



EMPLOYMENT TRIBUNALS

Claimant: Mr M Saunders

Respondent: Exclusive Fireplaces and Stoves Ltd

JUDGMENT ON APPLICATION FOR RECONSIDERATION

1. The Claimant's application of 24 June 2022 for reconsideration of the judgment sent to the parties on 28 April 2022 is allowed.
2. The judgment is varied to the extent that:
 - 2.1. the order that the Respondent pay to the Claimant the sum of £127,418.06 is revoked; and
 - 2.2. the Respondent is ordered to pay to the Claimant forthwith the sum of **£141,264.70**.

REASONS

3. At a final hearing on 19 April 2022 the Claimant (represented by counsel) sought compensation in the sum of £127,418.06 calculated as follows:
 - 3.1. In compensation for disability discrimination:
 - a. For financial losses: £69,794.90

- b. Uplift for failure to follow the ACAS Code of Practice @ 15%:
£17,448.25
 - c. For injury to feelings: £15,000
 - d. Subtotal: £102,243.15
 - e. Grossing up: £22,290.29
 - f. Total including grossing up: £124,533.44
- 3.2. In compensation for unfair dismissal, a basic award of £2,884.62
4. The grossing up figure was calculated on the basis that the Claimant was expected to earn £16,794.20 in the tax year 2022/2023. It was submitted on his behalf that:
- 4.1. The first £12,750 of the Claimant's earnings was not taxable as it represented the Claimant's personal allowance.
 - 4.2. The remaining £4,044.20 of his earnings for the year would be taxed at 20%.
 - 4.3. Of his disability discrimination award of £102,243.15, the first £30,000 would be tax free, leaving a balance of £72,243.62 to be grossed up. Of that sum:
 - a. £32,955.80 would be taxed at 20%, amounting to £6,591.16.
 - b. The remaining £39,247.82 would be taxed at 40%, amounting to £15,699.13.
 - 4.4. The total grossing up figure was therefore £22,290.29.
5. By judgment sent to the parties on 28 April 2022 the Respondent was ordered to pay to the Claimant the amount sought (£127,418.06).
6. In an application for reconsideration dated 11 May 2022 the Claimant asked for the judgment to be varied on the basis that the grossing up sum had not been calculated correctly. It was also pointed out that the grossing up calculation failed to take account of the basic award. A fresh calculation was provided, which

amounted to a total award of £141,264.70, including a grossing up figure of £36,136.93.

7. The Claimant's representatives stated in the application that they considered that the application could be determined without a hearing.
8. The Respondent's views on the application were sought by email from the Tribunal on 1 July 2022, which gave them until 11 July 2022 to respond. No response was received.

CONCLUSIONS

9. I find that it is in the interests of justice to reconsider the judgment. The grossing up figure has been incorrectly calculated because of a computational error.
10. I also find that the application can be determined without a hearing. The Claimant has provided a fully reasoned application with an attachment showing the basis on which the calculation is made. There is no need for further representations on his behalf. The Respondent has not responded to the application. It is in accordance with the Overriding Objective to save expense by dealing with the application on the papers.
11. I find that the error in the original judgment was a failure to apply the formula approved in **PA Finlay & Co Ltd v Finlay EAT 0260/14, 0062/16 & 0117/16 (22 March 2017)** and further explained in Appendix 3 of the **Presidential Guidance on Principles for Compensating Pension Loss** (4th edition, 3rd revision, 2021). Instead, simple percentages were added to the net figures. This would have resulted in a loss to the Claimant.
12. The correct grossing up formula is applied in the Claimant's application, as follows:
 - 12.1. The tax free element, taking account of the basic award, is £27,115.38.
 - 12.2. The amount to be grossed up is therefore £75,127.77.
 - 12.3. The Claimant is estimated to earn £16,794.20 in the tax year, which will extinguish his personal allowance of £12,570. Of the amount earned, £4,224.20 will be taxed at 20%.
 - 12.4. The remainder of the 20% tax bracket is £33,475.80. Grossed up, this amounts to £41,844.75 (calculated as £33,475.80 ÷ 8 x 10).

- 12.5. The remainder of the award is £41,651.97. Grossed up, this amounts to £69,419.95 (calculated as $£41,651.97 \div 6 \times 10$).
- 12.6. The total grossed up award is therefore $£27,115.38 + £41,844.75 + £69,419.95 = £138,380.08$.
13. The basic award of £2,884.62 must be added to this sum, to reach a grand total of £141,264.70.

**Employment Judge Reindorf
Date: 5 October 2022**

Sent to the parties on:

6 October 2022

For the Tribunal:

N Gotecha

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