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EMPLOYMENT TRIBUNALS

Claimants: Miss L Fell, Mr W Jones, Mr C Johnstone, Mr N Skelton, Mr S Sisson, Mr JW Bil

First respondent: Tzar Developments Limited

Second respondent: Richmond Lodge and Park Homes Limited (in voluntary liquidation) c/o John Paul Bell, Liquidator, The Pinnacle, Third Floor, 73 King Street, Manchester, M2 4NG

Heard at: Carlisle Magistrates Court (in public) **On:** 23 December 2019
In chambers: 24 December 2019

Before: Employment Judge Hoey (sitting alone)

Representatives

For the claimant: Mr Jones (representing each of the 6 claimants)

For the first and second respondent: No attendance nor representation

RESERVED JUDGMENT

1. Miss Fell was unfairly dismissed. The first respondent also unlawfully deducted sums from her wages and breached her contract by not paying her notice pay. She is also due holiday pay in respect of accrued holidays.
2. The first respondent shall pay Miss Fell the following sums:
 - a. In respect of her claim for unfair dismissal, she is entitled to a basic award of £1485 (3 x £495) and a compensatory award of 2 week's wages in the sum of 2 x £392.49, namely £784.98 plus £400 in respect of loss of statutory rights. The total sum due is therefore £2669.98.
 - b. In respect of the failure to pay her notice pay, she is entitled to 3 week's notice pay in the sum of 3 x £495, namely £1485.
 - c. She suffered an unlawful deduction of a wage in the gross sum of £495.

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- d. She is also due 11 day's holiday pay, $2.2 \times £495$ which is the gross sum of £1089.
 - e. The Employment Protection (Recoupment of Benefits) Regulations 1996 apply to Ms Fell's unfair dismissal award.. For the purposes of regulation 4 of the Employment Protection (Recoupment of Benefits) Regulations 1996 the Tribunal states:
 - a. The monetary award grand total is £5738.98
 - b. The prescribed element is £392.49
 - c. The period to which the prescribed element is attributable is 17 January 2019 to 23 December 2019
 - d. The excess of total monetary award over prescribed element: £5346.49.
3. The first respondent breached Mr Jones's contract by not paying him notice pay. The first respondent also unlawfully deducted sums from his contract and failed to pay him in respect of accrued holidays.
4. The first respondent shall pay Mr Jones the following sums:
- a. A sum in respect of his notice pay of the gross sum of £540.
 - b. An unlawful deduction from his wages in the gross sum of £540
 - c. 1.8 week's holiday pay in the gross sum of £972.
5. Mr Johnstone was unfairly dismissed. The first respondent also breached his contract by not paying him notice pay due to him and unlawfully deducted sums from his wages. He is also due holiday pay in respect of accrued holidays.
6. The first respondent shall pay Mr Johnstone the following sums:
- a. In respect of his unfair dismissal claim, a basic award of £2032 ($4 \times £508$) and a compensatory award of 2 week's pay ($2 \times £436.83$), namely £873.66 plus £400 in respect of loss of statutory rights. The total sum payable is therefore £3305.66.
 - b. 5 week's pay in respect of notice pay, in the sum of $5 \times £562.50$ (gross) which amounts to £2812.50.
 - c. He suffered 1 week's pay being unlawfully deducted from wages due to him and he is awarded the sum of £562.50 (gross).
 - d. He is due 2.2 week's accrued holiday pay and is awarded $2.2 \times £562.50$ namely £1237.50 (gross).

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7. Mr Skelton was unfairly dismissed. The first respondent also breached his contract by not paying him notice pay but no losses were sustained and so no award is made. The first respondent unlawfully deducted sums from his wages. He is also due holiday pay in respect of accrued holidays.
8. The first respondent shall pay Mr Skelton the following sums:
 - a. In respect of his claim for unfair dismissal, the basic award amounts to £2540 (£508 x 5) and a compensatory award in the sum of £400. The total sum payable is therefore £2940.
 - b. He suffered an unlawful deduction from his wage in the gross sum of £540
 - c. He is due 2 week's accrued holidays and is awarded 2 x £540 (gross), namely £1080.
9. Mr Sisson was unfairly dismissed. The first respondent also breached his contract by not paying him notice pay but no losses were sustained and no award is made. The first respondent unlawfully deducted sums from his wages. He is also due holiday pay in respect of accrued holidays.
10. The first respondent shall pay Mr Sisson the following sums:
 - a. In respect of the claim for unfair dismissal, his basic award is 5 x £508, namely £2540 and compensatory award is £3248.82, (6 x £541.47) together with a sum in respect of loss of statutory rights in the sum of £400. The total sum payable is therefore £6188.82.
 - b. He suffered an unlawful deduction from his wage in the sum of 3 x £652.50, namely £1957.50 (gross).
 - c. He is due to be paid 2 week's accrued holiday in the gross sum of 2 x £652.50, namely £1305.
11. It is declared that pursuant to regulation 15 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"), Mr Sisson was an employee in respect of whom the first and second respondent failed to comply with their obligations arising pursuant to TUPE by failing to elect appropriate representatives (and by failing to inform and consult) in respect of all affected employees (all staff of the second respondent at the time of transfer). Mr Sisson was an employee affected by the transfer from the second respondent to the first respondent. In terms of regulation 15(9) of TUPE the first and second respondent are jointly and severally liable to pay Mr Sisson 13 week's pay, namely £8482.50 (13 x £652.50) which is appropriate compensation.

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12. Mr Bil was unfairly dismissed. The first respondent also breached his contract by not paying him notice pay due to him but no losses were sustained and so no award is made. The first respondent unlawfully deducted sums from his wages. He is also due holiday pay in respect of accrued holidays.
13. The first respondent shall pay Mr Bil the following sums:
- a. In respect of the basic award, he is entitled to $7.5 \times £508$ which amounts to £3810 and in respect of the compensatory award he is awarded £400. The total sum payable is therefore £4210.
 - b. He suffered unlawful deductions from his wages amounting to 6 weeks' pay, namely the gross sum of £3510.
 - c. He is due accrued holidays in the sum of $0.28 \times £585$, namely the gross sum of £163.80.
14. It is declared that pursuant to regulation 15 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"), Mr Bil was an employee in respect of whom the first and second respondent failed to comply with their obligations arising pursuant to TUPE by failing to elect appropriate representatives (and by failing to inform and consult) in respect of all affected employees (all staff of the second respondent at the time of transfer). Mr Bil was an employee affected by the transfer from the second respondent to the first respondent. In terms of regulation 15(9) of TUPE the first and second respondent are jointly and severally liable to pay Mr Bil 13 week's pay, namely £7605 which is appropriate compensation.

Introduction

2. There are 6 claimants each of whom raised different claims. Each claimant raised claims against the first respondent and some also against the second respondent (in respect of alleged failures to comply with the Transfer of Undertakings (Protection of Employment) Regulations 2010).
3. Each of the claimants appeared, with Mr Jones taking the lead. Neither respondent appeared nor was represented, despite attempts to contact them. The hearing proceeded, the parties having been advised as to the location and time of the hearing.
4. It was noted that the second respondent had gone into members' voluntary liquidation and so their designation is altered as per above.
5. At the case management preliminary hearing each claimant had set out their specific claims and the Note issued following that hearing articulated the claims.
6. The claimants had worked together to ensure the bundle contained the relevant documents and witness statements were lodged.

Issues

7. The issues arising are as follows:

Unfair dismissal and redundancy

- (i) For those claimants bring a claim for unfair dismissal, was there a fair reason for dismissal?
- (ii) Was the dismissal fair or unfair in accordance with section 98(4) of the Employment Rights Act 1996 (“ERA”), and, in particular, did the respondent in all respects act within the so-called ‘band of reasonable responses’?
- (iii) Finally, if the Tribunal finds that the reason for the dismissal was because there was a redundancy situation, what redundancy payment is the relevant claimant entitled to?

Unpaid annual leave – Working Time Regulations

- (iv) When the claimant’s employment came to an end, was s/he paid all of the compensation s/he was entitled to under regulation 14 of the Working Time Regulations 1998?

Unauthorised deductions

- (v) For each of the claimants it is alleged that no pay was given for the period 14 December 2018 until dismissal was communicated (on 17 January 2019). Did the respondent make unauthorised deductions from the claimant’s wages in accordance with ERA section 13 by failing to pay the claimants for this period?
- (vi) For those claimants also seeking repayment of their week’s lying time, the Tribunal will require to determine whether such a payment was due to the claimant, and if so, how much should be awarded.

Breach of contract

- (vii) To how much notice was each claimant entitled and what, if any, mitigation is to be taken into account? This will be the statutory notice period set out in section 86 of the Employment Rights Act 1996.

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- (viii) For those claimants alleging a breach of TUPE 2006, the Tribunal will require to determine whether an award should be made in respect of Regulation 15. In this regard, the Tribunal will require to determine:
- a. Was there a TUPE transfer when the first respondent assumed control of the second respondent (which appears to be accepted by the first respondent)?
 - b. Was the claimant an “affected employee”?
 - c. Did the first/second respondent fail to inform the claimant of the relevant information and elect representatives in terms of Regulation 13 and 14.

Claims being advanced

8. I clarified with each of the claimant and it was agreed that the following claimants are raising the following claims:
9. Mr Bil, under claim reference number 2404569/2019, is claiming:
- Unfair dismissal
 - Breach of regulations 13 and 14 of TUPE
 - Notice pay
 - A redundancy payment
 - Unlawful deduction of wages
 - Accrued holidays
10. Mr Jones, under claim reference number 2402468/2019, is claiming:
- Notice pay
 - Unlawful deduction of wages
 - Accrued holidays
 - A week’s lying time
11. Mr Sisson, under claim reference number 2402957/19, is claiming:
- Unfair dismissal
 - Breach of regulations 13 and 14 of TUPE
 - Notice pay
 - A redundancy payment
 - Unlawful deduction of wages
 - Accrued holidays
12. Miss Fell, under claim reference number 2402504/19, is claiming:
- Unfair dismissal
 - Notice pay
 - A redundancy payment
 - Unlawful deduction of wages

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- Accrued holidays

13. Mr Skelton, under claim reference number 2402847/19, is claiming:

- Unfair dismissal
- Notice pay
- A redundancy payment
- Unlawful deduction of wages
- Accrued holidays

14. Mr Johnstone, under claim reference number 2402506/2019, is claiming:

- Unfair dismissal
- Notice pay
- A redundancy payment
- Unlawful deduction of wages
- Accrued holidays

Evidence

15. The Tribunal heard evidence from each claimant and was referred to a bundle of productions which had 5 sections each of which was numbered separately. Each claimant had produced a written witness statement. On some occasions the oral evidence superseded the written evidence and I preferred the oral evidence.

16. Neither respondent was in attendance nor represented and so the claimant's evidence was unchallenged. Nevertheless I asked relevant questions to focus the issues and to understand the factual position. While response forms had been lodged in respect of some of the claims, the claimants' evidence was unchallenged and I found each claimant to be credible and reliable.

17. I make the following findings of fact from the evidence that was presented to the Tribunal.

General position

18. Each of the claimants was originally employed by the second respondent.

19. Each claimant had a contract of employment which set out their job role and pay. They were hourly paid but with a minimum number of hours set out. They each worked a 5 day week.

20. The undertaking that was being carried out by the second respondent transferred to the first respondent before 17 January 2019 which assumed

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control of the business and all staff around that date. Each of the staff who were employed by the business transferred.

21. It appeared to be accepted by the respondents in correspondence that there was a relevant transfer for the purposes of the Transfer of Undertaking (Protection of Employment) Regulations 2010. There was no attempt by any respondent to comply with the information and consultation obligations in respect of the affected staff.
22. Each of the claimants' employment (and associated liabilities) transferred to the first respondent.
23. Each of the claimants received a letter on 17 January 2019 bearing to be from "Mr D Pearson, Tzar Luxury Lodges". That letter referred to the "change of ownership". The letter dismissed each claimant unilaterally and summarily.
24. Each claimant was therefore dismissed on 17 January 2019 summarily. There had been no discussion nor procedure leading up to each claimant's dismissal.
25. There was no evidence before the Tribunal to suggest that any of the claimants could have been fairly dismissed or to suggest they would have been dismissed fairly at some point following their summary dismissal.

Miss Fell

26. Miss Fell was employed originally by the second respondent as a painter and decorator with effect from 13 April 2015.
27. In the 17 January 2019 letter she received she was dismissed unilaterally and summarily when she was 33 years old.
28. Ms Fell earned £495 gross a week and £392.49 net a week
29. Ms Fell secured another role following her summary dismissal with effect from 22 February 2019. That job paid a higher rate of pay than she earned with the second respondent.
30. Ms Fell also received universal credit from January to March 2019 in the sum of £109.95 a week (for 12 weeks). She received the total sum of £2291.44.
31. Ms Fell was due to receive 3 week's statutory notice but did not receive it.
32. Ms Fell was due to be paid a week's pay in respect of her last week's pay (which was essentially a week's lying time). She did not receive this.

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33. As at the date of termination, Ms Fell had accrued 11 day's holidays, in respect of which no payment had been made.

Mr Jones

34. Mr Jones was employed as a joiner from January 2018. His employment ended when he was summarily dismissed by letter which he received on 17 January 2019.

35. Mr Jones's gross weekly pay was £540 and his net pay was £421.

36. Mr Jones was due 1 week's notice which he did not receive.

37. He was also due to receive 1 week's lying time which was outstanding upon termination of his employment.

38. Mr Jones had also accrued 9 day's holidays as at the termination of his employment, in respect of which no payment had been received.

Mr Johnstone

39. Mr Johnstone was employed by the first respondent with effect from 6 January 2014 as a joiner.

40. His gross weekly pay was £562.50 and his net weekly pay was £436.83.

41. Mr Johnstone was dismissed on 17 January 2019 summarily when he was 26 years old and had 5 year's service.

42. Mr Johnstone secured another job on 6 March 2019 which earned a similar (if not greater) amount than he did with the respondents.

43. Mr Johnstone was due to receive 5 week's notice which he did not receive.

44. Mr Johnstone was also due 1 week's lying time which was not paid to him.

45. As at the date of termination of his employment, he had accrued 11 day's holidays in respect of which no payment was made.

Mr Skelton

46. Mr Skelton was employed by the first respondent as a joiner.

47. Mr Skelton's gross pay was £540 and his net pay was £421.

48. Mr Skelton was dismissed summarily on 17 January 2019 at which point he was aged 34 with 5 complete year's service.

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49. Mr Skelton secured alternative employment effective immediately following his dismissal.
50. Mr Skelton was due to receive 5 week' notice which he was not given.
51. He was also due to be paid 1 week's lying time which was not paid to him.
52. As at the date of termination Mr Skelton had accrued 10 day's holidays which had not been paid to him.

Mr Sisson

53. Mr Sisson was employed as an electrician from 6 January 2014 until 17 January 2019.
54. His gross weekly pay was £652.50 and his net weekly pay was £541.47.
55. Mr Sisson had 5 complete year's service as at the date of his dismissal and was aged 38.
56. Mr Sisson secured another job on 26 February 2019 which earned the same or more than he earned with the respondent.
57. There was no election of representatives in respect of the TUPE transfer from the second to the first respondent. Further, at no stage was any information provided to Mr Sisson in connection with the transfer and no consultation took place. Mr Sisson was an affected employee given his employment transferred. There was no attempt by his employer to comply with any of their obligations under TUPE.
58. Mr Sisson was due 5 week's notice which was not given to him.
59. There were 3 week's wages outstanding and due to Mr Sisson in respect of the period 10 December 2018 to 17 January 2019 in respect of which no payment had been made.
60. Mr Sisson had also accrued a total of 2 week's holiday entitlement which was outstanding upon termination of his employment.

Mr Bil

61. Mr Bil was employed as a painter and decorator from 7 January 2014 until 17 January 2019.
62. His gross weekly pay was £585 and his net weekly pay was £461.28.
63. As at the date of his dismissal, Mr Bil was 62 with 5 complete year's service.

64. He secured another role yielding the same or more pay than he earned from the respondent immediately following his dismissal.
65. There was no election of representatives in respect of the TUPE transfer from the second to the first respondent. Further, at no stage was any information provided to Mr Bil in connection with the transfer and no consultation took place. Mr Bil was an affected employee given his employment transferred. There was no attempt by his employer to comply with any of their obligations under TUPE.
66. Mr Bil was due 5 week's notice which was not given to him.
67. Mr Bil was also due to be paid 6 week's pay, comprising 1 week's lying time and 5 week's pay, which sums were outstanding upon termination of his employment.
68. He had also accrued 1.4 day's holidays which were outstanding as at the date of termination of his employment.

Law

Unfair dismissal

69. In terms of section 94 of the Employment Rights Act 1996 an employee (with 2 year's service) has the right not to be unfairly dismissed by his employer.
70. Section 98 sets out the law in relation to unfair dismissal. In essence it is for the employer to show the dismissal was for a potentially fair reason (such as redundancy) and then a fair procedure should be followed. Whether or not the dismissal is fair depends upon the reason shown and is judged by applying the standards of a reasonable employer taking account of equity, substantial merits and the size and resources of the employer.
71. In the event of a successful claim, section 119 sets out the entitlement to a basic award which is calculated in the same way as a redundancy payment (with a cap on a week's pay). Where a basic payment is ordered, there is no entitlement to a redundancy payment.
72. Section 123 sets out the entitlement to a compensatory award which is such amount as is just and equitable flowing from the dismissal. Such an award is about compensating the employee for losses sustained as a result of the dismissal (and not punishing the employer). It is capped at the lesser of the statutory cap (in this case £83,682) or 52 week's gross pay. Claimants should mitigate their loss by seeking other work and where such work is obtained, that is taken into account in calculating compensation.

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73. If there is evidence that the employee would have been dismissed in any event or that the employee contributed to their dismissal that should be taken into account. Ultimately any compensation should be just and equitable.

Wrongful dismissal

74. Under the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 a claimant can seek payment of contractual sums due which are outstanding upon termination of employment. That can include payment of notice pay. There is a cap of £25,000 in respect of this claim.

75. Notice to be given to an employee must not be less than the statutory minimum which is set out at section 86 of the Employment Rights Act 1996, which is 1 week for complete year of employment, up to a maximum of 12 weeks following 12 complete years' service and beyond.

76. Any sums earned by the claimant during the notice period require to be taken into account in the assessment of the sums due to the employee. This is because the claim for wrongful dismissal (pay during the notice period that ought to have been given) is a claim for damages for breach of contract.

Unlawful deduction of wages

77. Under section 13 of the Employment Rights Act 1996, where the sum paid to a worker is less than the sum properly payable under the contract, the Tribunal can make a declaration to that effect and order repayment of the sum that was deducted. Failure to pay any sum is a deduction (of 100%).

Accrued holidays

78. Workers are entitled to accrued holidays in terms of regulations 13 and 13A of the Working Time Regulations 1998. Holiday entitlement can also arise by virtue of the contract (which cannot provide a lesser entitlement than that arising under the Regulations).

79. Where a worker's employment ceases during a leave year if the worker has not received all holidays to which they are entitled, an award can be made in respect of the accrued holiday entitlement - see regulation 14. Holidays are calculated in terms of a proportion of a week's pay.

TUPE

80. The Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE') contains obligations where there has been a relevant transfer (a transfer of an economic entity that retains its identity or a service provision change).

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81. Regulation 14 requires the employer to elect representatives to provide information and conduct relevant consultations (as set out in regulation 13). A failure to elect representatives can give rise to a penalty in terms of regulation 15 which could result in a penalty of up to 13 week's pay being awarded – see **Susie Radin** 2004 ICR 893. If there has been some compliance with the obligations, the sum awarded can be less.
82. A failure to comply with TUPE can result in both outgoing and incoming employers being jointly and severally liable – see regulation 15(9).

Decision and reasons

83. I now turn to the claims raised by each claimant. I considered the information available to me, including the claim forms and response forms together with the oral and written evidence was presented. Each of the claimants provided evidence which I accept.
84. As each of the claimants who claim unfair dismissal were successful, they do not receive a redundancy payment, as this is extinguished by the award of a basic award as part of the unfair dismissal award.
85. It also became clear that there were no time limit issues arising as each of the claims that had been raised had been raised within the statutory timeframe (taking account of the early conciliation provisions).

Miss Fell

86. Miss Fell was unfairly dismissed. I find that there was no potentially fair reason for her dismissal, her dismissal being summary and without any procedure having been followed. There was no challenge to her (or any of the other) evidence in connection with the dismissal. While it has been asserted in the pleadings lodged by the respondent that the reason was redundancy there was no evidence before me to substantiate that. The claimant was dismissed essentially “out of the blue” (as were all the claimants). The dismissal was unfair.
87. She is entitled to compensation.
88. In respect of the basic award, she is entitled to 3 (as she was 33 with 3 year's service) x £495 (her gross weekly pay), namely £1485.
89. In connection with a compensatory award, the compensation should be such amount as is just and equitable flowing from the dismissal. As she secured another role paying the same or greater amount on 22 February 2019, she has lost 5 week's wages, but I have compensated 3 of those 5 weeks by awarding 3

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weeks notice below leaving 2 week's compensatory award due to the claimant in the net sum of 2 x £392.49, namely £784.98.

90. I also award the sum of £400 in respect of loss of statutory rights.
91. Miss Fell is entitled to 3 week's notice pay in the gross sum of 3 x £495, namely £1485. I have calculated this sum gross given the impact of the post employment notice pay provisions to ensure the sum the claimant receives is correct.
92. Miss Fell is also entitled to a week's pay in respect of her last week's pay (which is lying time). The claimant received a sum by way of wages which was less than that properly payable to her. She therefore suffered an unlawful deduction of her wage in the gross sum of £495.
93. Finally, Miss Fell had accrued 11 day's holiday as at the termination of her employment. 11 days amounts to 2.2 weeks. She is therefore due 2.2 x £495 which is £1089 gross.
94. As Miss Fell was in receipt of relevant benefits for the period covered by the compensatory award to the date of the Hearing, the recoupment provisions apply. For the purposes of regulation 4 of the Employment Protection (Recoupment of Benefits) Regulations 1996 the Tribunal states:
- a. The monetary award grand total is £5738.98
 - b. The prescribed element is £392.49
 - c. The period to which the prescribed element is attributable is 17 January 2019 to 23 December 2019
 - d. The excess of total monetary award over prescribed element: £5346.49.
95. Miss Fells and the respondents should read the annex in relation to recoupment and the procedure following this judgment.

Mr Jones

96. Mr Jones is entitled to 1 week's notice pay and I award him the sum of £540.
97. He is also due a week's pay in respect of the failure of the respondent to pay him the sum due to him upon termination of his employment, namely £540 gross.
98. Mr Jones is also entitled to a sum in respect of 9 day's accrued holidays. That amounts to 1.8 weeks and so he is entitled to 1.8 x £540 namely £972 gross.

Mr Johnstone

99. Mr Johnstone was not dismissed for a potentially fair reason. He was therefore unfairly dismissed. There was no evidence to support the assertion that his dismissal was for a potentially fair reason or that his employment would have ended in any event. The dismissal was both procedurally and substantively unfair.
100. In respect of a basic award he was aged 25 at the date of his dismissal and had acquired 5 year's service. His basic award is therefore 4 x £508 (cap), namely £2032.
101. In respect of the compensatory award he had secured another job on 6 March 2019 earning the same or more he did with the respondents. He thus lost 7 week's pay. As 5 weeks of this is covered in his notice pay below, he is awarded 2 week's pay (the balance due to him) in the sum of 2 x £436.83, namely £873.66.
102. He is also awarded the sum of £400 in respect of loss of statutory rights.
103. Mr Johnstone is due to be paid 5 week's pay in respect of notice pay and I award him 5 x £562.50 (gross) which amounts to £2812.50.
104. He is also due 1 week's gross pay in respect of his final week of work, which was unlawfully deducted from the sums due to him. He is therefore awarded £562.50 (gross).
105. Mr Johnstone had accrued 11 days holiday as at the termination date. This amounts to 2.2 weeks. He is therefore awarded 2.2 x £562.50 namely £1237.50.

Mr Skelton

106. Mr Skelton was not dismissed for a potentially fair reason. He was therefore unfairly dismissed. From the evidence before me his dismissal was both substantively and procedurally unfair with no suggestion that his employment would have ended (fairly) sooner.
107. In respect of the basic award, he was aged 34 at his dismissal with 5 complete year's service. His basic award is therefore £508 (the statutory cap on a week's pay as at the date of dismissal) x 5, namely £2540.
108. As Mr Skelton secured another role effective immediately upon dismissal earning the same, if not more, than he earned with the respondent, he is only awarded loss of statutory rights in the sum of £400.

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109. As he secured another role during his notice period he suffered no loss and he is not entitled to any damages for breach of contract in respect of his notice pay.
110. Mr Skelton is entitled to a week's pay in respect of his last week's pay (which is lying time). He confirmed he received all other sums due to him. He therefore suffered an unlawful deduction of his wage in the gross sum of £540
111. Mr Skelton had accrued 10 day's holidays (2 weeks) as at the date of termination. He is therefore awarded 2 x £540 (gross), namely £1080.

Mr Sisson

112. Mr Sisson was not dismissed for a potentially fair reason. He was therefore unfairly dismissed. As with the other claimants, from the evidence before the Tribunal, his dismissal was both procedurally and substantively unfair with no reduction due or suggestion that his dismissal would have occurred in any event.
113. In respect of the claim for unfair dismissal, the basic award is 5 x £508, namely £2540.
114. In respect of the compensatory award, as Mr Sisson secured another job role on 26 February 2019 (receiving the same or more pay) he lost 6 week's pay. He is therefore awarded 6 x £541.47, namely £3248.82 together with a sum in respect of loss of statutory rights in the sum of £400.
115. As there was no attempt at all by the respondents to comply with TUPE in terms of electing a representative (nor complying with the information and consultation provisions) I award the sum of 13 week's pay, 13 x £652.50, namely £8482.50 in respect of the failure to comply with TUPE. Both respondents are jointly and severally liable to pay this.
116. Mr Sisson is due 5 week's notice but this is included in the compensatory award set out above (following which he secured another role) and so no separate award is made in respect of notice pay,
117. Mr Sisson is due to be paid 3 week's wages which were outstanding as at the date of termination for the period from 10 December to 17 January. That amounts to an unlawful deduction of a wage and he is due to be paid 3 x £652.50, namely £1957.50 (gross).
118. Mr Sisson had accrued 2 week's holiday upon termination of his employment and is due the gross sum of 2 x £652.50, namely £1305.

Mr Bil

119. Mr Bil was not dismissed for a potentially fair reason. He was therefore unfairly dismissed. His dismissal, as for each of the claimants, was procedurally and substantively unfair. There was no evidence to support the assertion that he was dismissed for a potentially fair reason or that compensation should be reduced for any reason.
120. In respect of the basic award, given he was aged 62 at dismissal with 5 complete years' service, he is entitled to $7.5 \times £508$ which amounts to £3810.
121. In respect of the compensatory award, as Mr Bil secured another role at the same rate of pay from the termination date, I award him the sum of £400 in respect of loss of statutory rights.
122. I am satisfied that there was a complete failure to comply with TUPE by the respondents in this case. There were no elections nor any attempt to communicate the relevant information. I consider it just to award 13 week's gross pay, namely £7605. Both respondents are jointly and severally liable to pay this.
123. As the claimant secured another role immediately upon cessation of his employment, which sum were equal to or greater than this pay with the respondents, he is not entitled to damages for non-payment of his notice pay.
124. He is due 1 week's pay in respect of his week's lying time plus 5 week's pay which was not paid to him. Those sums were properly payable to the claimant in terms of his contract and were not paid to him and as such were unlawfully deducted. He is accordingly awarded the gross sum of £3510.
125. The claimant accrued 1.4 days holiday as at the termination of his employment. That amounts to 1.4 divided by 5 ie 0.28 weeks. He is therefore awarded the sum of $0.28 \times £585$, namely £163.80.

Summary

126. The first respondent shall pay Miss Fell the following sums:
- a. In respect of her claim for unfair dismissal, she is entitled to a basic award of £1485 ($3 \times £495$) and a compensatory award of 2 week's wages in the sum of $2 \times £392.49$, namely £784.98 plus £400 in respect of loss of statutory rights.
 - b. In respect of the failure to pay her notice pay, she is entitled to 3 week's notice pay in the sum of $3 \times £495$, namely £1485.
 - c. She suffered an unlawful deduction of a wage in the gross sum of £495.

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- d. She is also due 11 day's holiday pay, 2.2 x £495 which is the gross sum of £1089.
 - e. The unfair dismissal compensatory award is subject to recoupment as set out above.
127. The first respondent shall pay Mr Jones the following sums:
- a. A sum in respect of his notice pay of the gross sum of £540.
 - b. An unlawful deduction from his wages in the gross sum of £540
 - c. 1.8 week's holiday pay in the gross sum of £972.
128. The first respondent shall pay Mr Johnstone the following sums:
- a. In respect of his unfair dismissal claim, a basic award of £2032 (4 x £508) and a compensatory award of 2 week's pay (2 x £436.83), namely £873.66 plus £400 in respect of loss of statutory rights.
 - b. 5 week's pay in respect of notice pay, in the sum of 5 x £562.50 (gross) which amounts to £2812.50.
 - c. He suffered 1 week's pay being unlawfully deducted from the sums due to him and he is awarded the sum of £562.50 (gross).
 - d. He is due 2.2 week's accrued holiday pay and is awarded 2.2 x £562.50 namely £1237.50 (gross).
129. The first respondent shall pay Mr Skelton the following sums:
- a. In respect of his claim for unfair dismissal, the basic award amounts to £2540 (£508 x 5) and a compensatory award in the sum of £400.
 - b. He suffered an unlawful deduction of his wage in the gross sum of £540
 - c. He is due 2 week's accrued holidays and is awarded 2 x £540 (gross), namely £1080.
130. The first respondent shall pay Mr Sisson the following sums:
- a. In respect of the claim for unfair dismissal, his basic award is 5 x £508, namely £2540 and compensatory award is £3248.82, (6 x £541.47) together with a sum in respect of loss of statutory rights in the sum of £400.
 - b. He suffered an unlawful deduction from his wage in the sum of 3 x £652.50, namely £1957.50 (gross).

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- c. He is due to be paid 2 week's accrued holiday in the gross sum of 2 x £652.50, namely £1305.
131. The first and second respondent are jointly and severally liable to pay Mr Sisson 13 week's pay, 13 x £652.50, namely £8482.50 in respect of the failure to comply with TUPE.
132. The first respondent shall pay Mr Bil the following sums:
- a. In respect of the basic award, he is entitled to 7.5 x £508 which amounts to £3810 and in respect of the compensatory award he is awarded £400.
 - b. In respect of the failure to comply with TUPE he is awarded 13 week's gross pay, namely £7605.
 - c. He suffered unlawful deductions from his wages amounting to 6 weeks, namely the gross sum of £3510.
 - d. He is due accrued holidays in the sum of 0.28 x £585, namely £163.80.
133. The first and second respondent are jointly and severally liable to pay Mr Bil 13 week's pay, £7605 in respect of the failure to comply with TUPE.

Employment Judge Hoey

Dated: 7 January 2020

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JUDGMENT SENT TO THE PARTIES ON

28 January 2020

FOR THE TRIBUNAL OFFICE

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NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case numbers: **2402504/2019 & Others**

Name of cases: **Miss L Fell** v **Tzar Developments**
& Others **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: 28 January 2020

"the calculation day" is: 29 January 2020

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

MR S ARTINGSTALL
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.

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Claimant: Miss L Fell (case 2402504/19 only)

Respondent: Tzar Developments Limited

**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.