



# EMPLOYMENT TRIBUNALS

## Claimant

Mr A Gomes (1)

Mr C Errico (2)

v

## Respondent

Playworks Limited (trading as  
'Panacea')

**Heard at:** Manchester

**On:** 17 January 2022

**Before:** Employment Judge Johnson

## Appearances

**For the Claimants:** both appeared in person

**For the Respondent:** did not attend

## REMEDY HEARING JUDGMENT

### First claimant

1. The respondent shall pay to the first claimant compensation for his complaints of unfair dismissal, breach of contract, unlawful deduction from wages, holiday pay and failure to provide a written statement of particulars in time of **£14,764.29 (Fourteen Thousand, Seven Hundred and Sixty-Four Pounds Twenty-Nine Pence)** and calculated as follows:

Unfair dismissal	Subtotal/Total
1. Basic award for 12 years completed service from age of 21 to 33 years and applying an average week's pay of £240.12, $((1/2 \times £240.12 \times 1) + (1 \times £240.12 \times 11)) =$ <b>£2761.38</b>	
2. Immediate loss of earnings from effective date of termination on 5 April 2021 for 6 weeks applying net average pay of £200.16 $(6 \times £200.16) =$ <b>£1200.96</b>	
3. Loss of statutory rights = <b>£500.00</b>	
4. Uplift to compensatory award of 25% reflecting the respondent's total failure to comply with the	

ACAS Code of Practice relating to disciplinary and grievance procedures, ( $\pounds 1200.96 + \pounds 425.24 \times 25\%$ ) = <b>£425.24</b>	
<b>Subtotal for unfair dismissal</b>	<b>£4887.58</b>
<p><b>Breach of Contract (Notice Pay)</b></p> <p>1. The first claimant was continuously employed by the respondent for 12 completed years of service and his net pay at the effective date of termination was a weekly average of £200.16 plus pension contributions of £4.49 , (<math>12 \times (\pounds 200.16 + \pounds 4.49)</math>) = <b>£2455.80</b></p> <p>2. Uplift to award for breach of contract of 25% reflecting the respondent's total failure to comply with the ACAS Code of Practice relating to disciplinary and grievance procedures, (<math>\pounds 2401.92 \times 25\%</math>) = <b>£613.95</b></p>	
<b>Subtotal for breach of contract</b>	<b>£3069.90</b>
<p><b>Unlawful deduction from wages (unpaid wages)</b></p> <p>1. The respondent ceased paying the first claimant furlough payments calculated at his average net weekly pay of £142.34 from 31 July 2020. Accordingly, the first claimant is awarded wages from 1 August 2020 until the effective date of termination on 5 April 2021 which is approximately 35 weeks, (<math>35 \times \pounds 142.34</math>) = <b>£4981.90</b></p>	
<b>Subtotal for unlawful deduction from wages</b>	<b>£4981.90</b>
<p><b>Holiday Pay</b></p> <p>1. The first claimant was entitled to 5.6 weeks annual leave each year and did not take any leave in his final year employed by the respondent, (<math>5.6 \times \pounds 240.12</math> being an average week's pay) = <b>£1344.67</b></p>	
<b>Subtotal for holiday pay</b>	<b>£1344.67</b>
<p><b>Failure to provide the first claimant with a written statement of particulars</b></p> <p>1. The respondent did not provide the necessary particulars within 2 months of his date of commencement of employment (5 April 2008 and particulars not provided until 5 December 2008) and it is just and equitable to award the first claimant with 2 week's pay, (<math>2 \times \pounds 240.12</math>) = <b>£480.24</b></p>	
<b>Subtotal for statement of particulars complaint</b>	<b>£480.24</b>
<b>Grand total</b>	<b>£14,764.29</b>

2. The first claimant acknowledged that for an unspecified period of time, he did receive universal credit payments from the Department of Work and Pensions, ('DWP'). It is not clear whether recoupment is applicable in this case, however, the following figures may be of relevance:
- a) **Prescribed element: £1200.96**, (being immediate loss of earnings payable as part of the compensatory award and which must be held until the question of recoupment has been resolved);
  - b) **Prescribed period: 28 June 2021**, (expiry of notice period of 12 weeks following the effective date of termination on 5 April 2021) until 17 January 2022 (date of remedy hearing).
  - c) **Total award: £14,764.29** (see Grand total figure in the table above)
  - d) **Balance: £13,563.33** (following the reservation of the prescribed element and payable to the first claimant immediately)

### Second claimant

1. The respondent shall pay to the second claimant compensation for his complaints of unfair dismissal, breach of contract, unlawful deduction from wages, holiday pay and the failure to provide a written statement of particulars in time of **£9,796.98 (Nine Thousand, Seven Hundred and Ninety-Six Pounds and Ninety-Eight Pence)** and calculated as follows:

<b>Unfair dismissal</b>	<b>Subtotal/Total</b>
<ul style="list-style-type: none"> <li>1. Basic award for 5 years completed service from age of 30 to 35 years and applying an average week's pay of £174.71, (5 x 1 x £174.71) = <b>£873.55</b></li> <li>2. Immediate loss of earnings from effective date of termination on 21 August 2020 for 34 weeks until second claimant was notified of his dismissal by HMRC on 12 April 2021 applying net average furlough pay of £135.35 (34 x £135.35) = <b>£4601.90</b></li> <li>3. Loss of statutory rights = <b>£500.00</b></li> <li>4. Uplift to compensatory award of 25% reflecting the respondent's total failure to comply with the ACAS Code of Practice relating to disciplinary and grievance procedures, (£4601.90 + 500.00 x 25%) = <b>£1275.48</b></li> </ul>	
<b>Subtotal for unfair dismissal</b>	<b>£7250.93</b>
<p><b>Breach of Contract (Notice Pay)</b></p> <ul style="list-style-type: none"> <li>1. The second claimant was continuously employed by the respondent for 5 completed years of service and his net pay at the effective date of termination was an average of £148.25 plus pension contributions of £5.57, (5 x (£148.25 + £5.57)) = <b>£769.10</b></li> </ul>	

2. Uplift to award for breach of contract of 25% reflecting the respondent's total failure to comply with the ACAS Code of Practice relating to disciplinary and grievance procedures, (£769.10 x 25%) = <b>£192.28</b>	
<b>Subtotal for breach of contract</b>	<b>£961.38</b>
<b>Unlawful deduction from wages (unpaid wages)</b>	
1. The respondent ceased paying the second claimant furlough payments calculated at his average net weekly pay of £135.35 from 31 July 2020. Accordingly, the second claimant is awarded wages from 1 August 2020 until the effective date of termination on 21 August 2020 which is approximately 3 weeks, (3 x £135.35) = <b>£406.05</b>	
<b>Subtotal for unlawful deduction from wages</b>	<b>£406.05</b>
<b>Holiday Pay</b>	
1. The second claimant was entitled to 5.6 weeks annual leave each year and did not take any leave in his final year employed by the respondent, (5.6 x £148.25 being an average week's pay) = <b>£830.20</b>	
<b>Subtotal for holiday pay</b>	<b>£830.20</b>
<b>Failure to provide the first claimant with a written statement of particulars</b>	
1. The respondent did not provide the necessary particulars within 2 months of his date of commencement of employment and it is just and equitable to award the first claimant with 2 week's pay, (2 x £174.21) = <b>£348.42</b>	
<b>Subtotal for statement of particulars complaint</b>	<b>£348.42</b>
<b>Grand total</b>	<b>£9796.98</b>

2. The second claimant acknowledged that for an unspecified period of time, he did receive universal credit payments from the Department of Work and Pensions, ('DWP'). It is not clear whether recoupment is applicable in this case, however, the following figures may be of relevance:

- a) **Prescribed element: £4601.90**, (being immediate loss of earnings payable as part of the compensatory award and which must be held until the question of recoupment has been resolved);
- b) **Prescribed period: 25 September 2020**, (expiry of notice period of 5 weeks following the effective date of termination) until 17 January 2022 (date of remedy hearing).
- c) **Total award: £9796.98** (see Grand total figure in the table above)
- d) **Balance: £5195.08** (following the reservation of the prescribed element and payable to the first claimant immediately)

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Employment Judge Johnson

Date: 17 January 2022

Sent to the parties on:

25 January 2022

For the Tribunal Office

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.



## NOTICE

### THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case numbers: **2407394/2021 & 2407607/2021**

Name of cases: **Mr A Gomes** v **Playworks Ltd t/a Panacea**  
**Mr C Errico**

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: **25 January 2022**

"the calculation day" is: **26 January 2022**

"the stipulated rate of interest" is: **8%**

For the Employment Tribunal Office

**Claimants:** Mr A Gomes & Mr C Errico

**Respondent:** Playworks Ltd t/a Panacea

**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.