



EMPLOYMENT TRIBUNALS

Claimant: Miss A Wilson

Respondent: Retirement Security Limited

Heard at: Liverpool

On: 4 December 2018

Before: Employment Judge Grundy

REPRESENTATION:

Claimant: In person

Respondent: Mr I McLane, Consultant

JUDGMENT ON REMEDY

The judgment of the Tribunal is that:

1. The respondent's application for postponement of the remedy hearing on the ground that an appeal has been lodged against the Tribunal's liability judgment is refused. The hearing has proceeded.
2. The Tribunal gives judgment for the claimant in the following sums:
 - (1) In respect of the basic award in the sum of £1,467;
 - (2) In respect of the compensatory award –
 - (i) With regard to the loss of statutory rights in the sum of £300;
 - (ii) In respect of continuing partial loss of wages to the date of hearing the Tribunal awards the sum of £7,773.50 calculated as ten months with continuing partial loss of £777.35 per month;
 - (iii) In respect of future loss of wages, for a period of six months, the sum of £4,664.10.
3. The Tribunal has no jurisdiction to order any sum in respect of stress, and the Tribunal has no jurisdiction to order return or restitution of possessions.

4. The Tribunal has no evidence upon which to order any mileage recoupment.
5. The total award which the respondent shall pay the claimant is £14,204.60.
6. The respondent's application for reduction to reduce the compensatory element of the award is refused.
7. Enforcement of the remedy judgment is stayed pending the final order of the Employment Appeal Tribunal.

REASONS

1. The respondent applied for a postponement and stay of the remedy hearing on the grounds that the respondent has issued an appeal against the judgment. The claimant has appeared in person and the application has been refused on paper and this morning on the grounds that the remedy hearing is not a complex matter and it is proportionate it having been listed with due expedition to deal with the matter, and the respondent may make application for a stay at the conclusion of the hearing.
2. The Tribunal is grateful to the parties for agreeing some of the headline figures in principle. So far as the basic award is concerned, the claimant was born on 24 December 2017. She was employed for two years. The rate of pay applicable to the calculation for the basic award is £489, therefore the total basic award calculates to £1,467.
3. The Tribunal heard submissions in respect of the figure awardable for loss of statutory rights. The respondent asserted a figure of £250. Given the short service of the claimant the respondent did not demure from the figure of £300 which the Tribunal awards.
4. So far as the continuing partial loss of earnings is concerned, the claimant amended her schedule and brought documents which were shown to the respondent, such that the parties were able to agree that the previous monthly income from employment with the respondent was £1,808.22. Given the claimant's current earnings, the ongoing monthly loss was agreed in principle at the figure of £777.35. Given there are ten months' loss to date the figure of loss to date in terms of earnings was agreed at £7,773.50. I am grateful that the parties took the time to agree in principle those figures.
5. So far as the future loss is concerned, I heard submissions from both parties in respect of that. The respondent sought the Tribunal to limit the claim to six months' future loss; the claimant invited the Tribunal to award eight months. Taking a holistic approach to the totality of the time that the claimant has been in employment and the time for which she may seek future higher paid employment, the Tribunal thought it reasonable to award six months in terms of future loss. The calculation of that is therefore $6 \times £777.35 = £4,664.10$.
6. As I indicated in the judgment, there is no jurisdiction to deal with stress and no jurisdiction, in my view, in terms of the limits of the evidence in respect of the

mileage claim. They were small amounts in terms of the grand scheme of things in any event.

7. The respondent invited the Tribunal to consider a reduction of compensation, particularly the compensatory aspect of the award, on two grounds: firstly, that the full disciplinary procedure been followed the claimant was likely to have been dismissed in any event by the respondent; and secondly, that the ACAS Code of Practice was not followed by the claimant. The respondent withdrew its tentative arguments regarding contributory fault.

8. The Tribunal heard submissions about these two matters, and the respondent drew to the Tribunal's attention that the claimant in effect deprived the respondent of the benefit of a full disciplinary process to examine the claimant's conduct by resigning after the investigation as no full disciplinary or appeal followed. The respondent submits that the likelihood of dismissal was high if the respondent had a reasonable belief in the claimant's misconduct. The respondent therefore considered that the loss of earnings should be limited to a period for the respondent to carry out a fair disciplinary procedure. I reject that argument. If the respondent was truly transparent about the claimant's alleged misconduct it would not be possible to assess if a fair dismissal would have followed following the investigatory stage. I have reconsidered the Tribunal's liability judgment and the decision in respect of the unfair constructive dismissal was based on the respondent's breach of trust and confidence even at that early stage, given the lack of transparency and the claimant's feeling that she was set up at that meeting, and that there was in effect a foregone conclusion to the termination of her employment. That is a view with which the Tribunal has some sympathy, so I reject the respondent's contention that there should be a reduction to a short period for a disciplinary process to take place.

9. Secondly, having regard to the ACAS Code, the respondent argues that there was a breach by the claimant in not raising a grievance, and the claimant resisted that by indicating to the Tribunal it was only after she made this claim that she had even heard of ACAS. Again, I cannot make a criticism of the claimant in failing to raise a grievance in the circumstances of the conclusions that I reached in the liability judgment. The claimant's case was that there was in totality an ambush and a set up at the investigatory meeting. That, in my judgment, does not lend itself to a person then trusting the employer to transparently air a grievance, so I have reached the conclusion that it would not be appropriate to reduce the award on that ground.

10. My conclusion is that the respondent should pay the totality of the award, which is £14,204.60. I understand that the respondent may wish to renew the application for a stay, so I will deal with that now.

11. The respondent applied for a stay in accordance with rule 66 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. The time for compliance, rule 66, provides:

“A party shall comply with a judgment or order for the payment of an amount of money within 14 days of the date of judgment or order unless, per rule 66,

(a) the judgment, order or any of these rules specifies a different date for compliance; or

(b) the Tribunal has stayed the proceedings or judgment.”

12. The respondent has lodged an application to the Employment Appeal Tribunal on 30 November 2018 in which they seek to appeal the liability judgment of this Tribunal. In accordance with what would be a just and proportionate view of where proceedings are up to I consider it appropriate to order a stay in terms of the payment of any amount of money pending the final order of the Employment Appeal Tribunal, so the enforcement of this remedy judgment is stayed.

Employment Judge Grundy

Date 30 April 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON

1 May 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): **2411048/2018**

Name of **Miss A Wilson** v **Retirement Security Ltd**
case(s):

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: **1 May 2019**

"the calculation day" is: **2 May 2019**

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

MR S ROOKE
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.