



EMPLOYMENT TRIBUNALS

Claimant: Miss M Wilson

Respondents: 1. Tiger Curry House Ltd t/a Purple Rooms Hotels
2. Purple Roomz Limited

JUDGMENT ON REMEDY

Employment Tribunals Rules of Procedure 2013 – Rule 21

1. The second respondent is ordered to pay to the claimant the sum of £12,000 as compensation for unfavourable treatment because of pregnancy and a further £1,443.95 interest on this award.
2. The second respondent is ordered to pay to the claimant the gross sum of £7598.30 in respect of wages unlawfully deducted prior to the claimant beginning maternity leave. Statutory maternity pay has been paid by HMRC to the claimant, so no order is made for the second respondent to pay to the claimant the amount of statutory maternity pay unlawfully deducted.
3. The second respondent is ordered to pay to the claimant the sum of £74.54 under section 24(2) Employment Rights Act 1996, to compensate the claimant for financial loss sustained by her which is attributable to the unauthorised deduction from wages.

REASONS

1. This judgment on remedy follows a judgment on liability issued under rule 21 of the Employment Tribunals Rules of Procedure 2013 and sent to the parties on 27 August 2020. I found two complaints to be well founded: a complaint of unfavourable treatment because of

pregnancy, contrary to sections 18 and 39 Equality Act 2010, and a complaint of unauthorised deduction from wages, by not paying the claimant her full wages after 23 January 2019 up to the time she went on maternity leave and then by not paying the claimant statutory maternity pay. The unauthorised deduction from wages claim relates to the period 23 January 2019 to 1 June 2020 (having allowed an application to amend the claim to include a period up to the date of that application, being 1 June 2020).

2. The claimant has provided further information relevant to remedy, in an email statement and various documents which I have considered.

3. I will deal with remedy for each of the complaints in turn, starting with the unfavourable treatment because of pregnancy.

Unfavourable treatment because of pregnancy

Further findings of fact

4. The claimant suffered considerable worry about not being able to pay credit card bills, general bills and rent, because of not being given hours to work after 23 January 2019 and, therefore, not being paid and because of not being paid statutory maternity pay, which appears also to be a result of not being given hours to work after 23 January 2019. The claimant and her partner had one child already and another expected, and then born on 26 August 2019. The family relied on the claimant's income, in addition to that of her partner, to pay their normal financial outgoings. The claimant's partner's income of £1300 per month was not enough to cover these outgoings. The claimant resorted to borrowing money from family members to pay bills. The claimant's sister paid for her food shopping for some weeks and her mother made them hot meals since they could not afford to eat as they normally would have done with two incomes. They could not afford to pay for their gas and electricity for some weeks.

5. The claimant, on the advice of the Citizens' Advice Bureau, made an application for universal credit which was granted but the claimant subsequently was investigated by DWP because of receiving these benefits when still employed, after HMRC paid the claimant statutory maternity pay when the second respondent declined to do so. The claimant was ordered to repay universal credit, receiving a letter saying they owed £2379.83. The claimant is still paying this off.

6. The claimant had placed a deposit of £72 on her dream pram when she discovered she was pregnant, and before the act of discrimination. When her income stopped, because of the act of discrimination, she was unable to keep up the repayments and suffered the financial loss of the deposit as well as the disappointment of not being able to get the pram she wanted. Instead, she borrowed money from her family to buy a second hand pram.

7. Shortly before the baby was born, the claimant and her family had to move house since the house they were renting was infested with rats. If the claimant had been working and receiving pay, they could have paid the first month's rent and deposit themselves, but they had to borrow the £1200 required from a family member.

8. The claimant has felt a burden to her partner as he was the only one providing an income to the family.
9. At Christmas, the claimant's family was put forward by their health visitor to receive money for presents for the children. This adversely affected the claimant's confidence and self esteem.
10. The claimant has not been able to take her children on days out, because of lack of money.
11. The claimant has not been able to pay off her credit card balance and made an arrangement with her credit card provider in June 2019 to pay off the balance of £508 at the rate of £5 per month, with an interest rate of 0.5%.
12. The claimant has suffered with depression and anxiety due to the situation, being put on anti-depressants and anxiety medication by her GP.

The Law

13. Section 124(6) of the Equality Act 2010 provides that the amount of compensation which may be awarded for a breach of the Equality Act in relation to work is "the amount which could be awarded by a county court...under section 119". Section 119 provides that the county court has power to grant any remedy which could be granted by the High Court in proceedings in tort and section 119(4) provides: "an award of damages may include compensation for injured feelings (whether or not it includes compensation on any other basis)". The aim of damages in tort is to put the claimant in the position they would have been in, had the act of discrimination not occurred. Compensation (with the possible exception of exemplary damages which may be relevant in rare cases) is to compensate for loss caused by the act of discrimination. There is no limit on compensation for discrimination.
14. In relation to compensation for injury to feeling, I have regard to the guidelines in *Vento v Chief Constable of West Yorkshire Police (no.2)* [2003] IRLR 102. I note, in particular, the guidance that awards are compensatory and not punitive. *Vento* sets out the bands that we must consider.
15. Presidential Guidance, issued by the President of the Employment Tribunals in England and Wales and the President of the Employment Tribunals in Scotland, on 5 September 2017 and later addendums set out bands revised to take account of subsequent developments.
16. In accordance with the Presidential Guidance applicable to when this claim was presented (23 April 2019), the top band is normally £26,300 to £44,000. This is to be said for the most serious cases such as where there is a lengthy campaign of discriminatory harassment. The middle band is £8,800 to £26,300, described as used for serious cases which do not merit an award in the highest band. The lower band is between £900 to £8,800. This is for less serious cases such as where the act of discrimination is an isolated or one-off occurrence.

17. Interest may be awarded on awards made in discrimination cases in accordance with the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996. The interest rate for claims presented on or after 29 July 2013 is 8%.

Conclusions on remedy for unfavourable treatment because of pregnancy

18. The claimant suffered injury to feelings and financial loss because of the act of discrimination. The financial loss suffered is the same as the amount of wages unlawfully deducted and consequential loss, which I deal with below. I do not, therefore, make any award of compensation for financial loss suffered because of the act of discrimination.

19. The claimant has clearly suffered injury to feelings because of the act of discrimination. She has suffered worry, anxiety and depression, particularly because of the financial difficulties she has endured, as outlined in my further findings of fact. She suffered this injury over a sustained period from January 2019 up to presentation of this claim and beyond. She is still suffering from the financial consequences of the respondents' failure to provide her with hours of work. The respondents' actions left her in a very difficult situation, without income and not knowing whether or not she was still employed. She was without income for a substantial period before the start of maternity leave and only received her maternity pay after a delay, from HMRC, rather than receiving it from her employer in a timely fashion. The complications of her situation caused her to make a claim for universal credit which she has had to repay.

20. I conclude that this is a serious case of injury to feelings, falling within the middle *Vento* band. I consider that the appropriate level of compensation to be in the lower half of the middle band and conclude that £12,000 is an appropriate level of compensation for injury to feelings.

21. Interest should be awarded on this in the normal way from the date of the act of discrimination until the calculation date (6 November 2020). The act of discrimination of not giving the claimant hours to work started on 24 January 2019 but carried on over a period until the claimant went on maternity leave on 19 August 2019. I, therefore, consider it appropriate to take the date to start interest at the mid point of those two dates i.e. 8 May 2019. 8 May 2019 to 6 November 2020 is 549 days.

22. The calculation of interest is as follows:

$$8/100 \times 549/365 \times £12,000 = £1,443.95.$$

Unauthorised deduction from wages

Further findings of fact

23. The claimant was contracted to work 32 hours a week on hourly pay of £8.03, making her gross weekly pay £256.96.

24. Her maternity leave began on 19 August 2019.

25. During maternity leave, she should have been paid statutory maternity pay for the first 6 weeks at the rate of 90% of her weekly earnings i.e. £231.26 per week. After the first 6 weeks, she should have been paid for a further 33 weeks at the rate of £148.68 per week. The paid period of statutory maternity leave ended on 6 April 2020.

26. The claimant was entitled to take up to 52 weeks maternity leave, although any leave after the first 39 weeks would be unpaid.

27. The claimant's complaint of unauthorised deduction from wages for which this judgment is providing a remedy goes up to 1 June 2020. There is no evidence that the claimant had sought to return to work from maternity leave before 1 June 2020. I find, therefore, that the claimant was on unpaid maternity leave in the period 7 April 2020 to 1 June 2020.

Calculation of wages unlawfully deducted

28. The wages unlawfully deducted in respect of the period prior to maternity leave are as follows:

$$24 \text{ January 2019 to 18 August 2019 (29.57 weeks)} - 29.57 \times \text{£}256.96 = \text{£}7598.30$$

29. It appears, from the claimant's statement, that HMRC has paid the claimant her statutory maternity pay, after the second respondent refused to pay it. The claimant will not be entitled to receive her statutory maternity pay twice. I have, therefore, ordered the second respondent to pay to the claimant only the wages unlawfully deducted prior to the start of her maternity leave. It will be a matter for HMRC to seek to recover from the second respondent the amount of statutory maternity pay paid to the claimant by HMRC but which should have been paid by the second respondent.

Consequential financial loss

30. Section 24(2) of the Employment Rights Act 1996 provides that, where a Tribunal makes a declaration that there has been an unauthorised deduction from wages, the Tribunal may order the employer to pay to the worker such amount as the Tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by the worker which is attributable to the unauthorised deduction from wages.

31. The claimant suffered considerable financial hardship because of the failure to pay wages, detailed in the further findings of fact relating to unfavourable treatment because of pregnancy. For the most part, borrowings were from family members and the claimant has not given evidence that any interest was charged on these borrowings. In relation to amounts borrowed from family, therefore, there is no financial loss attributable to the unauthorised deductions from wages.

32. The claimant was unable to make her normal payments on her credit card when she was not paid. A letter from her credit card provider shows that the claimant contacted them about her financial situation and an arrangement was offered on 3 June 2019 to pay off the debt at

£5 per month and to reduce the interest rate payable to 0.5% for the duration of the plan. I note from the account summary on a statement dated 3 June 2019, that the balance was then £508.18. It appears to me more likely than not that the claimant has incurred financial charges relating to her credit card that she would not have incurred if she had been paid her wages and then statutory maternity pay. The claimant has not calculated how much this is and I am unable to do so with any accuracy from the information provided. However, I consider that a reasonable estimate would be 0.5% of £508 for one year, being the amount of interest being charged on the debt under the payment plan. This is £2.54.

33. The claimant lost a deposit of £72 on a pram. I conclude that this was financial loss sustained by the claimant which is attributable to the unauthorised deduction from wages.

34. I, therefore, conclude that there was consequential financial loss of £74.54 and order the second respondent to pay this amount.

Employment Judge Slater

Date: 6 November 2020

JUDGMENT SENT TO THE PARTIES ON

26 November 2020

AND ENTERED IN THE REGISTER

FOR THE TRIBUNAL OFFICE

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.



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: 2404919/19
Miss M Wilson v Purple Roomz 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: 26 November 2020

"the calculation day" is: 27 November 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/collections/employment-tribunal-forms

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.