



# EMPLOYMENT TRIBUNALS

**Claimant:**  
Ms I Opalkova

v

**Respondent:**  
Acquire Care Ltd

**Heard at:** Reading

**On: 3 February 2020 (in chambers)**

**Before:** Employment Judge Hawksworth  
Mrs AE Brown

Upon the application of the claimant made by letter dated 16 September 2019 to reconsider the judgment dated 11 August 2019 under rule 71 of the Employment Tribunals Rules of Procedure 2013, and without a hearing:

## JUDGMENT (RECONSIDERATION)

The unanimous judgment of the tribunal is:

1. Paragraph 1 of the reserved judgment of 11 August 2019 is varied. The claimant is awarded £1,363.67 in respect of her complaint that she was not paid the national minimum wage because she was not paid for actual travelling time between assignments.
2. Paragraph 7 of the reserved judgment of 11 August 2019 is varied. The total award payable to the claimant is £3,363.67.
3. Paragraphs 2 to 6 of the reserved judgment of 11 August 2019 are confirmed.

## REASONS

### The claimant's application

1. The judgment of 11 August 2019 was sent to the parties on 2 September 2019. The claimant made an application for reconsideration on 16 September 2019. The judge wrote to the parties on 20 October 2019 under rule 72(1), setting out her provisional views on the application and seeking the views of the parties as to whether the application could be determined without a hearing. The respondent replied on 29 October 2019. The

claimant replied on 6 November 2019. The parties agreed to the application being determined without a hearing.

2. The judge wrote to the parties on 8 December 2019 under rule 72(2) indicating that the reconsideration would proceed without a hearing and giving the parties the opportunity to make further written representations. The respondent replied on 19 December 2019, the claimant did not reply.
3. The tribunal which made the original decision met in chambers on 3 February 2020 to reconsider the decision.

### **The tribunal's reasons**

4. We considered the claimant's application and the further correspondence from both parties. For the reasons explained below, we reached the unanimous decision recorded in the judgment on reconsideration.
5. The claimant's application was 17 pages long. We do not in these reasons deal with every point made in the application but in reaching the decision we have considered each of the grounds contained in the claimant's detailed application.

### Paragraphs 1 and 7 of the original judgment

6. In paragraph 1 of the judgment of 11 August 2019 the claimant was awarded the sum of £1,304.39 because of the shortfall in national minimum wage arising from the failure to pay her for actual travelling time. The calculation of the additional remuneration due to the claimant was not compliant with section 17 of the National Minimum Wage Act 1998. It did not calculate the shortfall by reference to the rate of national minimum wage in force at the time of determination (section 17(4)).
7. When the additional remuneration due to the claimant is calculated in accordance with section 17(4), there is an additional £59.28 due to the claimant, as set out the schedule attached to the respondent's letter to the tribunal and the claimant dated 29 October 2019.
8. The amount of the award to the claimant at paragraph 1 of the judgment is varied from £1,304.39 to £1,363.67.
9. There is a consequential amendment to the figure in paragraph 7 of the judgment which gives the total award to the claimant, from £3,304.39 to £3,363.67.

### Paragraphs 2 to 6 of the original judgment

10. The claimant has raised the question of whether she should have received her contractual rate of pay for actual travelling time. We did not consider this in our reserved judgment because we have rejected an application by

the claimant to amend her claim to include a complaint on this basis. We set out our reasons for doing so in the reserved judgment.

11. The claimant has said that we did not explore whether the respondent committed any criminal offence under the national minimum wage legislation. The employment tribunal does not have jurisdiction to do this, it is a matter for the criminal courts and not a matter that can be decided by an employment tribunal.
12. The other matters put forward by the claimant in her application for reconsideration appear to be asking us to reopen matters on which we made findings and reached conclusions having heard and weighed up evidence and considered submissions by the parties. They are not grounds for reconsidering the judgment.
13. For these reasons the remainder of the claimant's application for reconsideration is refused and paragraphs 2 to 6 of the original judgment are confirmed.

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**Employment Judge Hawksworth**

Date: 5 February 2020

Judgment and Reasons

Sent to the parties on: .21.02.2020.....

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For the Tribunal Office

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