



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondent

Mr Nadir Yousif

Everest Pharmacy Limited

JUDGMENT OF THE TRIBUNAL

Heard at: Manchester (by CVP)

On: 3 December 2021

Before: Employment Judge A M Buchanan (sitting alone)

Appearances

For the Claimants: In person

For the Respondent: No attendance and response struck out.

JUDGMENT

It is the judgment of the Tribunal that:

1. The complaint of discrimination because of race pursuant to the provisions of section 13 of the Equality Act 2010 ("the 2010 Act") is not well-founded and is dismissed.
2. The complaint of discrimination because of age pursuant to the provisions of section 13 of the 2010 Act is not well-founded and is dismissed.
3. The claimant is not entitled to a redundancy payment and the claim for a redundancy payment is not well-founded and is dismissed.
4. The complaint in respect of unpaid holiday pay pursuant to regulations 13-17 of the Working Time Regulations 1998 is not well-founded and is dismissed.
5. The complaint in respect of an unauthorised deduction from wages advanced pursuant to the provisions of part II of the Employment Rights Act 1996 ("the 1996 Act") is not well-founded and is dismissed.

6. The complaint of failure to consult and inform pursuant to Regulation 15 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 is not well founded and is dismissed.

7. The complaint of unfair dismissal pursuant to sections 94/98 of the 1996 Act is well-founded and the claimant is entitled to a remedy.

8. The respondent is ordered to pay to the claimant compensation for unfair dismissal totalling £3780.00p made up as follows:

Basic award £615.00p

Compensatory award £3165.00p. This includes an award of two weeks' pay pursuant to section 38 of the Employment Act 2002.

Total: £3780.00p.

9. The Employment Protection (Recoupment of Benefits) Regulations 1996 ("the Recoupment Regulations") apply to the award of compensation for unfair dismissal and the details required by Regulation 4(2) are as follows:

The monetary element: £3780

The prescribed element: £2255

The dates to which the prescribed element applies: 19 August 2019 – 4 November 2019.

The amount by which the monetary award exceeds the prescribed element: £1525

10. The complaint of breach of contract in respect of unpaid notice pay is well-founded and the respondent is ordered to pay to the claimant £410.00 in respect of unpaid notice pay. This is a gross amount and the claimant is to be responsible for the payment to the appropriate authorities of any income tax and national insurance contributions payable in respect of such sum.

11. Subject to the operation of the Recoupment Regulations, the amount due from the respondent to the claimant is £4190.00 and is payable forthwith.

NOTES

1. This matter came before me this morning. I had a bundle of papers comprising the claim form filed on 6 August 2019, a response filed by the respondent, an amended response from the respondent, orders made on 7 April 2020, a Judgment dated 6 August 2021 whereby the response of the respondent was struck out because it had not been actively pursued and other correspondence including a request from the respondent dated 2 December 2021 to re-arrange the hearing because "*the lady who is dealing with the claim is off due to serious health issue*". I had a witness statement from the claimant and other documents in support of the various complaints advanced.

2. The claimant did not present any satisfactory evidence in respect of the complaints which are dismissed.

3. The application by the respondent for a postponement was not considered as the response had been struck out and the respondent had made no application for a reconsideration of that decision.

4. I was satisfied that the claimant had been unfairly dismissed by the respondent on 5 August 2019 and was entitled to a remedy. The claimant was born on 13 January 1959 and had served the respondent and predecessor employers at dismissal for over two years but less than three years.

5. I was not satisfied that the claimant had mitigated his losses and I concluded that if he had taken reasonable steps to do so he would have obtained employment at the same level of remuneration within 13 weeks of his dismissal. The first two weeks of that period are covered by the award for notice pay and so there is an award of 11 weeks' pay and that is subject to the Recoupment Regulations. The claimant advised he was in receipt of universal credit after his dismissal but was uncertain as to the dates.

6. I was satisfied that the respondent had failed to provide the claimant with amended terms and conditions of employment after the transfer of undertakings on 1 May 2019 and before the date of his dismissal on 5 August 2019. The claimant had some written terms from previous employers and so I decided that the lower award of two weeks' pay was appropriate.

7. The claimant advised that his income from the respondent was not subject to income tax. I made an award for unpaid notice pay on the basis that the respondent had not established that the claimant was guilty of gross misconduct. The claimant is to account for any income tax and national insurance contribution due in respect of such sum.

EMPLOYMENT JUDGE A M BUCHANAN

**JUDGMENT SIGNED BY EMPLOYMENT
JUDGE ON 3 December 2021**

**JUDGMENT SENT TO THE PARTIES ON
14 December 2021**

AND ENTERED IN THE REGISTER

FOR THE TRIBUNAL

Note: Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing, or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions

Judgements and reasons for the judgments are published, in full, online at 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: **2410567/2019**

Name of case: **Mr N Yousif** v **Everest Pharmacy 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: 14 December 2021

"the calculation day" is: 15 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.

**ANNEX TO THE JUDGMENT
(MONETARY AWARDS)**

Recoupment of Benefits

The following particulars are given pursuant to the Employment Protection (Recoupment of Benefits) Regulations 1996, SI 1996 No 2349.

The Tribunal has awarded compensation to the claimant, but not all of it should be paid immediately. This is because the Secretary of State has the right to recover (recoup) any jobseeker's allowance, income-related employment and support allowance, universal credit or income support paid to the claimant after dismissal. This will be done by way of a Recoupment Notice, which will be sent to the respondent usually within 21 days after the Tribunal's judgment was sent to the parties.

The Tribunal's judgment states: (a) the total monetary award made to the claimant; (b) an amount called the prescribed element, if any; (c) the dates of the period to which the prescribed element is attributable; and (d) the amount, if any, by which the monetary award exceeds the prescribed element. Only the prescribed element is affected by the Recoupment Notice and that part of the Tribunal's award should not be paid until the Recoupment Notice has been received.

The difference between the monetary award and the prescribed element is payable by the respondent to the claimant immediately.

When the Secretary of State sends the Recoupment Notice, the respondent must pay the amount specified in the Recoupment Notice to the Secretary of State. This amount can never be more than the prescribed element of any monetary award. If the amount is less than the prescribed element, the respondent must pay the balance to the claimant. If the Secretary of State informs the respondent that it is not intended to issue a Recoupment Notice, the respondent must immediately pay the whole of the prescribed element to the claimant.

The claimant will receive a copy of the Recoupment Notice from the Secretary of State. If the claimant disputes the amount in the Recoupment Notice, the claimant must inform the Secretary of State in writing within 21 days. The Tribunal has no power to resolve such disputes, which must be resolved directly between the claimant and the Secretary of State.