



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr G Fisher

**Respondent:** A.B.C.>Concrete Direct Ltd

**Heard at:** Manchester (hybrid public hearing via CVP)

**On:** 25 June 2021

**Before:** Judge Brian Doyle

## **Representation**

**Claimant:** Mr J Searle, counsel

**Respondent:** Mr PA Smith, managing director – not permitted to participate in accordance with rule 21(3)

# REMEDY JUDGMENT

Further to the Tribunal's judgment dated 13 April 2021 (and sent to the parties on 14 April 2021) made under rule 21(2) of the Employment Tribunals Rules of Procedure 2013, the respondent is ordered to pay to the claimant compensation in the total sum of £42,045.41. The recoupment regulations do not apply to this award.

# REASONS

1. The Tribunal had previously issued a judgment (made by Employment Judge Allen) dated 13 April 2021 (and sent to the parties on 14 April 2021) under rule 21(2) of the Employment Tribunals Rules of Procedure 2013. The respondent had not responded to the claim at all.
2. The judgment upheld the claimant's complaints in respect of unfair dismissal, breach of contract of employment, unpaid holiday pay, non-payment of wages and failure to provide itemised pay statements.
3. The matter was listed for a remedy hearing today before the present judge. The Tribunal had before it a bundle of documents prepared on behalf of the claimant for remedy purposes only. It comprised 140 pages, including the claimant's witness statement and his schedule of loss.

4. Mr PA Smith, the managing director of the respondent, attended in person at the tribunal premises in Manchester. The judge, the claimant and the claimant's counsel were participating in the hearing via the Cloud Video Platform (CVP). This Tribunal had not expected Mr Smith's attendance and the judge was not on notice of it. It appears that the Tribunal administration made immediate arrangements for Mr Smith to be present during the hearing in a tribunal hearing room to which a connection to CVP was provided.
5. The Tribunal did not have access to a paper or electronic copy of the case file. It was unable to see what, if any, communications there had been between the Tribunal and Mr Smith or his company. The Tribunal assumes that any such communications were considered by Judge Allen when he made a rule 21 judgment on 13 April 2021.
6. The judge afforded Mr Smith an opportunity to say why he was in attendance and what he wished, if anything, the Tribunal to do in relation to his attendance. He gave a very confused, unfocused and incomplete account of what, if any, engagement the respondent had had with the Tribunal and its process. It appears that he had attended the Tribunal premises in person earlier this week and he had been shown or provided with correspondence from the Tribunal case file. The judge was unable adequately to glean from Mr Smith whether and to what extent his company had engaged with the Tribunal process, and why any such engagement was less than adequate for the purpose of presenting a response to the claim or challenging the rule 21 judgment made on 13 April 2021.
7. What was apparent, however, was that Mr Smith had not made (and was not now making) any kind of application that might be recognised within the Employment Tribunals Rules of Procedure 2013 either to correct the failure to present a response to the claim or to challenge the rule 21 judgment or to participate in some measured and appropriate way in the remedy hearing. The judge pointed out more than once that he could not advise Mr Smith or assume that his presence implied some form of application of whatever kind was intended. No application was in fact made. If such an application were to be made then it would be considered on its merits and in accordance with the procedural rules.
8. The claimant wished the remedy hearing to proceed. The judge exercised his discretion under rule 21(3), which provides that a respondent who has not presented a response to a claim shall be entitled to notice of any hearings and decisions of the Tribunal but, unless and until an extension of time is granted, shall only be entitled to participate in any hearing to the extent permitted by the judge. The judge had in mind the principles of how such discretion should be exercised as explained in *Office Equipment Systems Ltd v Hughes* [2019] ICR 201 CA and *Limoine v Sharma* [2020] ICR 389 EAT.
9. In the light of what the Tribunal has recorded above, the judge did not consider that it was a proportionate course of action consistent with the overriding objective to permit Mr Smith to participate further in the remedy hearing, other than as an observer and other than pointing Mr Smith towards the desirability of seeking advice in the face of the Tribunal judgments. He has made no

application to the Tribunal and the judge cannot advise him as to how he might proceed. It was in keeping with the overriding objective to proceed to determine remedy at this hearing, confident that if any injustice has been done to the respondent then it can be addressed by the respondent making an appropriate application, perhaps with the benefit of advice, and which would be considered on its merits and in accordance with the procedural rules.

10. The claimant took the affirmation and confirmed the contents of his witness statement. He confirmed the accuracy of his schedule of loss. He answered questions about his loss put to him by the judge, some of them prompted by points that Mr Smith had seemed to want to make. The judge was entirely satisfied as to the reliability of the claimant's evidence on remedy.
11. Accordingly, the calculations and grand total set out in the schedule of loss (and explained in the witness statement) are accepted. Those documents are incorporated into these reasons by reference. The compensatory award is subject to a 25 per cent uplift for failure to follow the Acas Code (£13,545.92 @ 25% = £3,386.48). At Mr Searle's suggestion that is added to the grand total without further grossing up. That produces a revised grand total of £42,045.41. That is the Tribunal's award.
12. The recoupment regulations do not apply to the award.

Judge Brian Doyle  
Date: 25 June 2021

JUDGMENT SENT TO THE PARTIES ON  
29 June 2021

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](http://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: **2419905/2020**

Name of case: **Mr G Fisher** v **A.B.C.>Concrete Direct Ltd**

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 judgment day" is: 29 June 2021

"the calculation day" is: 30 June 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/publications/employment-tribunal-hearings-judgment-guide-t426](http://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.