



EMPLOYMENT TRIBUNALS

Claimant: Miss S Holland

Respondent: Smart Energy Review Limited

Heard at: Manchester

On: 11 September 2020

Before: Employment Judge Warren

REPRESENTATION:

Claimant: In person

Respondent: Not in attendance

JUDGMENT

The judgment of the Tribunal is that:

1. The claimant was unfairly dismissed and is entitled to compensation.
2. There was an unlawful deduction from the claimant's wages of 6.5 days when she attended ante-natal appointments.
3. There was an unlawful deduction from the claimant's wages in relation to sales commission.
4. The claimant was dismissed in breach of contract and is entitled to one week's pay by way of compensation.
5. The claimant suffered sex/maternity discrimination when she was dismissed and suffered injury to feelings for which she is entitled to compensation.
6. The respondent is ordered to pay the claimant the total amount of compensation in the sum of nineteen thousand two hundred and ninety pounds (£19,290.00) calculated in accordance with the schedule attached hereto.
7. Recoupment applies in this case and is calculated in the attached schedule.

Employment Judge Warren
23 September 2020

JUDGMENT SENT TO THE PARTIES ON
29 September 2020

FOR THE TRIBUNAL OFFICE

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

[JE]

SCHEDULE

The claimant was aged 31 at the date of her dismissal. She had been employed by the respondent limited company for 23 months at the date of dismissal. Her date of dismissal was the 13 August 2019. In May 2019 she advised the respondent that she was pregnant. The respondent did not allow her paid time from work for ante-natal appointments. On dismissal she did not receive any notice or notice pay in lieu. Commission earned in January 2019 it had been agreed would be paid to her when she began maternity leave in October 2019. Having been dismissed on 13 August 2019 she did not receive this commission. Having been dismissed on the 13 August 2019 the claimant became unwell with anxiety over her finances and sought medical assistance. She was unwell for some four months with anxiety. Part of this was caused because the respondent was late filing returns with the Inland Revenue and she was not paid Universal Credit for two months as a result. Whilst working the claimant was paid £184 per week for a 20-hour week. The gross and net pay was the same because she was under the tax threshold. She had one years' complete service.

1.	Basic Award	
	One week's gross pay -	£ 184.00
	Wrongful dismissal – one-week net pay	£ 184.00
	Plus	
	20% uplift for failure to follow ACAS procedures	£ 36.80
2.	Unlawful deductions from wages – 6.5 days X £9.20 an hour =	£ 299.00
	Unlawful deduction from wages – commission	£ 380.00
3.	Immediate loss of net earnings (the claimant moved onto maternity pay having brought forward her material leave) 6 weeks at 90% of her net weekly pay -	£ 993.60
4.	33 weeks at statutory maternity pay rate	£ 148.68
	TOTAL	£ 4,906.44

Future Loss

5.	No future loss is awarded as the claimant has not yet attempted to return to work – she always intended remaining on maternity leave until around December 2020. She is therefore currently unpaid at home caring for her baby.	
6.	Loss of statutory rights	£ 250.00

This has been reduced to account for the fact that the Claimant worked 20 hours a week and that she had not quite reached statutory protection in her then employment.

The total compensatory award is £ 6,150.00

7. Adjustment to the total compensatory award

The award is adjusted by 20% uplift for a failure by the respondent to undertake any form of ACAS or similar procedure - £ 1,230.00

8. Sex Discrimination – injury to feeling

An award made at the lower end of the middle band for a one-off act which was serious enough to cause the claimant medically diagnosed anxiety. She was forced to borrow money from family including her Grandmother to ensure that her family of two children plus herself as a pregnant mother could afford food. The late delivery by the respondent of their wages Returns to the Inland Revenue left her without income At all for eight weeks. It was January 2020 when the Situation was recovered by her obtaining Universal Credit. Taking all the aggravating features of this case Into account an award of £10,000 is made for her Injury to feelings. £10,000.00

Aggravated damages – no award is made of aggravated damages because the compensatory award has been uplifted and to award aggravated damages would be to allow double recovery.

Interest at 8% from 13 August 2019 on the injury to Feelings compensatory award amounts to £ 826.63 (£10,000 X 0.08% x 397 days).

9. Recoupment

Recoupment applies in this case.
The prescribed period Is 20 August 2019 to 11 September 2020.
The prescribed amount is £ 5,900.

The total award is £19,290.

The balance is £13.390.

(Employment Protection Recoupment of Job Seekers Allowance and Income Support Regulations) 1996



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: **2413776/2019**

Name of case: **Miss S Holland** v **Smart Energy Review 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: 29 September 2020

"the calculation day" is: 30 September 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.

Claimant **Miss S Holland**
Respondent **Smart Energy Review 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.