



EMPLOYMENT TRIBUNALS

Claimant: Mr S Kelly

Respondent: (1) The Zoltar Group Ltd
(2) Cocomo Ltd
(3) Uzma Dar

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

The respondents not having presented a response to the claims, and on the information before the Judge,

The judgment of the Tribunal is that:

1. The claimant's complaints under sections 13, 15 and 26 of the Equality Act 2010 that he was subject to unlawful discrimination and harassment are well founded.
2. The Tribunal orders that the respondents by way of compensation for injury to feelings under section 124 of the Equality Act 2010 pay the claimant **£15,000**.
3. The Tribunal orders that the respondents by way of compensation for loss of wages under section 124 of the Equality Act 2010 pay the claimant **£1880.15**.
4. The claimant's complaint that he did not receive his accrued holiday pay under regulation 14 of the Working Time Regulations 1998 is well founded.
5. The Tribunal orders that the respondents by way of compensation under regulation 30 of the Working Time Regulations 1998 pay the claimant **£187.20**.
6. The claimant's complaint that the respondent failed to provide him with a written contract of employment contrary to section 1 of the Employment Rights Act 1996 is well founded.
7. The Tribunal orders the respondents by way of compensation under section 38 of the Employment Act 2002 pay the claimant **£312**.

REASONS

1. The claimant claimed compensation in respect of unlawful discrimination, a failure to pay accrued holiday pay on termination of employment and a failure to provide him with written terms of employment.
2. The first respondent never lodged a response. The second and third respondents lodged responses on 17 March 2020. All responses should have been lodged on 28 February 2020.
3. The second and third respondents made an application to extend time to lodge their respective responses. That application was considered and refused at the preliminary hearing on 1 May 2020. None of the respondents were in attendance at that hearing.
4. On a full consideration of the file of proceedings it was possible to issue this Judgment under Rule 21 in respect of the claims for without a hearing. Code P under the case number above reflects this.
5. On the information provided, which included a detailed schedule of loss and witness statement prepared by the claimant, the Tribunal makes the following findings:
6. The claimant suffers from a progressive condition and is deemed a disabled person for the purposes of section 6 of the Equality Act 2010.
7. The claimant worked at Mangobean Coffee Shop in Oldham from 22 June 2019 to 27 November 2019 as a trainee barista.
8. The first respondent operates a chain of coffee shops trading under the name Mangobean.
9. The second respondent operates the Mangobean coffee shop in Oldham at which the claimant worked.
10. The third respondent is the sole director and secretary of the second respondent and the claimant's manager.
11. The claimant worked an average of 18 hours per week. The claimant was paid £4.35 per hour and earned on average £78.00 per week. The claimant was not provided with written terms of employment.
12. In early October 2019 the claimant was diagnosed with a progressive condition and disclosed this diagnosis to two colleagues and his supervisor. On 6 October 2019 the claimant's name had been removed from the rota and he received no shifts.
13. The third respondent justified the claimant's removal from the rota on the basis that his condition was more severe than he had disclosed. The claimant was forced to

disclose his condition to the third respondent in attempt to clear up any misunderstanding.

14. The third respondent refused to reinstate the claimant to the rota until he could prove that his condition could not be transmitted. The third respondent also insisted on disclosing the claimant's condition to the first respondent.

15. During subsequent shifts the third respondent told the claimant that he must wear gloves to avoid transmission. The claimant also overheard the third respondent tell a colleague that the claimant must not be allowed to touch food.

16. On 1 November 2019 colleagues told the claimant that the third respondent had disclosed his condition to all colleagues and warned them not to share drinks, food or cutlery with the claimant because his condition could be transmitted via saliva.

17. On 10 November 2019 the claimant was removed from the rota. On 11 November 2019 the third respondent informed the claimant that the first respondent was monitoring the claimant because it was unhappy that he did not wear gloves on shift. The claimant was told that the first respondent had instructed the third respondent to give the claimant a warning.

18. The claimant was also told that the first respondent was concerned it would be subject to litigation should customers learn of the claimant's condition and the claimant must therefore wear gloves whilst on shift and not handle food. The claimant was informed that he would not receive any shifts until the third respondent had returned from holiday, on 23 November 2019, and was able to closely supervise him.

19. The claimant was removed from the rota on 17 and 24 November 2019. The claimant resigned with immediate effect on 27 November 2019.

20. The claimant did not receive any notice pay or accrued holiday pay following his resignation.

21. The claimant has been subject to direct disability discrimination contrary to section 13 of the Equality Act 2010. The removal of the claimant from the rota amounts to less favourable treatment on the grounds of his disability.

22. The claimant has been subject to discrimination arising from disability contrary to section 15 of the Equality Act 2010. The removal of the claimant from the rota was unfavourable treatment. The reason for the removal was the (incorrect) assumption that the claimant's condition was capable of transmission if he didn't wear gloves, touched food or shared food, drink or cutlery with colleagues. The fact that the claimant's condition is transmittable, in limited circumstances, arises from his disability.

23. The claimant has been subject to harassment contrary to section 26 of the Equality Act 2010. The assumption that the claimant's condition was more severe than it was, to insist that he could only work shifts if he could prove that his condition could not be transmitted, the referral to the first respondent, being singled out and being subject to

derogatory comments from the third respondent violated the claimant's dignity and created an intimidating, hostile, degrading, humiliating and offensive environment for him.

21. Since his resignation the claimant has only been able to find work at his mother's company providing care for elderly people. The claimant hopes to start his studies at University in September.

22. The claimant, who was 17 years of age at the time of this treatment, describes feeling "extremely hurt and disappointed" and "distressed and in a state of shock" during a time when he was coming to terms with the diagnosis of his condition. The claimant describes himself as feeling anxious and suffering from stress. The claimant has recently been diagnosed with depression and work related stress and prescribed medication.

23. I have awarded the claimant compensation of **£15,000** for Injury to Feelings. The respondents immediately formed an ignorant view of the effects of the claimant's disability and removed his shifts from the rota. The claimant was subject to surveillance and threatened with discipline due to the ignorant view of his disability. The respondents also disclosed the claimant's disability to his colleagues and misinformed his colleagues about threats to their health and safety.

24 The claimant is a young man at the start of his working life and also has a condition from which he will suffer for the rest of his life. At a time when he needed support and understanding from his employer, he received the exact opposite. The claimant now has little confidence in disclosing his condition to future employers and receiving the necessary support. This is evident in the fact that he has sought to work in his Mother's company until he starts University.

25. Whilst the treatment from which the claimant suffered took place over a short time, it was not a one off incident and despite being educated by the claimant about his condition, the respondents, and particularly the third respondent, persisted with an ignorant view and made the continuance of the claimant's employment impossible.

26. I have awarded the claimant the gross sum of **£1880.15** by way of compensation for loss of wages caused by the respondents' unlawful discrimination. The claimant's wage loss up to 12 May 2020 was £1716. The claimant has been able to mitigate his loss during this period and earned £1005.85. The claimant has ongoing wage loss until 25 August 2020 (when he expected to stop work to join University) of £1170.

27. I have awarded the claimant **£187.20** by way of compensation for unpaid holiday pay. The claimant commenced work on 22 June 2019 and resigned with immediate effect on 27 November 2019. The claimant was entitled to 28 days holiday per year. On termination the claimant had worked 42% of the holiday year. The claimant had therefore accrued 12 days annual leave or 2.4 weeks. The claimant was paid £78 per week.

28. I have awarded the claimant **£312** for the respondents' failure to provide the claimant with written terms of employment. The claimant received £78 per week. The maximum award for this failure is 4 weeks' pay.

29. The respondents are jointly and severally liable for the payment of these awards.

Employment Judge **Ainscough**

Date: 19 June 2020

JUDGMENT SENT TO THE PARTIES ON

23 June 2020
AND ENTERED IN THE REGISTER

FOR THE TRIBUNAL OFFICE



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: **2400708/2020**

Name of case: **Mr S Kelly** v **The Zoltar Group Ltd T/A
Mangobean
& Others**

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: 23 June 2020

"the calculation day" is: 24 June 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.