



EMPLOYMENT TRIBUNALS

Claimant: Mr G Gouthwaite

Respondents: (1) Viam Infrastructure Asset Management (VIAM) Ltd (in administration)
(2) Secretary of State for BEIS

Heard at: Manchester Employment Tribunal (by video)

On: 9 November 2022

Before: Employment Judge Dunlop

Representation

Claimant: In person
First Respondent: Did not attend
Second Respondent: Did not attend

JUDGMENT

1. The claimant was unfairly dismissed by the first respondent and is awarded compensation as follows:
Basic Award: **£4,896.00** (based on 6 years of service aged over 40 at the statutory maximum weekly pay of £544.00/week).

Compensatory Award: None made (see below)
2. The claimant's claim for a redundancy payment is not well-founded and is dismissed.
3. The claimant is permitted to amend his claim to include a claim for notice pay. The first respondent wrongfully dismissed the claimant and the claimant is awarded statutory notice pay of **£3,880.20** (gross) (based on 6 years of service and a weekly wage of £646.70).

REASONS

1. Mr Gouthwaite was dismissed from his employment with the respondent on 28 April 2021. There was some confusion over bringing his claims – he had not obtained a certificate of early conciliation and presented two claims which were essentially duplicates. The claim forms recorded that Mr Gouthwaite was bringing claims of unfair dismissal and for a redundancy payment.
2. On 1 June 2021 the respondent business went into administration, resulting in large scale redundancies. Mr Gouthwaite's claims, although unrelated to these events, were further delayed by the need to obtain the permission of the administrators for the claims to proceed and by some confusion arising out of the fact that a large number of other claims were presented as a result of those redundancies.
3. By letter dated 29 September 2021, the administrators gave consent for these claims to proceed. Claim 2408441/21 was served on the second respondent, on the basis that it may give rise to an award which would entitle the claimant to payment from the National Insurance Fund. (Although claim 2408522/21 was not served, I am content that the Secretary of State has had opportunity to respond to the claims raised, as they are repetitions of matters raised in the first claim). The Secretary of State's response noted that they had been unable to verify that Mr Gouthwaite was an employee of the first respondent, and put him to proof of the same.
4. During the hearing today, Mr Gouthwaite produced P60 forms and payslips evidencing his employment up to 28 April 2021 (this obviously pre-dated the Administration, which may be why it does not correlate with the second respondent's records). He also gave oral evidence about the dates of his employment and the circumstances of his dismissal.
5. I find that Mr Gouthwaite was continuously employed from September 2014 to his summary dismissal on 28 April 2021. He worked as a driver and machine operator. He was dismissed for using a vehicle on the previous weekend, despite the fact that he had had permission to do so, that it was a common practice to do so (with permission) and that a colleague who was with him was not disciplined. There was a meeting during the day where the matter was discussed with the contracts manager, who informed the claimant he would "have to think about it". The contract manager telephoned the claimant later that evening and dismissed him summarily.
6. Mr Gouthwaite was subsequently paid for the three days he had worked during the week of his dismissal, and for his accrued holiday pay.
7. I find that the reason for dismissal was Mr Gouthwaite's conduct, but that the dismissal was procedurally and substantively unfair.
8. I find that Mr Gouthwaite is entitled to a basic award, calculated as set out above. It is not appropriate to reduce the basic award as I accept, on the evidence presented by Mr Gouthwaite, that he was not at fault.
9. Normally, the claimant in these circumstances would also be entitled to a compensatory award. Mr Gouthwaite agreed that this award would be limited as he accepts that he would inevitably have been made redundant around 1 June

when the company went into administration. This period is accounted for by his notice pay claim (see below). Further, he recognises that he is highly unlikely to recover any part of any compensatory award I make. Taking all of that into account, Mr Gouthwaite did not ask me to make any compensatory award in this case.

10. There was no separate claim for wrongful dismissal on the face of the pleadings. However, it was evident that Mr Gouthwaite had been dismissed without notice and I considered it appropriate to allow the claim to be amended to include a wrongful dismissal claim. I presume that notice was not paid because the first respondent considered that the matter amounted to gross misconduct. However, they have not defended the claim and, on the evidence I have heard, I find that no gross misconduct took place. I have therefore made an award of notice pay as above.

Employment Judge Dunlop
Date: 9 November 2022

SENT TO THE PARTIES ON
14 November 2022

FOR EMPLOYMENT TRIBUNALS

Public access to employment tribunal decisions

Judgments 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 ARTICLE 12

Case number: **2408441/2021**

Name of case: **Mr G Gouthwaite** v **Viam Infrastructure
Asset Management
(VIAM) Ltd (In
administration)**

Interest is payable when an Employment Tribunal makes an award or determination requiring one party to proceedings to pay a sum of money to another party, apart from sums representing costs or expenses.

No interest is payable if the sum is paid in full within 14 days after the date the Tribunal sent the written record of the decision to the parties. The date the Tribunal sent the written record of the decision to the parties is called **the relevant decision day**.

Interest starts to accrue from the day immediately after the relevant decision day. That is called **the calculation day**.

The rate of interest payable is the rate specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as **the stipulated rate of interest**.

The Secretary of the Tribunal is required to give you notice of **the relevant decision day**, **the calculation day**, and **the stipulated rate of interest** in your case. They are as follows:

the relevant decision day in this case is: 14 November 2022

the calculation day in this case is: 15 November 2022

the stipulated rate of interest is: **8% per annum**.

Mr S Artingstall
For the Employment Tribunal Office

GUIDANCE NOTE

1. There is more information about Tribunal judgments here, which you should read with this guidance note:
www.gov.uk/government/publications/employment-tribunal-hearings-judgment-guide-t426

If you do not have access to the internet, you can ask for a paper copy by telephoning the Tribunal office dealing with the claim.

2. The payment of interest on Employment Tribunal awards is governed by The Employment Tribunals (Interest) Order 1990. Interest is payable on Employment Tribunal awards if they remain wholly or partly unpaid more than 14 days after the **relevant decision day**. Sums in the award that represent costs or expenses are excluded. Interest starts to accrue from the day immediately after the **relevant decision day**, which is called **the calculation day**.
3. The date of the **relevant decision day** in your case is set out in the Notice. If the judgment is paid in full by that date, no interest will be payable. If the judgment is not paid in full by that date, interest will start to accrue from the next day.
4. Requesting written reasons after you have received a written judgment does **not** change the date of the **relevant decision day**.
5. Interest will be calculated as simple interest accruing from day to day on any part of the sum of money awarded by the Tribunal that remains unpaid.
6. If the person paying the Tribunal award is required to pay part of it to a public authority by way of tax or National Insurance, no interest is payable on that part.
7. If the Secretary of State has claimed any part of the sum awarded by the Tribunal in a recoupment notice, no interest is payable on that part.
8. If the sum awarded is varied, either because the Tribunal reconsiders its own judgment, or following an appeal to the Employment Appeal Tribunal or a higher court, interest will still be payable from **the calculation day** but it will be payable on the new sum not the sum originally awarded.
9. The online information explains how Employment Tribunal awards are enforced. The interest element of an award is enforced in the same way.