearing to decide remedy be listed on the first available date. The judgment was posted to the respondent on Monday 23 April and would have been received in the normal course of post by at latest 25 April .

1.3. I said in my reasons that at the remedy hearing, the respondent may be heard on remedy only. It was fixed for 29 May and notice posted to the parties on 23 April. The hearing was later postponed at the request of the claimants.

1.4. The respondent, via Bermans Solicitors. applied for a reconsideration on 4 May. At a hearing on 25 July 2018 the claimants were represented by Ms H Abraham Solicitor and the respondent by Ms C Widdett of Counsel. I refused the application because it was not necessary in the interests of justice to reconsider and said the cases would now be listed for a remedy hearing, before me, for up to three days in November or December 2018. The parties were to provide a time estimate and unavailable dates by 3 August 2018. In my reasons I wrote:

5. Mr Harris and Ms Stewart contacted ACAS to commence Early Conciliation (EC) on 30th January and Mr Kirkpatrick on 25th January. ACAS issued certificates to all on 8th March. Regulation 6 of the Employment Tribunal (Early Conciliation etc) Rules of Procedure Regulations 2013 say EC lasts 4 weeks unless both parties consent and the conciliation officer thinks there is a reasonable prospect of conciliation, in which case the period may be extended by up to 14 days. There must have been contact between the respondent and ACAS. When EC failed, the respondent must have known a claim against it was likely to follow. Today, I heard evidence only from Mr Fakhar Ahmed, the General Manager , who agreed that was so.

6. In their claims Mr Harris describes himself as an Engineer, Mr Kirkpatrick as Transport Manager and Ms Stewart as Accounts Manager. All three say they were employed as well as being directors and shareholders. They resigned as directors on 23 December 2016 when a sale of the shares took place to Rothbury Securities Ltd . At a meeting in advance of that in November 2016 they met with Mr Ahmed and agreed to stay with the company as employees on the same rate of pay with 25 days per annum plus bank holidays. That they were directors and shareholders does not mean they cannot also have been employees. One defence now sought to be advanced by the respondent is that they all lack continuity of employment which it says commenced in January 2017. No evidential basis for that has been advanced.

7. Mr Robert Currie, CEO of Rothbury Securities Ltd and of the respondent sent an "all staff" email on 17 November 2017 saying Mr Harris and Mr Kirkpatrick had been dismissed. They also received an email directly from Mr Currie advising that as the purchase monies for their shares had now been paid to them, in the absence of resignations, their employment was terminated with one week's notice. Their last day was 24 November. Mr Harris was actually on holiday when these emails were sent. Ms Stewart claim is somewhat different in that she was not expressly dismissed. She resigned on 29 December and claims constructive dismissal.

1.5. When the claims were first served directions were given including that the claimants provide schedules of loss. They were provided on Monday 9 April by email to the Tribunal and a copy hand delivered to the respondent's office a few yards from Ms Abraham's on that day. The respondent accepted these were received and made it aware of the hearing date. In my reasons I wrote:

9 The first contact from the respondent was a telephone call to a Tribunal clerk from a Mr Hassan, Group Accountant, on 24th April who claimed the respondent had not received any of the three claim forms . The clerk told him to write to the tribunal and he replied he would be seeing his lawyer.

10 The next contact was an email from Bermans Solicitors on Friday 4th May, the last day for applying for a reconsideration. It repeated the claim forms had not been received. It did not contain a draft response but said one would be provided when they had full instructions. I ordered such details by 8th May to enable me to consider the application under Rule 72 (1). Some detail came on 10th May. The headline defence was length of service. Still there was no draft response because Bermans lacked full instructions. I did not refuse the application under rule 72(1) but ordered a hearing at which the claimants may attend but need not. Copies of the claim forms were sent to Bermans on 15th May. The parties were told of this hearing by notice on 21st June.

11. On 13 July, Bermans came off record due to lack of instruction. On 20th July they came back on record.Their letter of 23rd July requested a postponement of the first two claims to take instructions. They also said the claim of Ms Stewart had the wrong particulars attached to it. When the copies were sent particulars of a case between different parties were attached That was a pure administrative error of the tribunal which can easily be corrected and will be . I do not accept from my perusal of the file the wrong particulars were attached to the claim form posted on 12th March.

12. Bermans tendered as the reason for not receiving instructions that three members of the family of "our client " had died between16-18 June and organising 40 days mourning fell on him. By "our client " they mean Mr Ahmed. The respondent is a small limited company but now owned by Rothbury Securities Ltd which is not. Active parts have been been played in the history of the matter by Mr Ahmed Mr Hassan and Mr Currie. Had this been a small business with only one manager, I would not only have had every sympathy with Mr Ahmed , which I expressed to him today, but may have been persuaded it excused lack of instructions. However, it is not such a company. There was also in the letter a statement potential civil claims for breaches of warrenties in a Share Purchase agreement are in contemplation. They have not yet been commenced or any pre-action protocol steps taken.

*13. I heard Mr Ahmed's evidence the respondent did not receive the claims in March but what he really means is the manager at the registered office, a Mr Watson, and the administrator there who open the post and **should** scan anything important to the head office of Rothbury Securities Ltd in Manchester where Mr Ahmed is based, have **told** Mr Ahmed nothing arrived. Even if they misjudged the importance of the document it would be left in a tray for Mr Ahmed when he visited the registered office premises in North Shields which he does at least once a fortnight. In the very unlikely event an entire bag of post sent by the tribunal on 9 March was lost, is truly beyond belief that a letter sent on 12 March encountered the same fate. Everything I have read and heard leads me to conclude they were all received and either the staff at the registered office failed to forward them or more senior managers received and ignored them. The singular lack of urgency with which they have dealt with matters since the claims did come to the attention of Mr Ahmed Mr Currie and Mr Hassan supports that conclusion. The number of applications which are received following rule 21 judgments in which respondents claim not to have received the original claim form is substantial. I always guard against cynicism and I am prepared to accept a single letter can go astray in the post. In this case I would have to accept the three such letters went astray. I do not.*

1.6. Although my primary decision was that the claims were actually received , I dealt with an alternative, citing Zietsman and Du Toit t/a Berkshire Orthodontics-v-Stubbington 2001 EAT 345 holding they were in any event deemed to have been received. I cited some authority under the 2004 Rules and continued.

17. The whole purpose of ACAS and the Employment Tribunals is to provide a means of resolving employment disputes quickly. The requirement for EC came into force a few months after the 2013 Rules .Parliament clearly intended to have a modernised system with rules designed to do justice between the parties but requiring the respondent to the claim to put forward its arguments in a prescribed way at a prescribed time. The system also made far greater provision for determinations without a hearing. Everyone is still entitled to a hearing if they follow the rules to avail themselves of that right. Ms Widdett submitted there was a strong defence. Although a Tribunal should always weigh all factors including the apparent strength or weakness of the proposed defence, it cannot in my view be expected to conduct a " mini trial". Frankly in this case the respondent's length of service argument appears weak. Ms Stewart's claim of a breach of the implied term of mutual trust and confidence is powerful. As for the dismissals, the chances of a finding other than they were at the least procedurally unfair is negligible.

*18. Again, under the 2004 rules, DH Travel -v-Foster decided even where what was called a "default judgment" on liability was not set aside, a respondent still had the right to appear at the remedies hearing. Such instructions as Ms Widdett had point to an argument on remedy which could have been put forward much earlier. She said the share purchase agreement envisaged the claimants remaining in what could broadly be described a consultancy role **for a limited time**. If evidence to that effect were accepted, although the claims would still succeed and the claimants all receive a basic award, a compensatory award may be limited if, had a fair procedure been followed, they may have been fairly dismissed by a specific time as redundant or for some other substantial reason. That is why at this stage I am erring on the high side in asking for availability for up to three days for a remedy hearing.*

The applicability of DH Travel under the Rules has since been confirmed by the Court of Appeal in Office Equipment Systems -v-Hughes

1.7. Judgment with reasons was sent to the parties on 27 July 2018 . I listed remedy for two days because it was clear that although the manner of dismissal was procedurally unfair live issues as to loss and a " Polkey reduction " would take time. On 6 August the claimants provided unavailable dates as did the respondent on 7 August . On 18 September it was listed for 10 and 11 December .

1.8. On 21 September Bermans applied for a postponement because Ms Widdett was unavailable. Despite objection from the claimants , I granted the postponement because although the unavailablity of a chosen Counsel is not normally considered sufficient , I accepted, by analogy with the civil case RBS -v-Craig , Counsel who had been deeply involved should be retained. In the letter which the Tribunal sent to the parties at my direction it was said the case could be relisted sooner if it were agreed by both parties it could be heard by another judge. which is possible under the Rules.I believe it is implicit in that letter I was looking to relist the case urgently.

1.9. On 28 September the claimants said by email they would prefer it to be heard by me and accepted the postponement should be granted. Ms Abraham added they requested re-listing at the first available opportunity. That was copied to Bermans. On 9 October Bermans came off the record again and on the same day Ms Abraham asked for the original dates to be reinstated which they were. A notice was sent to the parties on 16 October. From that date if the respondent intended to be represented I would have expected them to be instructing new solicitors to prepare fully for the remedy hearing.

1.10. On 29 November I had to postpone the hearing of my own initiative because an emergency situation had arisen for me. I asked for further dates to avoid between what remained of December and the end of February. Such dates were provided by the claimants by email on 6 December and copied to the respondent. No response was received from the respondent by the due date of 8 December. The case was therefore listed for 10 and 11 January 2019 and notice of that sent to the parties on 21 December , the Friday before Christmas. Updated schedules of loss and witness statements were provided by the claimants on 3 January and copies delivered to the respondent's registered office.

1.11. By email at 13:41 on 9 January an application for postponement was received from Backhouse and Jones Solicitors on behalf of the respondent They are a firm in Lancashire where Rothbury Securities are based. The email included:
" *We have been instructed to represent the respondent this morning at short notice. We are in the process of taking urgent instructions in order to advise the respondent in respect of the tribunal claims…*
Our client believes that they have a strong defence to the claims and we are also taking urgent instructions in respect of an application to submit a response out of time.
Pausing there, that matter is res judicata. The email continued:
" *The explanation for the delay in instructing us is that the notice of hearing was sent to the respondent on 21 December 2018. The respondent's offices were closed for the Christmas period from 21 December 2018 and reopened in the New Year on 7*

January 2019 . The respondent therefore did not receive the notice until the afternoon of 7 January 2019 when all post was checked (7 January was a Monday).

1.12. The email continued saying a letter from the claimant's representative had been hand-delivered dated 4 January including the witness statements, documents and schedules of loss which the solicitors were reviewing. It said Mr Ahmed was unable to attend due to ill-health, was the only person able to provide instructions and a note from his GP would be available for tomorrow's hearing at which Counsel would be in attendance to make the application in person necessary. I refused the application to postpone on paper saying I would give full reasons in writing in the remedy judgment but in short this was another example of the respondent saying, as it did in the reconsideration application, its failure to have in place arrangements for the timely handling of post should result in it being given another chance. On reflection that was my subsidiary reason, the more important one being that had the respondent been taking this case seriously and intending to be represented it would have been well prepared long before personal circumstances caused me to postpone it on 29 November. The remedy hearing was originally listed over 3 months ago. A Company search today shows the sole director of the respondent and Rothbury Securities Ltd is Maryam Manzoor . Both companies are active.

1.13. I had prepared a draft of the above paragraphs before Mr McHugh arrived this morning which I gave him to pre-read. He confirmed he was instructed only to renew the postponement application. which he did. For the above reasons I again refused it and was happy for him to leave at that point. I did however assure him the points which Ms Widdett had raised about the reason for dismissal being potentially fair with the result that despite the procedural unfairness a Polkey reduction should be made, would be considered by me of my own initiative.

2 The relevant law

2.1. Section 112 of the Employment Rights Act 1996 (the Act) says

(1) This section applies where, on a complaint under section 111, an employment tribunal finds that the grounds of the complaint are well-founded.

(2) The tribunal shall—

(a) explain to the complainant what orders may be made under section 113 and in what circumstances they may be made, and

(b) ask him whether he wishes the tribunal to make such an order.

2.2. Section 113 permits (a) an order for reinstatement (section 114), or (b) an order for re-engagement (section 115), The claimants asked for neither order. Subsection (4) then says *" If no order is made under section 113, the tribunal shall make an award of compensation for unfair dismissal (calculated in accordance with sections 118 to 126) to be paid by the employer to the employee.*

2.3 Section 118 includes *:(1) Where a tribunal makes an award of compensation for unfair dismissal under section 112(4) or 117(3)(a) the award shall consist of—*
(a) a basic award (calculated in accordance with sections 119 to 122 and 126), and
(b) a compensatory award (calculated in accordance with sections 123, 124, 124A and 126).

2.4. The basic award as set out in s 122 is an arithmetic calculation based on age , length of service and a "week's pay" subject to a statutory cap of £489. It is the same calculation as for a redundancy payment. If a redundancy payment was due, it extinguishes the basic award . Redundancy is defined in s 139 which says dismissal shall be taken to be by reason of redundancy if it is wholly or mainly attributable to the fact (inter alia) that the requirements of that business for employees to carry out work of a particular kind, either generally or in the particular place , have ceased or diminished or are expected to cease or diminish permanently or temporarily and for whatever reason . The claimants would be due a redundancy payment if dismissal was wholly of mainly attributable to a redundancy situation .

2.5. The basic award can be reduced under s122(2) where the tribunal considers any conduct of the employee before dismissal makes it just and equitable to do so. There are no grounds to do so in this case.

2.6. Section 123 includes
(1) ... the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.

(4) In ascertaining the loss referred to in subsection (1) the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales .

(6) Where a tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant , it shall reduce the compensatory award by such proportion as it considers just and equitable having regard to that finding .

There are no grounds to make a reduction under ss(6) as there has been no culpable or blameworthy conduct by any claimant .

2.7. Section 124 imposes limits on the amount of a compensatory award calculated in accordance with section 123. At the relevant time, it was the lower of £80541 or 52 week's pay without the £489 cap.

2.8. Paragraph 54 of the Judgment of the EAT in Software 2000 Limited v Andrews 2007 ICR 825, is still an excellent summary of the basic principles if amended to take account of changes in the law to read as follows
1. The evidence from the employer may be so unreliable that the exercise of seeking to reconstruct what might have been is too uncertain to make any prediction, though the mere fact that an element of speculation is involved is not a reason for refusing to have regard to the evidence.
2. The employer may show that if fair procedures had been complied with, the dismissal would have occurred when it did in any event.
3. The Tribunal may decide that there was a chance of dismissal … in which case compensation should be reduced.
4. The Tribunal may decide that the employment would have been continued but only for a limited period.
5. The Tribunal may decide the employment would have continued indefinitely because the evidence that it might have terminated earlier is so scant that it can effectively be ignored.

It is sometimes argued a Tribunal ought not to speculate on what might have happened had a claimant not been treated as he was (King v Eaton (No.2) [1998] IRLR 686) I disagree. Scope-v-Thornett held though speculation is involved the Tribunal should still try to predict what may have happened in an appropriate case.

2.9. Section 38 of the Employment Act 2002 applies and says that if

(a) the employment tribunal makes an award to the employee in respect of the claim to which the proceedings relate, and

(b) when the proceedings were begun the employer was in breach of his duty to the employee under section 1(1) or 4(1) of the Employment Rights Act 1996,

*the tribunal **must**, subject to subsection (5), increase the award by the minimum amount and may, if it considers it just and equitable in all the circumstances, increase the award by the higher amount instead.*

(4) In subsections (2) and (3)—

(a) references to the minimum amount are to an amount equal to two weeks' pay, and

(b) references to the higher amount are to an amount equal to four weeks' pay.

A week's pay is limited by section 227 of the Act to £489 for this purpose.

2.10. Section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 as amended includes

(2) If, in the case of proceedings to which this section applies, it appears to the employment tribunal that—

(a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies,

(b) the employer has failed to comply with that Code in relation to that matter, and

(c) that failure was unreasonable,

the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 25%.

The section applies to unfair dismissal claims and the relevant code is the ACAS Code on Discipline and Grievances at Work. This discretionary power, if exercised, compensates the claimant to a greater extent than his losses. In my view s 124A has the effect that if I make a compensatory award which reaches either of the "caps" in s124 (1ZA), I should make the increases in addition to the cap. I cannot accept it was the intention of Parliament an employer who totally disregards the ACAS Codes and gives no one a statement of terms and conditions should pay no more than an employer who complies with both obligations but unfairly dismisses an employee in circumstances where an employee's compensation is capped.

3 Findings of Fact and Conclusions

3.1. After Mr McHugh left this morning, I heard the evidence of all three claimants given on affirmation. Each had prepared a thorough witness statement to which were exhibited a number of documents.

3.2. One of the documents was a share purchase agreement whereby the claimants' shares were purchased by Rothbury Securities Ltd on 22 December 2016 with payment by instalments over about a year. There is nothing in that document inconsistent with the claimants continuing to work as employees for the respondent doing the important work as engineer, transport manager, and accounts manager to enable the company to continue to operate .

3.3. Clause 8 imposes restrictions on the claimants for a period of 3 years beginning 22 December 2016 against conducting any business in competition with the company or being employed by any such business . I need not set out the full clause but it is at that point I would expect to see some reference to their continued employment being temporary if that were the intention of the parties at the time . There is nothing. As all the claimants point out, had they not had assurances of indefinite continued employment, they would not have entered into an agreement to sell their shares at a comparatively low price if they had thought for one moment they could be dismissed, as they were, with little or no notice and no redundancy payment or other recompense for the loss of jobs they had held for many years . The effect of the clause has been severely to limit each claimant's ability to mitigate loss.

3.4. As can be seen from para 18 of my earlier reasons quoted at page 4 above, I thought the argument Ms Widdett signalled that although there was no written agreement it was the understanding of both parties the claimants would retire when they received the final payment for their shares may be tenable . Having heard the claimants and read the documents I am completely convinced there was never any such understanding. All the claimants said there continued to be need for the work they did and there is no evidential basis for finding any of them were redundant. On the contrary, it now appears to me the respondent wanted to rid of the claimants to replace them with people of their own choosing. I find no basis for awarding any less than their full loss.

3.5. Turning to matters necessary for my calculations. The date of dismissal of Mr Kirkpatrick was the date of the email he received and read on 17 November. Although it was also sent to Mr Harris he did not receive it because he was on holiday and first found out about his dismissal on 24 November. Communication is essential so that is his end date. There was no attempt to follow the ACAS Code. Ms Stewart for reasons adequately set out in her witness statement gave up her job in response to breaches of the implied term of mutual trust and confidence and did so with effect from 29 December . She had expressed concerns before which would have triggered the ACAS grievance procedure but they were ignored. In each case a 25% increase is merited

3.6. Start dates of employment were Mr Harris 1 July 2002; Mr Kirkpatrick 1 June 2001 ; Ms Stewart 14 April 2008. Throughout their continuous employment each of them was over the age of 41.Their basic awards Mr Harris 22.5 weeks at £489 Mr Kirkpatrick 24 weeks at £489 ; Ms Stewart 13.5 weeks at £ 451.92 per week

3.7. They was never given a statement of terms and conditions of employment as required by s1 of the Act. The failure to do so has caused them and the Tribunal needless work of having to answer an argument about the start date of continuous

employment even though the argument had no merit. The higher amount under s 38 of the 2002 Act is merited .

3.8. None of the claimants have claimed any state benefits because they have capital assets and were of the opinion no such benefit would be payable to them .

3.9. Their gross and net week's pay respectively were Mr Harris £550 and £437.44; Mr Kirkpatrick £550 and £435 ; Ms Stewart £451.92 and £370.53. The weeks from dismissal from dismissal to the date of this hearing are Mr Harris, 58; Mr Kirkpatrick, 59 ; and Ms Stewart, 54.

3.10. Since dismissal Mr Harris has been unable to find work. This is unsurprising and not for want of trying. With his special skills and prevented from working for any similar companies in the area he has simply not been able to find work . In my judgment he will continue to be unable to find any such work for at least the next 52 weeks as the restrictive covenants will continue to bite until the end of 2019 and he will continue to be £ 437 per week worse off.

3.11. Mr Kirkpatrick is slightly more fortunate in that he has obtained sporadic casual driving work since dismissal and averaged £126.51 per week . Again I hold out no hope of him doing any better for at least the next 52 weeks so he will be £ 308.49 per week worse off.

3.12. Ms Stewart since her termination date has for the last 50 weeks earned £166.62 per week doing part-time bookkeeping, I believe it will be even longer, more like 60 weeks, before she is likely to do any better than that, during which she will be £ 203.91 per week worse off

3.13. I award each claimant £500 for loss of statutory rights. Adding all the loss calculations each claimant exceeded the 52 week's pay cap so their compensatory awards, before increases, were Mr Harris and Mr Kirkpatrick £550x52 = £ 28600 and Ms Stewart £451.92x52= £23499.84 and the s207A increase in each case 25% of that figure is Mr Harris and Mr Kirkpatrick £7150 and Ms Stewart £5874.76.

TM GARNON EMPLOYMENT JUDGE

SIGNED BY EMPLOYMENT JUDGE ON 10 JANUARY 2019

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): **2500575/2018, 2500576/2018 & 2500580/2018**

Name of case(s):	**Mr PG Harris** **Mr SR Kirkpatrick** **Ms LR Stewart**	v	**Priory Coach & Bus 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: **23 January 2019**

"the calculation day" is: **24 January 2019**

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

MISS K FEATHERSTONE
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.