



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Ms Grace Yearwood**

**v**

**The Department for Work and Pensions**

**Heard at:** Watford

**On:** 18-19 August 2021

**Before:** Employment Judge Alliott

**Members:** Mrs J Smith  
Mr M Bhatti, MBE

## **Appearances**

**For the Claimant:** In person (assisted by Ms Judith Ibe (Solicitor))

**For the Respondent:** Ms Emma McIlveen (Counsel)

## **DECISION ON APPLICATION TO RECONSIDER THE JUDGMENT DATED 29 MARCH 2021**

1. The tribunal has considered the claimant's application dated 9 April 2021 to reconsider the judgment sent to the parties on 29 March 2021. The tribunal has decided to grant the reconsideration in certain respects and reject the reconsideration in other respects. The tribunal's determination is as follows:-

Grossing up of claimant's arrears of pay, salary increments and bonus and annual leave payments for the period 10 January 2018 to 31 January 2021.

2. The tribunal has not made a monetary award for compensation. As such, the tribunal considers that grossing up is not appropriate in this case. The application for reconsideration is rejected.
3. The tribunal made an order for the claimant to be reinstated and to be treated in all respects as if she had not been dismissed.
4. The claimant was paid monthly. The tribunal would expect the respondent to make a calculation as of each pay day between dismissal and reinstatement of how much the claimant would have earned and what deductions for tax, National Insurance, pension contribution etc would have been made. The net figure payable to the claimant would then be arrived at

month by month. The tribunal would expect that sum to be paid to the claimant and that it would not be treated as taxable in her hands as the relevant deductions had already been made.

5. What actually appears to have happened is that in February 2021 following her reinstatement, a calculation was made as to the total amount of pay she would have earned prior to reinstatement, deductions were made as agreed for pay in lieu of notice and in lieu of annual leave and tax and National Insurance and pension contributions deducted from the balance. It seems to the tribunal highly probable that the payment of that back pay in one lump sum in February would result in the claimant paying tax/NI at a higher rate than she would otherwise have done.
6. The claimant also asserts that the correct rate of pay has not been used and that she was also entitled to bonuses and payments for annual leave. The claimant also has concerns that she has not been returned to the position she would have been as regards her 'classic' pension. The claimant informed us that she had been given a new employee number on reinstatement and that she could not access her historic P60 forms with this new employee number in order to ascertain whether all of her pension contributions had been taken into account.
7. We observe that, in our judgment, it is unsatisfactory that months after her reinstatement there is still uncertainty as to how much backpay the claimant is entitled to, how much tax and other deductions she should pay on it and whether she has been reinstated to the same position as regards her pension. These issues should be a matter of record and we would expect and organisation such as the DWP to be able to sort it out definitively.
8. In order to move the matter on, we make the following orders:-
  - 8.1 By **4pm, 31 August 2021**, the respondent is to send to the claimant a document setting out in relation to each payday between the claimant's dismissal and her reinstatement the gross pay due, the deductions in relation to tax, National Insurance and pension contribution etc and the net pay due.
  - 8.2 In the event that the net pay due exceeds the amount already paid to the claimant, then the difference is to be paid to the claimant by **4pm, 15 September 2021**. For the avoidance of doubt, the payment and acceptance of any such amount will not constitute settlement of the issue and the claimant will remain able to challenge the figures, whether earnings or deductions.
  - 8.3 By **4pm, 31 August 2021**, the respondent is to use its best endeavours to supply the claimant with her P60 forms from 1987 onwards.
  - 8.4 By **4pm, 15 September 2021**, the respondent is to use its best endeavours to provide the claimant with the following details:-

8.4.1 Details of the pension the claimant would have had but for her dismissal as of 1 February 2021.

8.4.2 Details of the pension the claimant has, as of 1 February 2021.

8.4.3 If there is a difference between the two, the reason for this.

Interest on the total amount due to the claimant as salary backpay.

9. The order for reinstatement was made under the Employment Rights Act 1996. We have not been taken to any provision that provides for the award of interest on backpay following reinstatement. Accordingly, we do not make an award of interest.

10. Even if we had a discretion to award interest, we record that due to the very low rate of base rate interest during this period, any such award would have been at a very low interest rate.

Interest on award for injury to feelings

11. The application for reconsideration of this aspect of the judgment is granted. It is accepted that we were under a duty to consider interest on any amounts awarded even if no application was made and no such consideration was made.

12. The figure for injury to feelings of £25,000 was, in error, made based on an assessment of the value of the claim as of the date of the hearing rather than the date of the act of discrimination. Accordingly, we have decided to reconsider that figure.

13. In our judgment, as of the date of discrimination which was from December 2017 through to dismissal on 10 February 2018, an appropriate and fair figure for injury to feelings would be £20,000.

14. From shortly before dismissal until the date of the hearing is a little over three years. At a rate of 8% per annual, we consider it appropriate to award an interest rate of 25%, or £5,000.

15. Accordingly, the award for injury to feelings will be £20,000 plus £5,000 interest.

16. This is the same figure as appeared in the original judgment and we understand that figure has already been paid to the claimant.

Aggravated damages

17. Best practice suggests that aggravated damages should be treated as a subset of the injury to feelings figure. In our original judgment we set out all the matters that we considered were aggravating features. We reconsider our judgment to make clear that the injury to feelings figure includes an award for aggravated damages.

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Employment Judge Alliot

Date:2/11/2021

Sent to the parties on: 19/11/2021

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For the Tribunal Office