



EMPLOYMENT TRIBUNALS

Claimant: Mrs L Johnson

Respondent: Manchester City Council

Heard at: Manchester (by CVP)

On: 19 November 2020

Before: Employment Judge McDonald
Mr D Lancaster
Mr M Smith

REPRESENTATION:

Claimant: In person

Respondent: Miss K Nowell, Counsel

JUDGMENT BY CONSENT

By consent, the respondent shall pay the claimant compensation for breach of contract and unlawful deductions for wages.

1. The gross sum awarded is £9060.46 consisting of:
 - a. £2547 for underpayments of salary from 2016/17 to the termination of the claimant's employment on 29 April 2019;
 - b. £4787 for failure to pay provide pay protection from 2016/17 to 1 April 2019;
 - c. £1112.17 for underpayment of 6 weeks' holiday pay for the year 2018/19;
 - d. £614.29 for underpayment of 1 week's holiday pay for untaken holiday for the holiday year 2017-18.

2. The respondent shall pay the gross sum set out in para 1 to the claimant less the following deductions:
 - a. income tax;

- b. £421.72 employee's pension contributions;
 - c. a total sum for National Insurance Contributions being the lower of: (i) the total NIC payable had the payments at 1(a)-(d) been made in the tax year to which they related or (ii) the total NIC payable if the sums at 1(a)-(d) were payable as a lump sum in the current tax year.
3. The respondent will be responsible for remitting any tax or NIC on the gross sum to the appropriate authorities and the pension contribution to the claimant's pension provider.
4. The issue of any loss of pension arising from the respondent's breach of contract and unlawful deductions is adjourned. The claimant will write to the Tribunal and the respondent by 31 January 2021 to confirm whether that issue has been resolved. If it is not resolved the Tribunal will list a further hearing to consider that issue. This is to allow time for the claimant to obtain confirmation that any impact on her pension of the respondent's breach of contract or unlawful deductions has been rectified resulting in no past or future pension loss.

REASONS

1. This is the Tribunal's remedy Judgment following on from its Liability Judgment on 9 July 2020. In that Liability Judgment the respondent conceded that it had made unlawful deductions and breached the claimant's contract of employment by failing to pay her at the correct rate of pay, and by failing to pay holiday pay in lieu of untaken holiday.
2. At the hearing the parties were able to agree the amount of holiday pay due to the claimant. They had previously agreed amounts of salary deduction and the amounts which should be payable for the failure to apply pay protection. That left two issues to be decided by the Tribunal: the first was pension loss, and the second was how to deal with the tax treatment of the payment. We were able to agree a Judgment by Consent but I briefly record the background to those two points for the sake of any future consideration of this case.

Pension Loss

3. The respondent's position essentially is that the pension provider having been notified of the corrections that should be applied to the claimant's pay, there will now be no pension loss. The claimant is not yet satisfied that that is the case, having had no confirmation in writing on that point.
4. We decided that the appropriate way to approach this was to adjourn the issue and to require the claimant and respondent to confirm by 31 January 2021 whether this matter has been resolved. Our intention is that this will give time for the claimant, assisted by the respondent, to clarify with the pension provider that there is indeed no pension loss arising either from (i) the failure to pay her salary at the correct rate in the years in which they should have been paid at that rate, or (ii)

because the claimant's pension contributions are being made in a lump sum in arrears as opposed to having been paid at the relevant time.

Tax Position

5. In relation to the tax position, the claimant referred me to two decisions. One of those was the Employment Tribunal decision in **Gardner v Solehawk** (2500076/19). That was a Tribunal decision on a rule 21 Judgment and did not assist me. The second was the Employment Appeal Tribunal decision in the case of **Walters t/a Rosewood v Barik UKEAT/0053/16/BA**. Briefly in that case the Tribunal had confirmed that it was in order for an Employment Tribunal to award a sum gross with the amount to be deducted for tax and national insurance to be resolved between the employer and the Inland Revenue rather than by the Tribunal.

6. In this case we decided to adopt the same approach of ordering a gross payment and ordering that the respondent resolve the issue of deductions. The reason for that is that the claimant submitted that there might be a loss to her if national insurance contributions deductions were applied in one go to the lump sum being paid this tax year as opposed to those deductions being made in each tax year to which the relevant salary related. That was not a matter which the Tribunal felt it was able to resolve itself today, hence the approach we took to deductions in this case.

Employment Judge McDonald
Date: 19 November 2020

JUDGMENT AND REASONS SENT TO THE PARTIES ON
30 November 2020

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: 2402797/19
Mrs L Johnson v Manchester City Council

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: 30 November 2020

"the calculation day" is: 1 December 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.