EMPLOYMENT TRIBUNALS

Claimant: Mr B Grey

Respondent: Quest Medical UK Limited

Heard at: Manchester Employment Tribunal **On:** 28th July 2021

Before: Employment Judge Cronshaw (sitting alone)

Representation

Claimant: Ms A Rumble (Counsel)
Respondent: Ms T Trevett (HR)

RESERVED JUDGMENT

The Judgment of the Tribunal is that:

1. The claim for unfair dismissal is well-founded. The Respondent is ordered to pay the Claimant the following sums:
    a. Basic award: **£9,684**
    b. Compensatory award: **£400**

2. The Respondent was in breach of contract for dismissing the Claimant without notice and is ordered to pay the Claimant the net sum of **£6,876**.

REASONS

1. This is a reserved judgment following the final hearing on 28th July 2021 of the Claimant's claim for unfair dismissal and wrongful dismissal.

2. The hearing was a remote hearing which was consented to by the parties. The hearing took place by video conference using the Tribunal's CVP video platform. A face-to-face hearing was not held because it was not practicable due to Covid-19 restrictions, and no-one requested the same.

Background

3. The Claimant was employed by the Respondent as a driver. He drove LGV vehicles and was responsible for the transport of specialist medical products.

4. On the 3rd October 2020 the Claimant was involved in a collision within the Respondent's warehouse which caused damage to a medical scanner the Claimant was manoeuvring at the time.

5. The Claimant was subsequently suspended and, following disciplinary procedures, dismissed without notice for gross misconduct on 12th October 2020.

6. The Claimant appealed but the decision to dismiss was upheld on 4th December 2020.

7. ACAS were notified under the early conciliation procedure on 1st December 2020 and a certificate was issued on 12th January 2021. The ET1 was presented on 10th February 2021. The ET3 was received by the tribunal on 16th March 2021.

8. The Claimant claims that his dismissal was unfair, and that being summarily dismissed was in breach of contract (wrongful dismissal).

9. The Respondent contends that the Claimant's actions, in causing the collision and associated damage, amounted to gross misconduct. The reason being gross misconduct, the Respondent submits, they were contractually entitled to dismiss without notice, and that the dismissal overall was fair.

Procedure and evidence heard

10. I have been assisted by a 116 page bundle and witness statements from the Claimant Mr Barry Grey, Transport Operations Manager for the Respondent Mr Darren Kitchen, and Group Operations Manager for the Respondent Mr Simon Overbury.

11. I also heard oral evidence from the Claimant and both Mr Kitchen and Mr Overbury for the Respondent.

12. I received oral submissions from Ms Rumble, Counsel for the Claimant and Ms Trevett, Representative for the Respondent.

Issues

13. The issues were agreed at the outset of the hearing to be:
    a. Has the respondent shown the reason for dismissal?
    b. Was the reason a substantial reason of a kind which can justify dismissal?
    c. Was the dismissal fair or unfair applying the band of reasonable responses? Following the 3-stage test in *British Home Stores v Burchell [1980] ICR 303*,:
        i. Did the respondent genuinely believe the claimant was guilty of misconduct?
        ii. Did the respondent hold that belief on reasonable grounds?
        iii. Did the respondent carry out a proper and adequate investigation?
    d. Was dismissal a fair sanction?
    e. Was the Respondent entitled to summarily dismiss the Claimant?

14. It was agreed by the parties that there was no fundamental dispute regarding the disciplinary procedure. Although the Claimant had some concerns regarding the impartiality of the investigation there was no allegation of a breach of the ACAS code.

15. Remedy was addressed as part of the evidence and submissions.

16. The key consideration in this case was whether the Claimant's action, in causing the collision, was reasonably categorised as gross misconduct by the Respondent.

The applicable law

17. The unfair dismissal claim was brought under Part 98 of the Employment Rights Act 1996. A dismissal for a reason which relates to the employee's conduct is a potentially fair reason for dismissal, but the test of whether it is fair or unfair appears in section 98(4):

> *"…The determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer –*
>
> *(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*
>
> *(b) shall be determined in accordance with equity and the substantial merits of the case."*

18. In *British Home Stores v Burchell [1980] ICR 303*, Mr Justice Arnold identified three considerations which arise in misconduct cases. Firstly, did the employer have a genuine belief that the employee was guilty of the misconduct in question? Secondly, was that belief based on reasonable grounds? Thirdly, had that belief been formed following such investigation into the matter as was reasonable in all the circumstances? This is commonly referred to as the 'Burchell test'.

19. If the Burchell test is answered in the affirmative, the Tribunal must still determine whether the decision of the employer to dismiss the employee rather than impose a different disciplinary sanction (or no sanction at all) was a reasonable one.

20. In considering the fairness of the dismissal the appeal should be treated as part and parcel of the dismissal process: *Taylor v OCS Group Limited [2006] ICR 1602.*

21. In the employment context "gross misconduct" is commonly used shorthand for conduct which amounts to a repudiatory breach of the contract of employment entitling the employer to terminate it without notice. In the unfair dismissal context, however, a finding of gross misconduct does not automatically mean that dismissal is a reasonable response. An employer should consider whether dismissal would be reasonable after considering any mitigating circumstances: *Brito-Babapulle v Ealing Hospital NHS Trust [2013] IRLR 854.*

22. Exactly what type of behaviour amounts to gross misconduct will depend upon the facts of the individual case. In *Laws v London Chronicle (Indicator Newspapers) Limited [1959] 1 WLR 698*, the Court of Appeal considered the position of an employee who disobeyed a direct instruction from the Managing Director to remain in a particular room. Lord Evershed said that the question must be whether the conduct complained of shows that the employee has "disregarded the essential conditions of the contract of service", and that a single act of disobedience could amount to gross misconduct if it was "willful" in the sense that it connoted a deliberate flouting of the essential contractual conditions.

23. In *Neary & Neary v Dean of Westminster [1999] IRLR 288* Lord Jauncey of Tullichettle, sitting as Special Commissioner, adjudicated on a petition brought by the Organist and Master of Choristers of Westminster Abbey following a dismissal from that post on the ground of gross misconduct.

24. In the judgment Lord Jauncey recognised that the extent of the duty owed by employee to employer is dependent on the facts of each case.

> [19] **"***The character of the institutional employer, the role played by the employee in that institution and the degree of trust required of the*

employee vis-a-vis the employer must all be considered in determining the extent of the duty and the seriousness of any breach thereof."

[22] "Conduct amounting to gross misconduct justifying dismissal must so undermine the trust and confidence which is inherent in the particular contract of employment that the master should no longer be required to retain the servant in his employment."

25. It follows that in the statutory context of section 98(4), even if the *Burchell* test is met, the Tribunal must still consider the following:

    a. Whether the employer acted within the band of reasonable responses in choosing to characterise the misconduct as gross misconduct, and if so

    b. Whether the employer acted within the band of reasonable responses in deciding that the appropriate sanction for that gross misconduct was dismissal.

26. On the latter question the employee's length of service and disciplinary record are relevant (*Trusthouse Forte (Catering) Limited v Adonis [1984] IRLR 382*) as well as the attitude of the employee to his conduct (*Paul v East Surrey District Health Authority [1995] IRLR 305*).

Findings

27. The majority of the facts in this case are agreed between the parties and ultimately, as I outlined earlier, this case rests on whether the Claimant's actions amounted to gross misconduct. It is important, however, to clarify the facts of this case and I have set out my findings below.

28. The Claimant was initially employed by Kuehne & Nagel via an agency from 13th March 2008 before receiving a permanent full-time contract on 15th September 2008. The parties now agree that 15th September 2008 is the relevant start date for the purposes of continuous employment.

29. A TUPE transfer took place on 1st April 2019 and the Claimant's employment transferred to the Respondent. The Claimant has 12 years continuous service.

30. It is relevant that the parties agree the Claimant has had no previous disciplinary issues. The only other collision in which he was involved 6 years ago was found not to be his fault, but the fault of his colleague who was directing his movements at the time.

The Collision

31. On 3rd October 2020 the Claimant was involved in a collision when he was parking a medical scanner in the Respondent's Warehouse in Warrington. I have heard evidence from the Claimant on this point as no one else was present. He explained that he was driving forward in order to manoeuvre and reverse the trailer into bay 3. He misjudged the distance and hit a metal post with the back corner of the trailer.

32. It is agreed between the parties that the incident was reported immediately. The Claimant took photographs (p61), provided a statement (although undated I am told it was written at the time of the incident) (p60), and completed the accident report the following day on 4th October 2020 (p58-59).

33. The Claimant received a phone call from Edwin Scott, Transport Supervisor, on the day of the incident approximately 30 minutes after the initial report to inform him that he was suspended. Written confirmation of this suspension was provided on 5th October 2020 (p55).

34. During the phone call the Claimant asserts that Mr Scott indicated to him that suspension was 'only a formality' which he felt was a way of reassuring him. Mr Scott did not give evidence, however, through the Respondent's representative it was suggested to the Claimant that Mr Scott meant that suspension is a formality, as opposed to giving any assurances or reassurance. The Claimant was very clear in his evidence that Mr Scott meant to reassure him during that conversation, and I accept that evidence. I do not attempt to guess Mr Scott's intentions, indeed he has not given evidence for me to query this, but I have no doubt that the Claimant took what was said to him as reassurance.

35. The Claimant accepted full responsibility for the collision from the outset in a witness statement written at the time where the Claimant expresses annoyance at himself for causing damage. In the disciplinary hearing he accepts full responsibility and apologises. At p65 the Claimant states:

> "I am very sorry for the damage caused. I let the company down, the customer down. It was a lack of judgment which I duly regret…"

36. The Claimant gave a similar account at the hearing, indeed he has never suggested the fault lay anywhere else. That is an important consideration to which I will return.

37. The Claimant raised concern at his appeal hearing of the layout of the warehouse and suggested that it was difficult to navigate – particularly into bay 3 where the Claimant was attempting to park, and that there were items lying around in the warehouse which made this more difficult.

38. This is supported by the phone call Mr Overbury had with employee Alister Brown during his investigation where Mr Brown also expresses concern about the manoeuvring inside the Warrington warehouse.

39. I however accept the Respondent's submission that no concerns regarding the warehouse in Warrington had been formally raised.

The Damage

40. The collision caused damage to the medical scanner which will cost in the region of £22,000 to repair in full. I accept this evidence from the Respondent and find as a fact the level of damage to be at the stated amount.

41. The scanner was originally off the road for a week whilst a temporary repair was completed, I have not been provided with the costs of this. The scanner has still not been repaired fully and there is no time estimate as to when this will be done.

The Consultation

42. Around the time of the collision a consultation was in process between 9 drivers, including the Claimant, to change their contract from 4 days on 4 days off to 4 days on and 2 days off. The Claimant, as I understand others, resisted this change.

The Disciplinary Process

43. As I stated at the outset the disciplinary process is not in dispute in this case.

44. The Respondent followed their internal disciplinary proceedings.

45. The Claimant was invited to a disciplinary hearing by letter dated the 9th October 2020 (p56) to discuss the allegation of 'serious negligence'. A disciplinary hearing was held with Mr Kitchen on the 12th October 2020.

46. Within Appendix 1 of the Respondent's Disciplinary Policy (p9) the definition of gross misconduct is "misconduct which, in our opinion, is likely to prejudice our business or reputation or irreparably damage the working relationship or trust between us." The policy goes on to provide non-exhaustive list. The Respondent relies on point 9 of this list to justify categorisation of this incident as gross misconduct. That being 'serious negligence which causes or might cause unacceptable loss, damage or injury or which may bring the Company or its customers/suppliers into disrepute'.

47. The Claimant was told of his dismissal during that meeting and this was confirmed by letter dated 14th October 2020 (p67-68).

48. The Claimant appealed on the 15th October 2020. He was invited to an appeal hearing by letter dated 30th October 2020. The appeal hearing took place with Mr Overbury on 6th November 2020.

49. Mr Overbury conducted his investigation after the meeting with the Claimant and he accepts he did not put the investigation findings to the Claimant before he came to his decision.

50. The Claimant was informed by letter dated 4th December 2020 that his dismissal would be upheld (p77-p79).

Conclusions

51. I will address each of the agreed issues in this case separately for ease but each conclusion has been drawn having taken account of the whole of the evidence in the case both written and oral.

52. Firstly, has the Respondent shown the reason for dismissal? The Respondent's evidence is clear in this regard that the reason for dismissal was the collision caused by the Claimant on the 3rd October 2020. The Claimant has suggested within the initial claim and his evidence that he believes this consultation may have provided some motivation for his dismissal. I do not accept this assertion and find, as a fact, that the consultation had no impact on the Respondent's decision to dismiss.

53. The Respondent has given evidence that there have been no amendments to any contracts as a result of the consultation, and none of the other drivers who were in consultation have been dismissed.

54. The consultation appears to have stopped relatively swiftly without any business impact. In my view, had the consultation been a significant driving factor, there would have been a greater impact – either by amendments to contracts or dismissals – felt across the cadre of drivers under the contract consultation.

55. Secondly was the reason a substantial reason of a kind which can justify dismissal? The short answer to this is yes. The Respondent, having categorised the action as gross misconduct, has demonstrated that the collision was a substantial reason which *could* justify dismissal. For reasons I will come onto, however, dismissal was not within the band of reasonable responses in this particular case.

56. I then move to consider the Burchell test. There is no dispute in this case that the Respondent believed the Claimant was guilty of the conduct alleged, that their belief was based upon reasonable grounds or that they carried out a proper and adequate investigation.

57. Having answered the Burchell test in the affirmative the key question in this case is 'was dismissal a fair sanction?' In considering this I must consider whether categorising the incident as gross misconduct was within the band of reasonable responses and, if so, whether dismissal as a sanction was also within that band. On both considerations I am ultimately drawn to the conclusion that it was not.

58. In support of their assertion the Claimant's behaviour was gross misconduct the Respondents have advanced the potential that the Claimant was speeding or failed to stop after causing the damage, the value of the damage, the customer impact and potential for reputational damage.

59. The Respondent has suggested that they believed due to the level of damage that the Claimant was either driving at speed or failed to stop after causing the damage – thereby indicating a failure to pay attention. Mr Overbury gave evidence that he reached those conclusions after his investigation. The considerations of speed or failure to stop, however, appear to be based entirely on speculation and upon consideration of photographs of the damage only which are not entirely clear and certainly not sufficient on which to base an assertion which is used as a factor to terminate employment. To do so is not reasonable in the context of the impact of such a decision.

60. The resulting damage to the customer property was significant in monetary terms. £22,000 is not a small sum. However, risk of damage whilst moving this equipment is an inevitable part of the business and, because of the nature of the equipment being moved, any significant damage is likely to be expensive.

61. There was a lot of concentration within the Respondent's evidence on the level of damage and the resulting costs which leads me to believe that the Respondent has focused on the result of the collision, and the subsequent monetary cost, to justify gross misconduct rather than the actual act the Claimant is guilty of. The Respondent's disciplinary policy refers to 'serious negligence' being grounds for gross misconduct. This, by definition, is the act, or failure to act as opposed to the consequences. It is this guidance which should have been the basis for the Respondent's considerations when deciding on categorisation as opposed to solely the financial consequences.

62. At the time the Claimant was dismissed there was no real understanding of the specific resulting costs of the collision to the Respondent beyond the cost

of a temporary repair which was done by the in-house team. The cost of the damage was significant but that alone does not justify the Respondent's assertion that the Claimant's act in causing the collision was seriously negligent and thus amounted to gross misconduct.

63. Turning to look at reputational or business loss. There was no evidence of customer complaints or damage to the relationship with the customer. The Respondent's explained that they told the customer and they 'weren't pleased' but there has been no impact to the business as a result of this nor has the Respondent been asked to justify or explain their response to the incident. There is no evidence, therefore, of loss to the business by either impact on custom or reputation.

64. I have heard, as a result of the collision, the suggestion that patients were inconvenienced and there is potentially a need for a replacement scanner to be loaned whilst the repair is completed. However, this appears to me to be entirely speculation. None of this information has come from the customer themselves. There was no actual evidence of the specific impact of the scanner being out of service either for the week following the collision or when it is ultimately fixed and it is unclear to me who will bear the costs of any replacement scanner if, indeed, one is required at all.

65. When you break this case down the act, which the Respondent has characterised as 'gross misconduct', is a one-off momentary lapse or minor misjudgment in other words, an accident. The Respondent does not argue against the categorisation of the incident as an 'accident'. When I asked the Respondent's witnesses, Mr Overbury, why he believed the accident constituted 'gross misconduct' the answer given was that the incident was 'avoidable'.

66. The incident was, by very definition, an accident and thus avoidable. Mr Overbury's explanation does not justify why a momentary lapse could be elevated to the level of serious negligence. There was no suggestion here of the Claimant doing anything else whilst completing this manoeuvre. There was no suggestion of him being distracted, using his mobile phone or driving dangerously. Damage was caused but it is repairable and, importantly, no one was injured. There is no element of this case which could reasonably bring the incident into the category of serious negligence and, therefore, gross misconduct.

67. To categorise an incident such as this as gross misconduct is not within the band of reasonable responses and it was not reasonable for the Respondent to behave as such and dismiss the Claimant. On this finding alone, the dismissal is unfair.

68. The final consideration is whether, had the Respondent reasonably characterised the incident as gross misconduct, dismissing the Claimant was in the band of reasonable responses.

69. I have considered the 'comparable' employees provided to me by the Respondent. These are demonstrations of similar situations where employees have been dismissed but they are immediately distinguishable based firstly on their facts but secondly, and perhaps most importantly, by the length of service – neither employee had been with the company more than 18 months. This is in stark contrast to the Claimant's 12 years service.

70. I have also considered the examples I have been provided with where employees have, following collisions or incidents, received other disciplinary penalties. I am immediately drawn to p114 where it is stated that an employee failed to secure a tail lift on the trailer that resulted in damage to a third-party vehicle. The key line within the letter is 'The tail lift not being secure could have led to a serious injury or worse'. This employee received a written warning.

71. I asked Mr Overbury during his evidence how this was distinguishable, as the incident was also arguably avoidable. Mr Overbury had indicated earlier in his evidence that the incident being 'avoidable' was the basis for his decision that the instant case was gross misconduct. Mr Overbury replied that he believed the employee in this scenario may have been distracted, his phone may have gone off, and so the scenario was different.

72. In the Claimant's case he was not distracted, he did not fail to carry out any of his checks, crucially, his action did not risk serious injury, or worse. I do not accept that the 'act' of colliding with the post was sufficiently more serious than this example case. Indeed, the risks it presented are arguably less serious.

73. Turning to look at the working relationship and trust between the parties. The Claimant immediately reported, accepted full responsibility for and expressed his remorse. It is clear from his initial statement and conduct during the disciplinary hearing that he understood the impact of the damage he had caused on not only the Respondent, but he also acknowledged the impact on the Customer too. His conduct following the incident was exemplary.

74. In addition to this conduct the Claimant had clear disciplinary and accident record. There is nothing in this case which indicates there was any impact on the working relationship or trust between the parties. Ultimately, the Claimant made a mistake, a misjudgment which he immediately reported and apologised for. The misjudgment was clearly out of character given his clear record.

75. Having concluded the collision itself could not reasonably be categorised as serious negligence. Beyond that, there is no evidence of unacceptable loss to the business or irreparable damage to the working relationship of the parties.

76. I cannot accept that any reasonable employer would immediately dismiss an employee of 12 years service in these circumstances. I have therefore concluded that it was not within the band of reasonable responses for the Respondent to determine the collision amounted to gross misconduct and consequently dismiss the Claimant.

77. For all the reasons outlined I find that the claim for unfair dismissal is well founded.

78. Finally, was the Respondent entitled to summarily dismiss the Claimant? Having come to the conclusion that dismissal was unfair on the basis that the Claimant's actions were unreasonably categorised as gross misconduct it follows that the Respondent was in breach of contract by summarily dismissing the Claimant. For clarity, the Claimant was contractually entitled to receive notice of termination or pay in lieu of notice.

79. The claim for wrongful dismissal therefore succeeds and damages will be awarded in this regard.

Remedy

80. The Claimant has submitted a schedule of loss at p53 and 54 of the bundle.

81. The Respondent accepted that, if the dismissal is deemed unfair by the tribunal, the figures submitted on the schedule of loss are correct.

82. The Claimant had 12 years continuous service at the date of termination and was 53 years of age.

83. It is agreed that his net pay was £2,080 per month which equates to £480 per week.

84. The payslips provided at p90 demonstrate gross pay at £2,483.48 per month which equates to £573 per week.

85. Dealing firstly with the breach of contract claim. The parties agree the Claimant had a 12 week notice period based on his length of service. The net award in respect of wrongful dismissal is calculated as follows:

    12 x net weekly wage £480 = £5,760

86. However, the Claimant will likely have to pay tax due to this being post employment notice pay therefore, in order that he should not be disadvantaged by this, I have used the gross figure weekly pay at £573:

    12 x gross weekly wage £573 = **£6,876**

87. The basic award for unfair dismissal is calculated as set out on p54:

    12 years service x age factor 1.5 x gross weekly wage (which is capped at £538) = **£9,684**

88. The compensatory award is combined with the award for wrongful dismissal so as to ensure the Claimant is not doubly compensated. The Claimant secured new employment on 23rd November 2020 whilst in his notice period therefore there is no additional award for loss of earnings.

89. The Claimant has claimed an additional £50 per month on the basis his new basic pay was lower than his pay whilst employed by the Respondent. However, calculations from the payslips provided do not reflect this and indicate a net weekly pay of around £600 – significantly higher than previous pay. On this basis there is no award for any losses claimed after the notice period.

90. **£400** is claimed for loss of statutory rights by the Claimant. This is justifiable in the circumstances and is awarded.

91. The total award in this case for both claims is therefore **£16,960**

Employment Judge Cronshaw
Date: 8th August 2021

SENT TO THE PARTIES ON
28 September 2021

FOR THE EMPLOYMENT TRIBUNAL

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: **2401691/2021**

Name of case: **Mr B Grey** v **Quest Medical UK 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 judgment day" is: 28 September 2021

"the calculation day" is: 29 September 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

   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.