



EMPLOYMENT TRIBUNALS

Claimant: Mr L Banham

Respondent: BOC Limited

Heard at: Manchester

On: 3 February 2021

Before: Employment Judge Feeney
Ms CS Jammeh
Mr ST Anslow

REPRESENTATION:

Claimant: Mr Andrew O'Neill, solicitor

Respondent: Miss H Ford, solicitor

RECONSIDERATION JUDGMENT

1. By a Judgment dated 5 June 2019 the Tribunal awarded the claimant £40,179.20 in respect of his unfair dismissal claim. His disability claim having not succeeded. His representatives wrote to the Tribunal on 24 June 2019 requesting that the Tribunal address and correct two matters as follows.
 - (i) In relation to his cost of retraining as a Barber the claimant had sought £1,095 for this, but the Tribunal failed to deal with this in its judgment; and
 - (ii) That the Tribunal was incorrect in its calculation on grossing up as it had not included the basic award when undertaking the grossing up calculation.
2. The respondent replied on 28 June and stated that they objected to these changes on the basis that a friend had covered the advance payment of the course fees and there was no evidence that the claimant had to repay his friend for that barbering course and he had not produced any evidence to that effect. In respect of the basic award the respondent commended a broad-brush approach to this and submitted that the Tribunal should leave the award as it was. However if they were minded to take a different approach that they

should reconsider the use of the 20% marginal tax rate as there was no evidence that the claimant would have actually used his tax-free allowance that year due to his low earnings and the failure of his business to flourish in particular.

3. Unfortunately, the file was then misplaced at the Tribunal and it took some time to obtain the relevant documents again from the parties. Following this the Judge indicated that she would consider the reconsideration, however, it was clear it would have to be reconsidered with the full panel who had heard the liability and remedy hearing. Subsequently, the pandemic interfered with the Tribunal's plan and smooth running and it has also proved difficult to deal with day to day enquiries whilst Judges are not present in the Tribunal's premises but are working from home. Accordingly, and unfortunately it has only just been now that we have been able to arrange a reconsideration hearing by CVP.
4. The parties agreed that the matter could be decided on the basis of submissions and the parties themselves did not attend.

Law

5. Reconsideration of judgments is contained in rule 70 of schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. It says that:
 - “(70) A Tribunal may, either on its own initiative or on the replication of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration the decision may be confirmed, varied or revoked. If it is revoked it may be taken again.
 - (71) Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing within 14 days of the date on which the written record or other written communication of the original decision was sent to the parties, or within 14 days of the date when the written reasons were sent out (if later) and shall set out why reconsideration of the original decision is necessary.

Process

- (72) An Employment Judge shall consider any application made under rule 71:
 - (i) If the Judge considers there is no reasonable prospect of the original decision being varied or revoked the application shall be refused and the Tribunal shall inform the parties of that refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.

- (ii) If the application has not been refused under paragraph (i) the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (i), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further representations.
 - (iii) Where practicable the consideration under paragraph (i) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full Tribunal which made it, and any reconsideration under paragraph (ii) shall be made by the Judge or, as the case may be, the full Tribunal which made the original which made the decision. Where that is not practicable the President, Vice President or Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full Tribunal, either shall direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.”
6. “We allowed the claimant’s request for reconsideration in view of the legitimate contentions they made which required the scrutiny of the panel which had made the original decision.
 7. We do not repeat the law applying to the remedies applications in general as these are set out in the remedies decision.

Conclusions

Barbering course

The claimant did provide a receipted invoice for this course of £1,095. The claimant’s evidence was that a friend had lent him this sum. The respondents suggest that there is no evidence the claimant’s friend has demanded repayment of this amount or has an expectation of repayment, however, we find it highly unlikely that a friend would lend this amount with no expectation of repayment, particularly in the situation where if they are a friend it will be well known to them that the claimant has succeeded in his Tribunal claim. Whilst the claimant has not provided any proof of this we think it is inherently likely that this would be the situation. As we found it was a reasonable course of conduct to retrain as a Barber at that point in time we award the claimant this additional amount which should be added to the compensatory award, increasing it from £32,104.40 to £33,199.40.

Grossing up

1. It is a correct contention of the claimant that for the purposes of grossing up the basic award is included before the grossing calculation is made, even though the grossing up only strictly applies to the compensatory award. In effect, the basic award contributes to the £30,000 tax free amount.
2. We refer to Harvey's where an example is given as follows. " An employee succeeds in an unfair dismissal claim, his basic award is £4,000, in calculating the compensatory award by reference to net losses the Employment Tribunal arrives at a starting figure of £45,000, the total notional award of £49,000 would be subject to tax under ITEPA 2003 Section 401 on the excess over £30,000, i.e. £19,000. Grossing up that £19,000 by a factor of 100 over 60 (for a 40% tax pay brackets will give £31,667 to be added to the tax-free slice of £30,000). A notional figure of £61,667. £4,000 of this is the basic award, the balance of £57,667 forms a basis for the calculation of a compensatory award and includes an element of grossing up, attributable to the basic award. The actual compensatory award applicable at the relevant effective date of termination is however capped at, for example, £55,000 so the employee is awarded a total of £59,000 rather than the £61,667 of which £29,000 will be subject to tax under ITEPA 2003."
3. In the claimant's case the entire payment has to be aggregated. This is partly dependent on our finding on the barbering costs which we set out above. As we have awarded the claimant his barbering training costs this increases the compensatory award from £32,104.40 to £33,199.40. Accordingly, the basic award of £7,664 should be added to this before the £30,000 exemption is deducted. Once this is deducted this leaves the figure of £13,579.25. The grossing up figure being £2,715.85. When the £30,000 is added back in and the basic award this brings the award to £43,579.25.
4. Therefore, the corrected award is as follows.

(i)	Cost of retraining	£ 1,095.00
(ii)	Basic Award	£ 7,664.00
(iii)	Compensatory Award	£35,915.25
(iv)	Prescribed element is now	£35,415.25
Total		£43,579.25

The prescribed period is 31 October 2016 to 5 August 2017 and the excess of the total award over the prescribed award is £8,164.

26 February 2021

JUDGMENT SENT TO THE PARTIES ON
26 February 2021

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]



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: 2405152/16
Mr L Banham v BOC 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 February 2021

"the calculation day" is: 27 February 2021

"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.