



THE EMPLOYMENT TRIBUNALS

Claimants

Ms Kimberley Davison

Respondent

Tastybake (North East) Ltd

JUDGMENT (Liability and Remedy) **Empolymnet Tribunals Rules of Procedure 2013 –Rule 21**

1. The name of the respondent is amended to that shown above.
- 2 The claimant is entitled to a redundancy payment payable by the respondent ,on which no tax is payable, in the sum of £501.12.
- 3 The claim of breach of contract is well founded . I award damages on which no tax is payable to be paid by the respondent in the sum of £501.12.
4. The claim for compensation for untaken annual leave is well founded. I order the respondent to pay compensation gross of tax and National Insurance (NI) in the sum of £375.85
5. The Hearing listed for 1st April 2019 is cancelled.

REASONS

1. The claim is for a redundancy payment, breach of contract (notice pay) , and compensation for untaken annual leave. It was presented to the Tribunal on 26 December 2018 following a full period of Early Conciliation from 12 November to 12 December which tends to suggest the respondent was contacted by ACAS or at least ACAS tried its best to do so. The claim was served on 31 January 2019 on the respondent named as Tastybake (NE) Ltd at the address 1 Lloyd Court, Gateshead.

2.Those papers were returned by the Royal Mail marked “address inaccessible”. A company search revealed the existence of the respondent named above. At the direction of Employment Judge Buchanan on 11 February the claim was re-sent to the registered office address without changing the due date for the lodgement of a response which remained at 28 February. No response form was received but by email of 28 February from “Tastybake (NE) Ltd” the tribunal were informed the company “ *now in the process of being closed by companies house, the company no longer has any directors is no longer trading. Nor does it have any premises or assets anymore*”. The email is signed “*regards James*” .Zietsman and Du Toit t/a Berkshire Orthodontics-v-Stubington held a company may be served at any known address or place of business which includes the last known place of business.

3. On 13 October 2018 the claimant was dismissed when the business stopped trading at the place she worked. A Companies House search does not show formal insolvency procedures in force but does show there has been filed on 19 February a

directors application to have the company struck off. The claimant may be able to recover a redundancy payment from the Secretary of State but will only recover a notice and holiday pay if the company enters formal insolvency proceedings. She may wish to consider writing to the Registrar of Companies objecting to strike off

4. The claimant was born 26 June 1989. She started continuous employment on 31 March 2014. The law relating to redundancy payments is in Part XI of the Employment Rights Act 1996 (the Act). A claimant is entitled to 1 week's gross pay for every complete year of continuous employment during the whole of which she was over 22 but under 41. Her entitlement is 4 weeks. Her weekly pay was £125.28.

5. The common law provides a contract of employment may be brought to an end by reasonable notice. Dismissal without such notice is termed "wrongful". Damages are the amount of pay, net of tax and NI, due during the notice period (see Addis v The Gramophone Company) which was 4 weeks. Her net pay was probably the same as her gross as she was below the tax threshold .

6. The Working Time Regulations 1998 say in Regulation 14 that where a worker's employment is terminated during the course of a leave year, and on the date on which the termination takes effect the proportion she has taken of the leave to which she is entitled in the leave year differs from the proportion of the leave year which has expired, her employer shall make a payment in lieu of untaken leave . The claimant states she is entitled to 21 days untaken annual leave and, though she will have worked less than 7 days per week, I take her to mean she is owed at least 3 weeks pay. It is more important I issue a judgment before the respondent is struck off than that I ask the claimant for further information and risk delay .

T M Garnon EMPLOYMENT JUDGE
SIGNED BY EMPLOYMENT JUDGE ON 1 March 2019



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): **2503611/2018**

Name of case(s): **Miss K Davison** v **Tastybake NE 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 March 2019**

"the calculation day" is: **5 March 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.