



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms L Thomas

**Respondent:** The Lancashire Teaching Hospitals NHS Foundation Trust

**Heard at:** Manchester

**On:** 16 April 2021  
31 August 2021

**Before:** Employment Judge Ainscough (in chambers)

## REPRESENTATION:

**Claimant:** Not in attendance

**Respondent:** Not in attendance

# JUDGMENT

The judgment of the Tribunal is that:

1. The respondent is ordered to pay the claimant a basic award of £2,155.50.
2. The respondent is ordered to pay the claimant a compensatory award of £77,844.35.

# REASONS

1. The claimant was employed by the respondent from 8 July 2013 to 31 March 2017. The claimant's date of birth is 26 April 1972. The claimant's combined gross weekly salary was £2166.19. The claimant's combined net weekly salary was £1373.93.

2. The Tribunal, chaired by Employment Judge Sherratt, determined in a Judgment dated 11 March 2019 that the claimant had been unfairly dismissed contrary to section 94 of the Employment Rights Act 1996.

3. On 13 October 2020 the parties provided an agreed Schedule of Loss and asked the Tribunal to issue a remedy judgment without hearing further from the parties.

4. Employment Judge Sherratt retired in March 2020 and the matter was passed to me to determine at an in chambers hearing on 16 April 2021. On 13 May 2021 I asked the parties to provide further information.

5. On 24 May 2021 the claimant's representatives provided the further information requested and I sat in chambers on 31 August 2021 to decide the matter.

### **Basic Award**

6. In accordance with section 119 of the Employment Rights Act 1996 the claimant had three years' continuous service over the age of 41 and is therefore entitled to 1.5 weeks' pay for each year of continuous service. The claimant's weekly pay is capped at £479 in accordance with the Employment Rights (Increase of Limits) Order 2016 and therefore she is entitled to a total basic award of £2,155.50.

### **Compensatory Award**

7. In accordance with section 123 of the Employment Rights Act 1996, it was agreed that the period of loss from the date of termination on 31 March 2017 to the start of the final hearing on 3 December 2018 was a period of 87 weeks. The claimant's combined net weekly salary was £1,373.93 which equates to a loss of £119,531.97.

8. The agreed period of loss from 3 December 2018 to the date of the Schedule of Loss of 11 September 2020 was 92 weeks. The claimant's combined net weekly salary was £1,373.93 and this equates to a loss of £126,401.56.

9. The combined loss from 31 March 2017 to 11 September 2020 is £245,933.53

10. The claimant was able to mitigate her loss and was able to earn the following sums up until the week of 11 September 2020: £4,279.43; £34,966.91; £29,503; and £123,045.59. The total sums earned in mitigation are £191,794.92.

11. The total sums earned in mitigation deducted from the period of loss equate to a total past loss of £54,138.61.

12. The claimant also incurred expenses of £3,705.80. When this figure is added to the total past loss it equates to a compensatory award of £57,844.50.

### **Grossing Up**

13. The claimant is entitled to receive a level of compensation that reflects what she would have received in wages had she remained in employment. It is therefore necessary to perform a grossing up calculation in order that the claimant has sufficient funds to meet any charge for income tax on the award.

14. In the tax year 2021/2022 the claimant will earn £92,372. The personal allowance for this year is £12,750.

15. The current tax bandings are as follows:

Up to £12,750 = 0%

£12751 - £50,270 = 20%

£50,271 - £150,000 = 40%

Over £150,000 = 45%

16. The first £12,750 of the claimant's salary is tax free. The next £37,700 is subject to the basic rate of 20%. The remaining £41,922 is subject to the higher rate of tax at 40%.

17. If an employee earns wages that are subject to the higher rate of 40% tax, they can earn an additional £99,730 that would be subject to this rate. This equates to net earnings of £59,838.

18. In this claimant's case, she will earn £41,922 that will be subject to 40% tax; therefore, the net earnings in this bracket will be £25,153.20. When that net figure is deducted from £59,838 it leaves a net figure of £34,684.80 available to the claimant. This is the additional net amount the claimant could earn in the higher rate tax bracket.

19. In accordance with section 401 of the Income Tax (Earnings and Pensions) Act 2003, the first £30,000 of any award on termination of employment is tax free. The basic award of £2,155.50 is deducted from this £30,000 tax free amount and leaves £27,844.50 of the tax free sum to be applied to the compensatory award.

20. Once the £27,844.50 is applied to the compensatory award of £57,844.50 it leaves a figure of £29,999.91 subject to the higher rate of tax.

21. It has been established that the claimant has £34,684.80 available in the 40% tax bracket, and therefore I can determine that the remaining £29,999.91 of the compensatory award will be subject to 40% tax.

22. Therefore, in order to ensure that the claimant receives £29,999.91, it is necessary to gross up that amount by 40%. When that calculation is performed the gross amount is £49,999.85.

23. It is then necessary to add the £49,999.85 to the tax free element of the compensatory award of £27,844.50, and this equates to a grossed up total compensatory award of £77,844.35.

24. The statutory cap applicable to a compensatory award in accordance with the section 124 of the Employment Rights Act 1996 and the Employment Rights (Increase of Limits) Order 2016 is the lower of £78,962 or 52 weeks gross pay £112,641.88. It is therefore not necessary to apply this cap to the compensatory award.

Employment Judge Ainscough  
Date: 2 December 2021

JUDGMENT AND REASONS SENT TO THE PARTIES ON  
6 December 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:2403352/17

Ms L Thomas v The Lancashire Teaching Hospitals NHS Foundation Trust

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: 6 December 2021

"the calculation day" is: 7 December 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](http://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.