EMPLOYMENT TRIBUNALS

Claimants: 1. Mr A Camacho
2. Miss A I Ramos Bermejo

Respondent: People Solutions Resourcing Limited

Heard at: Manchester (by CVP) **On:** 18 June 2021
1 September 2021
(in Chambers)

Before: Employment Judge Ainscough
(sitting alone)

REPRESENTATION:

Claimants: Mr Camacho (Lay Representative)
Respondent: Mr Hignett (Counsel)

JUDGMENT

The judgment of the Tribunal is that:

1. The claim of unlawful deduction from wages is successful.

2. The respondent is ordered to pay each claimant £61.58 for the hours worked on 16 March 2020.

3. The respondent is ordered to pay each claimant £183.90 in compensation for entitlement to annual leave on termination of employment in accordance with regulation 14 of the Working Time Regulations 1998.

REASONS

Introduction

1. The claimants were employed as Warehouse Operatives by the respondent, a recruitment firm which provides workers for their client Movianto UK Limited. The claimants brought claims for unlawful deduction from wages, breach of contract and failure to pay accrued holiday pay.

2. ACAS Early Conciliation began on 17 June 2020 and a certificate was produced by ACAS on 31 July 2020. The claimants subsequently submitted the Employment Tribunal claim on 30 August 2020, and the respondent produced a response on 16 October 2020.

3. In the response, the respondent denied that the claimants were employed on a fixed term contract or that they worked for more than one day for the respondent's client. The respondent admitted that there was an outstanding holiday pay claim.

The Issues

4. At the outset of the final hearing, the parties were able to agree the issues to be determined as follows:

(1) Whether the claimants had worked on 16 March 2020 and were entitled to wages for hours worked on that day;

(2) Whether the claimants were entitled to statutory sick pay between 18 March 2020 to 5 April 2020;

(3) Whether the claimants were employed under a fixed term contract and were entitled to wages from 6 April 2020 to 15 June 2020;

(4) Whether the claimants were entitled to unpaid pension contributions;

(5) Whether the claimants were entitled to accrued holiday pay on termination of employment in accordance with regulation 14 of the Working Time Regulations 1998.

5. The respondent conceded that the claimants were entitled to two weeks' statutory sick pay and that would be paid. The respondent also conceded that the claimants were entitled to the payment of accrued holiday but disputed the accrual figure. It was the respondent's position that the claimants had only worked for one day and therefore were only entitled to one hour's accrued holiday pay.

6. It was the claimants' case that they worked for two days before going off sick. In the alternative the claimants contended they were entitled to accrued holiday pay

for the balance of the fixed term contract. The claimants maintained they were entitled to payment of wages for the remainder of their contracts.

7. It was therefore agreed that the holiday pay claim would remain at issue for the determination by the Tribunal.

Evidence

8. The parties agreed a bundle of documents of 140 pages.

9. I heard evidence from both claimants. English is not their first language and therefore they were assisted by an interpreter during the hearing.

10. I also heard evidence from Alex Fearn, the Senior Branch Manager of the respondent's Warrington and Manchester branch, and Marie Galliena, the respondent's Director of Human Resources.

Relevant Legal Principles

Agency Worker Regulations 2010

11. Regulation 3 defines an agency worker as:

> **"an individual who—**
>
> **(a)is supplied by a temporary work agency to work temporarily for and under the supervision and direction of a hirer; and**
>
> **(b)has a contract with the temporary work agency which is—**
>
> **(i)a contract of employment with the agency, or**
>
> **(ii)any other contract to perform work and services personally for the agency."**

12. Regulation 5 provides that an agency worker has the right to the relevant terms and conditions ordinarily included in a contract of employment provided by the hirer to a comparable employee.

13. Regulation 6 defines the relevant terms and conditions as:

> **"(a)pay;**
>
> **(b)the duration of working time;**
>
> **(c)night work;**
>
> **(d)rest periods;**

(e)rest breaks; and

(f)annual leave."

14. Regulation 7 provides that an agency worker only has this right after 12 weeks continuous employment with the hirer.

Unlawful deduction from wages

15. The unlawful deduction from wages claim was brought under Part II of the Employment Rights Act 1996. Section 13 confers the right not to suffer unauthorised deductions unless:

> **"(a) The deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision in the worker's contract; or**
>
> **(b) The worker has previously signified in writing his agreement or consent to the making of the deduction."**

16. A deduction is defined by section 13(3) as follows:

> **"(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this part as a deduction made by the employer from the worker's wages on that occasion."**

17. Section 27 defines wages, which includes:

> **"(a) Any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise.**
>
> **(b) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992."**

18. Section 24 provides that:

> **"Where any complaint under section 23 is well-founded the Tribunal can make an order that the employer pay to the worker the amount of any deduction in contravention of section 13."**

19. However, section 25 determines that:

> **"(3) An employer shall not under section 24 be ordered by a Tribunal to pay or repay to a worker any amount in respect of a deduction or payment, or in respect of any combination of deductions or payments, insofar as it appears to the Tribunal that he has already paid or repaid any such amount to the worker."**

Holiday Pay

20. Regulation 14 of the Working Time Regulations 1998 provides:

"(1) this regulation applies where –

(a) a worker's employment is terminated during the course of this leave year, and

(b) on the date on which the termination takes effect ("the termination date"), the proportion he has taken of the leave to which he is entitled in the leave year under regulation 13 and regulation 13A differs from the proportion of the leave year which has expired.

(2) where the proportion of the leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave in accordance with paragraph (3).

21. In the case of **Harpur Trust v Brazel (UNISON intervening) 2020 ICR 584, CA** the Court of Appeal confirmed that the Working Time Regulations is not a scheme to pro rata leave entitlement. Each worker is entitled to the same period of leave in accordance with the regulations.

22. Regulation 16 of the Working Time Regulations 1998 provides:

"(1) A worker is entitled to be paid in respect of any period of annual leave to which he is entitled under regulation 13 and regulation 13A, at the rate of a week's pay in respect of each week of leave.

(2) Sections 221 to 224 of the 1996 Act shall apply for the purpose of determining the amount of a week's pay for the purposes of this regulation, subject to the modifications set out in paragraph (3) and the exception in paragraph (3A).

(3A) In any case where applying sections 221 to 224 of the 1996 Act subject to the modifications set out in paragraph (3) gives no weeks of which account is taken, the amount of a week's pay is not to be determined by applying those sections, but is the amount which fairly represents a week's pay having regard to the considerations specified in section 228(3) as if references in that section to the employee were references to the worker."

23. Sections 221-224 of the Employment Rights Act 1996 provide formulae for calculating a weeks pay where hours of work can vary. These sections require an assessment of wages earnt during the preceding 12 week period for the performance of each complete week of work.

24. Section 228 of the Employment Rights Act 1996 applies to new employment were it is not possible to perform a calculation because the duration of employment was not sufficient. In those circumstances it is necessary to determine an amount which fairly represents a weeks pay.

Relevant Findings of Fact

Terms of Employment

25. The claimants registered with the respondent on 12 March 2020 and both signed terms of employment. Those terms confirmed that the respondent was the claimants' employer, and the employment was governed by the Agency Workers Regulations 2010. Those terms also confirmed that an "assignment" meant a period during which the claimants would be supplied to work for a client. The claimants' first assignment was with Movianto UK Limited, working as Warehouse Operatives.

26. Under the subheading "The Contract" the terms set out that employment with the respondent would only commence once the claimants had been assigned to work for a client. The terms further stated that the claimants acknowledged that as a result of the claimants' status as a flexible worker, there would be periods when the respondent would not have suitable work available. The claimants agreed that they would not refuse a suitable assignment without good cause.

27. Under the heading "Place of Work", the respondent reserved the right to change the claimants' assignment and/or place of work at any point in time, in line with the needs of either the respondent or the client.

28. Under the heading "Remuneration", the claimants were not entitled to receive payment from the respondent or the client for any time not spent on assignment, particularly in respect of holidays, illness or absence for any other reason.

29. The terms provided that the claimants were entitled to the leave granted in accordance with the Working Time Directive and that leave would accrue from the start of the claimants' assignment. Entitlement to leave (and presumably accrued leave on termination of employment) is calculated in accordance with the hours worked on assignment.

30. The terms dictated that payment of wages would only be made if the claimants submitted timesheets with hours of work signed off by the client. The respondent only agreed to guarantee 336 hours of work at the National Minimum Wage if the claimants remained employed with the respondent for a full 12 month period.

31. The terms confirmed that the claimants would be entitled to statutory sick pay if they met the necessary requirements. The terms also stated that the respondent would comply with the necessary provisions of the pension legislation.

32. Under the heading "Termination", the respondent was entitled to give the claimants immediate notice during the first month of employment but required the claimants to give one week's notice to terminate their employment.

33. The handbook that accompanied the terms of employment, under section 2 entitled "Conditions of Employment", set out that a client could request that the claimants be removed from an assignment, but that would not ordinarily mean that the employment with the respondent would be terminated. Under the heading "Sickness", the handbook stated that if the claimants were off sick for four or more days they may be entitled to statutory sick pay.

Assignment with Movianto

34. On 13 March 2020 the respondent sent the second claimant a text message advising that she and the first claimant would be starting work with Movianto on Monday 16 March 2020 at 8.00am. The second claimant acknowledged this text message saying "thank you" and that she would be on time.

35. The evidence given by Alex Fearn in his witness statement is that Movianto subsequently contacted him to say they had too many workers starting on 16 March 2020 and therefore the claimants would be required to start on 17 March 2020. Alex Fearn gave evidence that this would have been communicated to the claimants via telephone.

36. It is the claimants' evidence that they did attend at Movianto on 16 March 2020 but were not asked to clock in or clock out that day and told that that would happen the following day. This is the claimants' explanation for why there is no record with Movianto of their attendance on 16 March 2020.

37. The claimants also stated in evidence that they did not remember receiving a call telling them not to go in on 16 March 2020. The claimants provided evidence of their mobile phone records and this did not include a call from the respondent. The claimants pointed out that the respondent did not have evidence that a call was made to the claimants.

38. The second claimant recalled that the start time should have been 6.00am but was moved to 8.00am because of induction training.

39. During his evidence Alex Fearn explained that all staff were working from home as a result of the COVID pandemic and he asked that calls be made to the claimants telling them not to start until 17 March 2020. It was his evidence that he was sure that everybody had been spoken to, including the claimants. Alex Fearn disputed the length of time of the induction and said that it would not take 7.5 hours but rather two hours and that a security card would have been issued on the first day.

40. Within the bundle there are two emails from Alex Fearn to each claimant and both set out his understanding that they had worked two shifts and were then asked to self-isolate. There is an email from the first claimant from 19 March 2020 in which he stated his understanding that he had to report sick on his third day of work.

41. A lack of a timesheet does not mean that the claimants did not attend at Movianto on 16 March. The timesheet produced for 17 March is quite simply a handwritten record setting out 7.5 hours. There is no detail of a date or the hours worked. It is not conclusive that the claimants only worked on 17 March 2020.

42. Instead, the claimants are both clear that they worked on 16 March 2020 and 17 March 2020 and reported sick on the third day as set out in the first claimant's email of 19 March 2020. In the emails sent on 20 April to both claimants, Alex Fearn stated that his records showed that they worked two shifts and then reported sick. The claimants' explanation for a lack of record is that they were not given the security login until the second day. If this was the case, there would be no record that they had turned up to work on 16 March 2020.

43. I conclude that the claimants did attend to work for the client on 16 March 2020.

44. The claimants also worked for Movianto on 17 March 2020 for the duration of 7.5 hours. That evening, the first claimant felt unwell and therefore, in light of the global pandemic, on 18 March 2020 both claimants informed the respondent that they had been advised to isolate for 15 days. The claimants subsequently provided the respondent with isolation notes that ran from 23 March 2020 to 5 April 2020.

45. On 19 March 2020 the respondent's HR department sent an email to the first claimant confirming the assignment with Movianto. The email confirmed that the first day was 16 March 2020 and the expected last day was 15 June 2020.

46. On 19 March 2020 the first claimant responded, advising the respondent that he and the second claimant had sent a text message on the third working day prior to the start of the shift informing the respondent of his ill health and the need to self-isolate. The first claimant said that he and the second claimant would be happy to resume work after a period of isolation.

47. Subsequently, on 22 March 2020 the respondent sent a Work Finder Agreement to the first claimant. The first claimant was told he would be bound by this agreement and was asked to sign it. This Agreement confirmed that the respondent would find work for the claimant but did not constitute a contract of employment.

48. On 25 March 2020 the first claimant responded, acknowledging receipt, and stating that his name had been incorrectly recorded in the Agreement, and he hoped to return to work after his period of isolation.

49. On 7 April 2020 the second claimant sent an email to the respondent querying why she had not received a response to earlier emails and wanted to know if she was able to return to work after isolation. Alex Fearn, the Senior Branch Manager for the Warrington and Manchester branch responded to the claimant, advising that

their previous contact, Marie Middlehurst, had been furloughed and asked the second claimant to identify herself.

50. In a response the same day the second claimant confirmed that she and the first claimant had started work at Movianto and had been isolating and had provided the respondent with an isolation note.

51. On 13 April 2020 the first claimant sent a similar email to the respondent complaining that he had not received an answer to his emails and he had not received statutory sick pay. The first claimant alleged breach of contract and asked for an update. Alex Fearn responded the same day and asked for a copy of the isolation note and advised he would investigate.

52. On 15 April 2020 the first claimant responded saying that he had already sent the isolation note and asked for an update. On the same day Alex Fearn responded, querying how long the first claimant had worked for the respondent.

53. Later that day the first claimant confirmed that he had undertaken work for the client on 16 March 2020 and 17 March 2020 and then had called in sick on 18 March 2020. On 20 April 2020, the first claimant had to chase a response and stated in the absence of a response he would have to make a formal complaint.

54. Alex Fearn responded, advising the first claimant that he had not been furloughed and confirmed on consideration of his record, the first claimant had worked two shifts and then provided a self-isolation note.

55. Alex Fearn informed the first claimant that there was no more work available at Movianto as they had not asked for the first claimant to return. The first claimant was told he could not be furloughed. Alex Fearn advised the first claimant that he would remain registered with the respondent and that alternative work would be offered when the first claimant was fit and well.

56. The first claimant responded the same day stating that this answer was not acceptable and that he would take the matter to court because there had been a breach of his contract. The first claimant concluded his email (English is not the first claimant's first language) stating that:

> "Please consider that any labour or relation is finish with resing to any label right that assist me."

57. Alex Fearn responded confirming that furlough was only available to those who started work prior to 28 February 2020 and confirming that the first claimant would be in receipt of sick pay. In response the first claimant stated that he did not agree and would be making a claim to the Employment Tribunal. In the final email of that day Alex Fearn responded stating that as he was in receipt of the self-isolation note he would process the sick pay payment.

58. On 20 April 2020 Alex Fearn also sent an email to the second claimant confirming that she had worked two shifts for the respondent and then sent a sick note. He confirmed that he had only just been in receipt of the sick note and was processing the sick payment. In response the second claimant (English is not ee second claimant's first language) stated this:

> "I just inform that I finish my labour relationship with it without to resign by laboural rights."

59. On 17 June 2020 the claimants began ACAS early conciliation and an ACAS certificate was received on 31 July 2020. The claimants both submitted the ET1 form on 30 August 2020. In the first claimant's ET1 form, he confirmed his period of employment with the respondent from 16 March 2020 to 20 April 2020. The second claimant's ET1 form does not provide details of dates of employment.

60. On 15 July 2020 Movianto sent an email to the respondent stating that neither claimant worked on 16 March 2020, but they had worked for 7.5 hours on 17 March 2020.

61. On 30 July 2020 ACAS sent an email to the respondent confirming that the first claimant considered himself to be a leaver.

Submissions

Respondent's submissions

62. The respondent submitted that in March/April 2020 employers were having to improvise and there were issues with communication.

63. The respondent maintained that a call was made to the claimants informing them they did not need to work on 16 March 2020, and this is supported by the email from Motivano.

64. The respondent submitted that the claimants would not be required to attend a 7.5 hour induction for a task based job. It was the respondent's witness' evidence that induction for that client would ordinarily only take two hours, which would include details of clocking in and out of the client's system. The respondent submitted that as the evidence of the second claimant was that the clock-in/clock-out card was only given on the 17 March 2020, the claimants could not have worked the 16 March 2020.

65. The respondent conceded that the claimants were entitled to two weeks' sick pay at the current rate of £95.85 per week.

66. The respondent submitted there was no fixed term contract and therefore no liability to pay the claimants until 15 June 2020. The respondent submitted that there was nothing in the terms of employment that constituted a fixed term, and the notice

period for either side is inconsistent with the idea of a contract. The respondent submitted that the first claimant conceded that he was not entitled to be paid when not on assignment. The respondent also submitted that both claimants resigned on 20 April 2020.

67. The respondent submitted that there was no explanation as to how the claimants had calculated their pension loss. The respondent submitted that no contributions were payable in the circumstances.

68. The respondent did concede that the claimants were owed one hour's holiday pay based on one day's work. This amounts to £8.31. The respondent denied any uplift should be made to any award.

Claimants' Submissions

69. The claimants submitted that there was a lack of communication from the respondent. The claimants submitted that they wanted to return to work prior to 20 April but had no response.

70. The claimants submitted that they were seeking compensation in accordance with the rights conferred by the Agency Worker Regulations 2010.

71. The claimants maintained that they did work on 16 March 2020 and that the respondent had not been able to prove that it was cancelled. The claimants contend that they have lost earnings up to 15 June 2020.

Discussion and Conclusions

Unlawful Deduction from Wages claim

72. It was the claimants' case that as a result of the email received from the respondent's representative on 19 March 2020, they had a fixed term contract between 16 March 2020 to 15 June 2020 and were entitled to the payment of wages for this period. The claimants contend that in light of this fixed term of employment, they are also entitled to pension contributions and a greater sum for accrued holiday.

73. The respondent relied on the terms of employment with the claimants, which it said makes it clear that it is not a fixed term contract. The respondent pointed out that the correspondence on 19 March 2020 made reference to "expected" end date of 15 June 2020, which was indicative that there was no certainty of duration.

74. The respondent's terms of employment were signed by the claimants on 12 March 2020. The terms make it clear that there could be periods when no suitable work was provided. There is no clarification that an assignment would be for a fixed term and this premise is countered by the fact that the terms state that a worker can be removed from an assignment at any time during the assignment.

75. The Agency Worker Regulations 2010 ensure that an agency worker is in a comparable situation to a permanent employee in regard to pay, duration of working time, night work, rest periods, rest breaks and annual leave, if the agency worker has worked for 12 continuous calendar weeks during one or more assignments.

76. There is no right, regardless of duration of service, for either an agency worker or a permanent employee, to a fixed term contract.

77. The terms of the respondent's employment do not make any reference to a fixed term contract, and the email of 19 March 2020 refers to an "expected" end date rather than a guaranteed end date. The claimants were not offered a fixed term contract and were not operating under a fixed term contract from 16 March 2020.

78. The claimants had not worked on assignment for a continuous period of 12 weeks and therefore did not qualify for the same rights in regard to contractual sick pay or annual leave as a permanent comparable employee of Movianto. Instead the terms of employment signed on 12 March 2020 with the respondent applied. In accordance with these terms the claimants were not entitled to a contractual payment for time spent away from assignment caused by illness or holidays.

79. In any event, whilst English is not the first language of the claimants, my interpretation of the emails both sent on 20 April 2020 was to bring an end to their "labour relationship" which they wanted to "finish". ACAS confirmed that the first claimant had treated himself as a leaver and in his ET1 the first claimant set out his period of employment as from 16 March 2020 to 20 April 2020.

80. I determine that for both claimants the assignment with Movianto ended on 18 March 2020 and that they resigned from their employment with the respondent on 20 April 2020.

81. On 20 April 2020 Alex Fearn confirmed to the claimants that Movianto had not asked for the claimants' return. In accordance with the terms of employment, the respondent is not liable for the claimants' wages between 18 March 2020 to 20 April 2020 or 15 June 2020.

82. It was the claimants' evidence that they worked 7.5 hours on 16 March 2020 and 17 March 2020. The claimants were entitled to an hourly rate of pay of £8.21, the National Minimum Wage.

83. The claimants were paid for the hours worked on 17 March 2020 but not for the hours worked on 16 March 2020. Therefore, each claimant is entitled to compensation of £61.58.

Pension

84. The terms of the respondent's employment are that it will meet the pension duties in respect of Part I of the Pensions Act 2008. This legislation requires there

to be automatic enrolment of employees on a pension scheme. Part I also provides for the deferral of enrolment in a pension scheme for up to a period of three months after the start date. It was the evidence of Marie Galliena, that neither claimant met the minimum earnings threshold to qualify for pension payments, and in any event the respondent's default position is to defer auto enrolment for the first 12 weeks of employment.

85. The claimants were unable to set out how they had reached the figure of £150 for this claim. The evidence given was that this was based on previous jobs and the deductions were taken of £25 per week over an eight week period. The right to defer was put to the claimants in evidence, and they accepted that this is something that the employer was entitled to do. Therefore, I determine that the claimants are not entitled to compensation for non payment of pension contributions.

Holiday Pay

86. The claimants' period of employment with the respondent was from 16 March 2020 to 20 April 2020.

87. The terms of employment between the claimants and the respondent confirmed that workers were entitled to the statutory leave entitlement in accordance with the Working Time Directive. The Working Time Directive is implemented into domestic law by the Working Time Regulations 1998. A worker is entitled to 5.6 weeks annual leave per annum regardless of the hours worked.

88. The claimants had worked for 10% of the annual leave year on termination of employment. In accordance with Regulation 14 of the Working Time Regulations 1998 the claimants had accrued 0.56 weeks annual leave on termination of employment.

89. Regulation 16 of the Working Time Regulations provides that in order to determine a weeks pay it is necessary to follow the calculations set out in section 221-224 of the Employment Rights Act 1996.

90. Regulation 3A provides that if, following the application of the formulae set out in those relevant sections, no weeks are to be taken into account, a weeks pay is not to be determined by those sections.

91. Instead, it is necessary to determine an amount which fairly represents a weeks pay with regard to the considerations set out in section 228(3) which states:

> **"The considerations referred to in subsection (2)(b) are—**
>
> **(a)any remuneration received by the employee in respect of the employment in question,**

(b)the amount offered to the employee as remuneration in respect of the employment in question,

(c)the remuneration received by other persons engaged in relevant comparable employment with the same employer, and

(d)the remuneration received by other persons engaged in relevant comparable employment with other employers."

92. The claimants did not work a full week on assignment before termination of employment.

93. The normal working hours as confirmed by the assignment email of 19 March 2020 were 6am – 2pm Monday to Friday for an expected period of 12 weeks.

94. The weekly wage expected by, and offered to, the claimants was £328.40. On consideration of the factors listed in section 228, I determine that £328.40 fairly represents a weeks pay for the purposes of the calculation in accordance with regulation 16 of the Working Time Regulations 1998.

95. The claimants' annual leave entitlement on termination was 0.56 weeks and they are each entitled to a payment in lieu of accrued annual leave of £183.90.

Employment Judge Ainscough
Date: 15 December 2021

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON
16 December 2021

FOR THE TRIBUNAL OFFICE

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): **2413521/2020 & Others**

Name of case(s): **Mr A Camacho** v **People Solutions**
Miss AI Ramos Bermejo **Resourcing 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: 16 December 2021

"the calculation day" is: 17 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/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.