



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4103235/2015

Hearing Held at Dundee on 25 April 2019

Employment Judge: I McFatridge
Members: Mr W S Gray
Mr J Priestley

Mr D I Nutt

Claimant
Represented by:
Mr McLaren
Solicitor

Scottish & Southern Energy plc

Respondents
Represented by:
Ms Munro
Solicitor

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that:

1. the Judgment issued by the Tribunal on 20 February 2019 is varied as follows

(i) the gross amount payable by the respondents to the claimant in terms of section 117(3)(a) of the Employment Rights Act 1996 is the sum of Three Hundred and Sixty Five Thousand and Sixty Four Pounds and Thirty Four Pence (£365,064.34);

(ii) the Tribunal confirms the award of 52 weeks' pay in terms of Section 117(3)(b) of the said Act in the sum of Twenty Six Thousand, Four Hundred and Sixteen Pounds (£26,416); and

(iii) the total award made in terms of Section 117 of the Employment Rights Act 1996 is the gross amount of Three Hundred and Ninety One Thousand, Four Hundred and Eighty Pounds and Thirty Four Pence (£391,480.34).

E.T. Z4 (WR)

2. For the avoidance of doubt the respondents shall be entitled to deduct from such gross payment the amount of any PAYE Tax which they are legally required to deduct but that only provided

5 (i) any sums so deducted are paid to the relevant tax authorities within the appropriate statutory period;

(ii) The Claimant is provided with a calculation showing the amount of any such deductions that are made; and

10 (iii) if required by the claimant the respondents shall provide written proof to the claimant that any amount so deducted has been paid to the appropriate authorities at the appropriate time.

REASONS

1. The Judgment in this case was issued on 20 February 2019, in net terms and part 5 of the Judgment required the parties to revert to the Tribunal within 14 days with their calculation as to the grossed up sum which would
15 require to be paid to the claimant in order that the claimant obtained the net benefit of £226,352.14 after deduction of Tax. Since that date the parties have been in communication with each other with a view to agreeing this sum and reference is made to the preliminary hearing which took place on 18 April 2019. Following this a further preliminary hearing took place on 25
20 April. The parties confirmed their agreement on the gross sum which was due. This is based on the Scottish Tax Code being applicable. The parties were agreed that the legislation requires PAYE Tax to be deducted and that in terms of the PAYE Regulations this must be deducted on a month one non-cumulative basis. Given the agreement of the parties I took the view
25 the calculation being on this basis.

Interest

2. The claimant's representative indicated that he had been instructed to raise the question of interest by the claimant. He also referred to an e-mail in which he had suggested that in terms of the Employment Tribunals
30 (Interest) Order 1990 (as amended) he was entitled to interest for the net part of the award from February 2019. I indicated to the parties that unlike interest awarded under the regime for discrimination cases interest on

awards made under Section 117 did not require the Tribunal to calculate interest. My understanding of the regulations is that interest arises as a matter of law. In terms of Regulation 12 the Secretary of the Tribunals is required to cause a notice containing the decision day, the stipulated rate
5 of interest and the calculation day in respect of the decision concerned. It is no part of the role of the Employment Judge to become involved in any matter connected with the issue of this notice.

3. My understanding is that if such a notice were issued and either party wished to dispute the terms of this then, absent any agreement to vary it,
10 the appropriate route for them to take would be to apply for judicial review. For this reason I shall not make any specific ruling as to what the relevant decision day is in this case.

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30 **Employment Judge:**
Date of Judgment:
Entered in register:
and copied to parties

Ian McFatridge
29 April 2019
29 April 2019

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