



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M Johnston  
**Respondent:** Econ Engineering Limited

## JUDGMENT

The respondent's application dated **16th September 2019** for reconsideration of the judgment sent to the parties on **4th September 2019** is refused.

## REASONS

There is no reasonable prospect of the original decision being varied or revoked, because

1. The quantification of the awards was by consent.
2. The inclusion of overtime pay, as well as basic pay, within the award for wrongful dismissal is not necessarily wrong in law. Where the discretion to grant overtime cannot reasonably be exercised so as to exclude it altogether, it will be necessary to include it within the damages for breach of contract if the Claimant is to be put in the position he would have been in had he worked the period of notice to which he was contractually entitled. It is, in any event conceded that the overtime pay would properly be included in the calculation of compensation for unfair dismissal.
3. Whilst it is correct that within the damages for wrongful dismissal only the basic pay will be taxable as post employment notice pay, and the element in respect of overtime will not be so taxable, the difference to the overall result is not particularly substantial.
4. Both the gross basic pay and the net overtime pay ought to have been uplifted by 10 per cent under paragraph 5 of the original Judgment. This was not done.
5. There is no power for the Tribunal to order that the Respondent pay the damages for breach of contract in respect of basic pay net after

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deductions of tax and national insurance. The expression of this award as a gross sum is correct. It will nonetheless be regarded as satisfaction of the Tribunal judgment if the Respondent in fact makes the appropriate deductions and pays these sums over to the revenue before transmitting the balance to the Claimant (cf. *Barden v Commodities Research Unit International (Holdings) Limited* [2013] EWHC 1633 (Ch)).

6. In these circumstances there is in fact no reasonable prospect of the interests of justice requiring the overturning of a decision made with consent, even if that consent may, in part, have been inadvisably given.

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Employment Judge Lancaster

Date 25<sup>th</sup> November 2019