EMPLOYMENT TRIBUNALS

Claimant: Mr L McLoughlin

Respondent: TAB Refractory Construction & Maintenance Co Ltd

HELD AT: Liverpool **ON:** 4 & 5 March 2019

BEFORE: Employment Judge Holbrook

REPRESENTATION:

Claimant: Miss A Johns, Counsel
Respondent: Mr G Isherwood, Consultant

JUDGMENT having been sent to the parties on 8 March 2019 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

INTRODUCTION

1. By an ET1 claim form presented to the Tribunal on 6 September 2018, Liam McLoughlin made claims against his former employer for unfair dismissal; wrongful dismissal; and unlawful deductions from wages (in relation to contractual sick pay).

2. An additional claim in respect of an alleged entitlement to accrued holiday pay was withdrawn at the outset of the hearing.

3. The Tribunal heard oral evidence and submissions over two days. The claimant gave evidence himself and three witnesses were called for the respondent. They were Simon Taberham (managing director); Duncan Jones (technical director); and Matthew Midgley (contract manager). In addition, the Tribunal admitted a sworn affidavit given my Emma O'Leary, a solicitor who had been engaged by the respondent to deal with the claimant's appeal against his dismissal. The Tribunal was also provided with a modest agreed bundle of documentary evidence.

FACTS

4. The principal events from which these proceedings arise are summarised below. However, for ease of presentation, additional facts are set out in the 'Conclusions' section of these reasons.

5. The respondent's business concerns the relining of large industrial aluminium melting furnaces. The company is a division of Pyrotek (a corporation based in the USA). The respondent operates globally, but its operations are managed from its offices in Warrington.

6. The claimant was employed in Warrington by the respondent as Purchasing and Logistics Manager. Mr McLoughlin's employment commenced in January 2008 and continued until his summary dismissal for gross misconduct on 1 June 2018.

7. Mr McLoughlin had progressed well in his career with the respondent. However, by 2017, it appears that senior managers were developing concerns about aspects of his performance. Part of Mr McLoughlin's role involved responsibility for the logistics of often high-value shipments of components for use in the respondent's operations overseas. Ensuring on-time delivery of such shipments was critical to the business, and errors risked incurring substantial contractual penalties and/or reputational damage. Errors by Mr McLoughlin had been identified, however: in March 2018 he failed to ensure that a large consignment reached its destination in Mozambique on time, causing delay to an important contract. He was also responsible for the delay of a further consignment of parts destined for Florida. Both errors could have had serious ramifications for the respondent's business. Luckily, though, any major adverse consequences of these mistakes were averted.

8. On 8 May 2018, Mr McLoughlin happened to see an email which had been sent to a number of colleagues two days previously by the respondent's managing director, Simon Taberham. The email had not been sent to Mr McLoughlin directly (and he had not been intended to read it). The email stated:

> "It's time to process the removal of Macca. Has anyone actually sat him down about the several instances of his failure to perform. I said to Lisa yesterday we need to start the process this week with a disciplinary hearing with the intent to finalize this when I am in the UK the week of 21st May."

9. The respondent accepts that the reference to "Macca" in this email was a reference to Mr McLoughlin.

10. Upon reading the email, Mr McLoughlin was evidently upset and, having made an excuse about needing to make childcare arrangements, he left the workplace soon afterwards. He visited his GP later that day and was signed off work for two weeks with a diagnosis of depression and work-related stress. The GP also prescribed medication for these conditions.

11. Later that same day, Mr McLoughlin notified the respondent that he had been signed off work because of stress. He also mentioned that he had seen Mr Taberham's email of 6 May. Following a subsequent conversation with Mr Tabenham, the manager to whom Mr McLoughlin had spoken called him back and asked him to return his company-issue laptop computer and mobile phone.

12. It appears that Mr McLoughlin's disclosure about having seen the email also precipitated a call-back from Mr Tabenham himself, who sought to assure Mr McLoughlin that it was not the respondent's intention to dismiss him. Instead, Mr Tabenham said that the respondent was considering a restructuring exercise which might result in a new role for Mr McLoughlin. However, Mr Tabenham was unable to discuss the specifics of what that role might be.

13. It seems that Mr McLoughlin was indeed reassured by his conversation with Mr Tabenham, and the subject of an early return to work was discussed. The parties disagree about the specifics of this discussion. However, it appears that Mr McLoughlin said that he would be able to return to work within the two-week period covered by his sick note, but the respondent told Mr McLoughlin that he would not be permitted to return to work during this period unless he was medically certified as fit to do so. In the event, Mr McLoughlin did not obtain a fit note from his GP. Nor did he return to work early. The respondent paid Mr McLoughlin statutory sick pay ("SSP") in respect of the period for which he had been signed off work.

14. Mr McLoughlin had requested a delay in the return of his company-issue mobile phone to the respondent. He did so because the phone contained some family photographs and other personal data which he wished to remove. The respondent allowed him an additional 24 hours to do this before the phone had to be returned. In the event, however, Mr McLoughlin had difficulty removing his personal data from the phone because it had a cracked screen and was not operating properly as a consequence. Mr McLoughlin says that, in the end, the only way he could remove his personal data from the phone was to restore it to its factory settings. He did so, and then returned the phone to the respondent. However, the inevitable consequence of doing this was that all the data on the phone was permanently deleted, including that relating to Mr McLoughlin's work activities. The factory reset also had the effect of blocking the respondent's access to the phone, although it did manage to divert incoming calls to an alternative number.

15. On 22 May 2018, Mr McLoughlin attended a return to work meeting with Mr Taberham at which he was questioned about the deletion of data from his company-issue mobile phone. Mr Taberham stated that Mr McLoughlin's actions in this regard may amount to gross misconduct, and Mr McLoughlin apologised. Asked about what he wanted going forward, Mr McLoughlin said that he could not go on with his role but that he wanted to continue working for the respondent. Mr McLoughlin was told that he was being suspended pending a possible disciplinary hearing or a new job role going forward. He voiced concern that a decision about his future with the respondent had been pre-determined, but was offered assurance that this was not the case. Later that day, Mr Taberham wrote to Mr McLoughlin to inform him that he was required to attend a further meeting, on 25 May, "pending investigation of issues discussed today". A copy of the minutes of the meeting which had just taken place was enclosed with that letter.

16. The meeting which took place on 25 May 2018 was a disciplinary hearing chaired by Mr McLoughlin's line manager, Matthew Midgley. Mr Midgley stated that wiping the company's mobile phone was an act of gross misconduct, for which Mr McLoughlin could be dismissed. In response, Mr McLoughlin said that he had not intended his actions to impact negatively on the respondent and that he had not acted out of malice – he had just wanted to remove his personal data from the phone. There was also discussion of the manner in which Mr McLoughlin had reacted upon seeing

Mr Taberham's email of 6 May, and Mr Midgley said he was worried about the risk of this pattern of behaviour being repeated in the future. Workload issues were also discussed: Mr Midgley said that he was concerned that Mr McLoughlin tended to let work build up and did not keep on top of things, with the result that errors had occurred.

17. On 29 May 2018, Mr Midgley wrote to Mr McLoughlin inviting him to attend an 'outcome meeting' on 1 June. The letter of invitation warned of the possibility that the disciplinary process might result in Mr McLoughlin's dismissal.

18. The outcome meeting duly went ahead on 1 June 2018 and Mr Midgley told Mr McLoughlin that he had decided to terminate his employment with immediate effect. This decision was confirmed by letter dated 4 June 2018, which stated that the reason for dismissal was:

> "Removing access to company mobile, wiping all data and locking making it unable to receive calls/messages therefore jeopardising ongoing business."

19. The letter of dismissal also recorded a number of conclusions which Mr Midgley had reached. In particular, he noted that Mr McLoughlin had accepted the allegations made against him; that he had not offered satisfactory responses in respect of concerns about his future conduct; and that he had stated he "cannot do the role".

20. Mr McLoughlin subsequently appealed against his dismissal and the respondent appointed an external solicitor, Emma O'Leary, to handle the appeal process on its behalf. Following an appeal hearing, Ms O'Leary wrote to Mr McLoughlin on 11 July 2018 to inform him that she had decided to uphold his dismissal.

LAW

21. Section 98 of the Employment Rights Act 1996 places the burden upon the respondent to show that the reason (or, if more than one, the principal reason) for dismissing the claimant was a potentially fair reason, being either one of the reasons set out in section 98(2), or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the claimant held. If the respondent can show that the principal reason for dismissal was indeed a potentially fair reason then, under section 98(4) of the 1996 Act, the Tribunal must go on to consider whether the dismissal was fair or unfair having regard to the reason shown by the respondent, and this will depend on whether in all the circumstances, including the size and administrative resources of the employer's undertaking, the respondent acted reasonably or unreasonably in treating the reason as sufficient for dismissing the claimant. The burden of proof at this stage is neutral as between the parties and the Tribunal must determine the question in accordance with equity and the substantial merits of the case.

22. In cases concerning conduct dismissals, it is well established following the principles laid down in the case of British Home Stores Ltd v Burchell [1980] ICR 303 (EAT) that, to be satisfied that an employee was validly dismissed for misconduct, the Tribunal must be satisfied that the employer believed the employee was guilty of the misconduct in question; that it had in mind reasonable grounds upon which to sustain that belief and, at the stage at which that belief was formed on those grounds, it had carried out as much investigation into the matter as was reasonable in the circumstances. If the Tribunal is satisfied on each of these matters, then it must find

the dismissal to have been fair if dismissal for the misconduct in question falls within the range of responses which a reasonable employer could make in the same circumstances.

CONCLUSIONS

Unfair dismissal

23. The primary question which I must determine is this: what was the reason – or (if there was more than one) the principal reason – for Mr McLoughlin's dismissal?

24. The respondent asserts that Mr McLoughlin's conduct in erasing work-related data from his company-issue mobile phone was the sole reason for its decision to dismiss him. Mr McLoughlin challenges this: he says that the incident involving the mobile phone was used as an excuse to dismiss him following Mr Taberham's concerns about his performance. Whilst I accept that Mr McLoughlin's conduct in respect of the mobile phone was a contributory factor in his dismissal, it must be remembered that the burden is on the respondent to prove, on the balance of probabilities, that this was indeed the sole or principal reason for the dismissal. In my view, however, the respondent has failed to discharge that burden.

25. The respondent asserts that Mr McLoughlin's actions amounted to gross negligence and that it was entitled to treat this as an act of gross misconduct in accordance with its internal disciplinary policy. Mr Midgley told me that the decision to dismiss Mr McLoughlin was his alone, and that it was made during the course of the outcome meeting held on 1 June 2018. Mr Midgley also told me that the decision had not been influenced by, or discussed in advance with, the respondent's managing director, Mr Taberham. Nor had Mr Midgley's own concerns about Mr McLoughlin's past performance been a factor in the decision to dismiss. Instead, Mr Midgley asserted that, prior to the meeting on 1 June, he had been hoping that Mr McLoughlin would show contrition for his actions and that he would offer assurances that the conduct would not be repeated. However, during the meeting, Mr McLoughlin appeared to take the view that his fate had already been sealed and, in Mr Midgley's view, he did little to engage with the process. Mr Midgley said that, for this reason, he had not felt reassured that Mr McLoughlin would not engage in similar conduct in the future.

26. I am not persuaded that the sole or principal reason for Mr Midgley's decision to dismiss Mr McLoughlin was as he stated it to be. Nor am I persuaded that the decision was arrived at free from Mr Taberham's influence.

27. I have reached this conclusion for the following reasons:

    27.1 It seems to me that there is clear evidence – in the form of Mr Tabenham's email of 6 May 2018 – that the respondent had a settled intention to dismiss Mr McLoughlin, and that that intention pre-dated the conduct for which he was ostensibly dismissed on 1 June 2018. Mr Tabenham asked me to accept that the reference in his email to "the removal" of Mr McLoughlin did not imply that Mr McLoughlin was to be dismissed, but rather that he was to be redeployed to an alternative role within the organisation. I regret that I did not find this aspect of Mr Tabenham's evidence credible: the interpretation he put forward does

not sit comfortably with the subsequent references in the email to Mr McLoughlin being subjected to a disciplinary process. Nor is it the plain and ordinary meaning of the words used. The email made no reference to any alternative role to which Mr McLoughlin might be redeployed, and Mr Tabenham has since offered little (if any) clarification about what he says he had in mind.

27.2 Mr Midgley also had concerns about Mr McLoughlin's performance. These concerns were discussed at the disciplinary hearing held on 25 May. He was also aware of the email sent by Mr Taberham – it was mentioned in the minutes of the disciplinary hearing – and it is improbable that these considerations did not influence Mr Midgley's decision in the disciplinary process. In addition, the meeting on 1 June at which Mr McLoughlin was dismissed had been described by Mr Midgley in the letter of invitation sent a few days previously as an "outcome meeting following disciplinary hearing". This suggests that, notwithstanding Mr Midgley's assertion to the contrary, a decision about Mr McLoughlin's future had been taken before that meeting occurred.

27.3 The severity of the disciplinary sanction imposed upon Mr McLoughlin also suggests that other considerations did influence Mr Midgley's decision. Given the respondent's assertion that Mr McLoughlin had been a valued member of staff, together with the fact that he had long service and an unblemished disciplinary record, a decision to summarily dismiss him solely because of the mobile phone incident would have been surprisingly harsh. It suggests that other factors also played a part in the decision.

27.4 The allegations which were the subject of the disciplinary proceedings were not clearly spelled out. However, the fact that performance issues were discussed as part of the disciplinary hearing (and were also referenced in the letter of dismissal) provides further indication that these issues were at least part of the reason for dismissal.

27.5 Finally, the close proximity in time between Mr Taberham's email of 6 May and the subsequent disciplinary proceedings casts doubt upon the true motivation for implementing those proceedings – as does the respondent's decision to ask Mr McLoughlin to return his company-issue laptop and mobile phone as soon as he notified the respondent that he had been signed-off work. The respondent's witnesses acknowledged that this was an unusual step for the respondent to take and that no other member of staff had been asked to do likewise when absent from work. Whilst I accept the possibility that the respondent was concerned about keeping in touch with Mr McLoughlin's business contacts, demanding the return of company-issue equipment can also be an indicator that the employer does not expect the employee to return to work at all.

28. The actual reason for dismissing Mr McLoughlin may well have been a potentially fair one – being a reason relating to his capability and/or performance. But that was not the ostensible reason for dismissal in this case, and I therefore consider the dismissal to have been substantively unfair. Clearly, no reasonable employer

would dress-up one potentially fair reason for dismissal as another. Mr McLoughlin's claim for unfair dismissal therefore succeeds.

Wrongful dismissal

29. Mr McLoughlin's actions in erasing all work-related data from his company-issue mobile phone were certainly ill-advised, and no doubt constituted misconduct. However, unless done maliciously, I do not consider these actions to constitute a repudiatory breach of Mr McLoughlin's contract of employment. I am not persuaded that Mr McLoughlin acted maliciously in this regard. Accordingly, I find that the respondent was not entitled to terminate his employment contract without giving him proper contractual notice.

Unlawful deductions from wages

30. Mr McLoughlin claims that he suffered an unlawful deduction from wages in respect of the period of sick leave he took between 9 May and 21 May 2018. The claim is based on the fact that Mr McLoughlin received SSP in respect of this period, which was less than his normal rate of pay.

31. Clause 12 of Mr McLoughlin's written contract of employment dealt with his entitlement to receive sick pay as follows:

> "Provided that the Company is satisfied with the reasons given for your absence you may be entitled to the following sick pay benefits which depending on your length of service are:-

Length of Service	**Full Pay Period**	**Half Pay Period**
Under 6 months	Nil, only SSP where applicable	Nil, only SSP where applicable
6 months to 1 year	1 week	1 week
1 year to 3 years	2 weeks	2 weeks
3 years to 6 years	4 weeks	4 weeks"

32. Whilst it is slightly odd that the above provision does not expressly provide for employees who (like Mr McLoughlin) have in excess of six years' service, it is clear that Mr McLoughlin had a basic contractual right to be paid at his full normal rate of pay for the first four weeks of sick leave. The respondent had no discretion as to whether or not to grant sick pay in these circumstances.

33. The respondent argued that, in the particular circumstances in question, Mr McLoughlin was not entitled to receive contractual sick pay, however. The reason was that, because Mr McLoughlin had said (soon after being signed off) that he was actually well enough to return to work, the respondent was not 'satisfied with the reasons given' for his absence.

34. The respondent had refused to permit Mr McLoughlin to return to work early without an appropriate fit note, and it was undoubtedly right to do so: if an employee has been medically certified as unfit to work, the employer should require that employee to stay away from work until they are certified as fit to return. However, the

employee should then receive sick pay in respect of the period of certification in accordance with their contractual rights. In determining whether sick pay is payable, the employer is not entitled to second-guess the appropriateness of the medical opinion which has given rise to the certification. Where (as in this case) an employee has been medically certified as unfit to work because of work-related stress and depression, but then expresses a view about his fitness which differs from that of his medical practitioner, the wise employer will err on the side of caution and accept the opinion of the medical expert.

35. In my judgment, the provision in clause 12 of the employment contract, which makes entitlement to sick pay conditional upon the respondent being 'satisfied' about the reasons given for the absence, must be confined to cases of short-term, self-certified sickness absence – and does not apply in cases where there is a medical certificate as to an employee's fitness to work. Mr McLoughlin is therefore entitled to be compensated for the deduction from wages he has claimed.

Remedies

36. The parties agree that the difference between the SSP Mr McLoughlin received in relation to his sickness absence in May 2018 and the net pay he would otherwise have received is £756.92. I award that amount in compensation for the unlawful deduction from wages.

37. The parties also agree that, if Mr McLoughlin was entitled to notice pay, the amount in question was £3,764.08. I award that amount in compensation for wrongful dismissal.

38. Turning to the appropriate remedy for unfair dismissal, I note that Mr McLoughlin seeks an award of compensation only. He does not wish to be reinstated or re-engaged. Compensation awarded for unfair dismissal comprises a basic award and a compensatory award. The amount of the basic award is ascertained by reference to a statutory formula, and section 123(1) of the Employment Rights Act 1996 provides that 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". The Tribunal may therefore reduce the amount of the compensatory award to reflect general considerations of fairness. For example, such a reduction may be made in the case of a procedurally unfair dismissal if the Tribunal is satisfied that the employee could nevertheless have been fairly dismissed at a later date or if the employer had followed a proper procedure. Reductions made in these circumstances are commonly referred to as "Polkey" reductions, following the case of Polkey v AE Dayton Services Limited (1988) ICR 142 (HL).

39. I have considered whether it is appropriate to make a Polkey reduction in this case, but I have concluded that it would be inappropriate to do so. Whilst it is arguable that the respondent might have been able to dismiss Mr McLoughlin fairly for reasons of capability and/or poor performance relating to his previous errors, that line of argument would require me to speculate as to what might have happened (had the respondent undertaken a fair disciplinary process in respect of such matters) to such an extent that I cannot safely make findings about what the likely outcome would have been.

40. On the other hand, I do consider that a reduction in compensation should be made to reflect Mr McLoughlin's contributory fault. Section 123(6) of the 1996 Act states that:

> *Where the Tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.*

41. There is an equivalent provision in section 122(2) for reduction of the basic award, and this gives a Tribunal wide discretion to reduce the basic award on the ground of any kind of conduct on the employee's part that occurred prior to the dismissal. In contrast, however, a reduction in the compensatory award under section 123(6) can only be justified if the conduct in question is shown to have caused or contributed to the employee's dismissal. In order to make such a reduction the Tribunal must be satisfied (1) that there is conduct which is culpable or blameworthy; (2) that the conduct actually caused or contributed to the dismissal; and (3) that it is just and equitable to reduce the award by the proportion specified. On the facts of the present case, I am persuaded that Mr McLoughlin's actions in erasing all work-related data from his company-issue mobile phone did contribute to the respondent's decision to dismiss him. I accept that Mr McLoughlin did not act maliciously or with intent to harm the respondent's business. However, his actions were nevertheless blameworthy, and I consider them to justify a reduction of 25% in both the basic and compensatory awards.

42. There are also circumstances in which the Tribunal may increase the amount of an award of compensation for unfair dismissal. Where it appears to the Tribunal that the employer has failed unreasonably to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures, section 207A of Trade Union & Labour Relations (Consolidation) Act 1992 gives the Tribunal power, if it considers it just and equitable in all the circumstances to do so, to increase any compensatory award it makes by up to 25%. In the present case, the respondent argues that it faithfully adhered to the ACAS Code of Practice. Although I accept that there was substantive compliance with most of the elements of the Code, I find that there was one significant failing: when Mr McLoughlin was notified that there was a disciplinary case against him, he was not given sufficient information about the alleged misconduct and its possible consequences to enable him to prepare to answer the case at the disciplinary hearing. Mr Tabenham's letter of 22 May 2018 merely informed Mr McLoughlin that he was required to attend "another meeting … pending investigation of issues discussed today". The letter did not make it clear that the meeting would be a formal disciplinary hearing, or that it may lead to Mr McLoughlin's dismissal. Moreover, whilst the letter enclosed a copy of the minutes of the meeting which Mr Taberham had had with Mr McLoughlin on 22 May, the minutes were not sufficient to notify Mr McLoughlin of the allegations he faced. Those allegations should have been clearly expressed in the letter itself. I consider that the respondent's failure to follow this aspect of the ACAS Code of Practice was unreasonable. It hindered Mr McLoughlin's ability to prepare for the disciplinary hearing and led to upset during the hearing itself. I therefore consider it appropriate to apply a 10% uplift to the compensatory award to take this failing into account.

43. The parties agree that the amount of the basic award in this case (following adjustment to take account of the claimant's contributory fault) is £3,429.00.

44. The parties also agree that the claimant's net loss of earnings from dismissal to the date of the hearing was £3,955.24. This figure takes account of the compensation now awarded for wrongful dismissal, as well as earnings from new employment. It does not take into account the amount of any state benefits which Mr McLoughlin has claimed in respect of this period (as those amounts will be subject to recoupment under the statutory scheme in that regard).

45. The respondent has not persuaded me that there has been any failure on Mr McLoughlin's part to mitigate his loss. I note that he commenced new employment on 24 July 2018, albeit at a lower rate of pay than that previously enjoyed. I am satisfied that Mr McLoughlin has maximised his earning potential since leaving the respondent's employment. However, when assessing compensation for future loss of earnings, it is appropriate to note that Mr McLoughlin could now take further steps to seek employment opportunities which would match those of his previous job in terms of remuneration. I therefore award him an additional 26 weeks' loss of earnings (rather than the 52 weeks he claimed). The parties agree that this amounts to £3,569.02.

46. This exercise produces a compensatory award of £7,524.26 which must then be adjusted: first to reflect the respondent's unreasonable failure to follow the ACAS Code of Practice (see paragraph 42 above); and, second, to reflect the claimant's contributory fault (paragraph 41). I therefore make an adjusted compensatory award of £6,207.52.

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Employment Judge Holbrook

Date 18 March 2019

REASONS SENT TO THE PARTIES ON

2 April 2019

FOR THE TRIBUNAL OFFICE

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): **2415000/2018**

Name of case(s): **Mr L McLoughlin** v **Tab Refractory Construction & Maintenance Co 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: 08 March 2019

"the calculation day" is: **09 March 2019**

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

MISS H KRUSZYNA
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.

Claimant **Mr L McLoughlin**

Respondent **Tab Refractory Construction & Maintenance Co Ltd**

ANNEX TO THE JUDGMENT (MONETARY AWARDS)

Recoupment of Benefits

The following particulars are given pursuant to the Employment Protection (Recoupment of Benefits) Regulations 1996, SI 1996 No 2349.

The Tribunal has awarded compensation to the claimant, but not all of it should be paid immediately. This is because the Secretary of State has the right to recover (recoup) any jobseeker's allowance, income-related employment and support allowance, universal credit or income support paid to the claimant after dismissal. This will be done by way of a Recoupment Notice, which will be sent to the respondent usually within 21 days after the Tribunal's judgment was sent to the parties.

The Tribunal's judgment states: (a) the total monetary award made to the claimant; (b) an amount called the prescribed element, if any; (c) the dates of the period to which the prescribed element is attributable; and (d) the amount, if any, by which the monetary award exceeds the prescribed element. Only the prescribed element is affected by the Recoupment Notice and that part of the Tribunal's award should not be paid until the Recoupment Notice has been received.

The difference between the monetary award and the prescribed element is payable by the respondent to the claimant immediately.

When the Secretary of State sends the Recoupment Notice, the respondent must pay the amount specified in the Recoupment Notice to the Secretary of State. This amount can never be more than the prescribed element of any monetary award. If the amount is less than the prescribed element, the respondent must pay the balance to the claimant. If the Secretary of State informs the respondent that it is not intended to issue a Recoupment Notice, the respondent must immediately pay the whole of the prescribed element to the claimant.

The claimant will receive a copy of the Recoupment Notice from the Secretary of State. If the claimant disputes the amount in the Recoupment Notice, the claimant must inform the Secretary of State in writing within 21 days. The Tribunal has no power to resolve such disputes, which must be resolved directly between the claimant and the Secretary of State.