



EMPLOYMENT TRIBUNALS

Claimant: Miss E Bailey

Respondent: R1 Jon Janvier
R2 Energy Saving Installers Limited (in creditors
voluntary liquidation)

Heard at: Liverpool **On:** 22 and 23 November
2022

Before: Employment Judge Aspinall
Mr J Murdie
Mr A Clark

Representation

Claimant: Mr Mukulu (Counsel)
Respondent: no appearance

JUDGMENT

1. **The claimant's complaint of automatically unfair dismissal under Section 99 Employment Rights Act succeeds.** She was dismissed by Mr Jon Janvier because she took maternity leave. By reason of the operation of the Transfer of Undertakings Protection of Employment Regulations the claimant had two years two months service at the time of her dismissal and could have pursued a complaint for ordinary unfair dismissal. She lost her statutory protection.

2. **The claimant's complaint of maternity discrimination under Section 18(4) Equality Act 2010 succeeds.** She was dismissed by Mr Jon Janvier because she took maternity leave.

3. **The claimant's complaint of victimisation under Section 27 Equality Act 2010 fails** because she could not meet the burden of proof in establishing the reason why the respondent did not provide her with a reference. Its silence on the point was not enough to prove a prima facie case of discrimination.

Mr Jon Janvier is ordered to pay to the claimant £ 19,728.16
made up as follows:

Loss of earnings flowing from the act of discrimination on 18 June 2021 until the date on which the claimant found new employment 1 February 2022. The claimant had wanted to return to work 4 days a week so she is awarded 4/5 of her pay for that period, awarded net because she is to be put in the position she would have been in if she had not been discriminated against, being:

net monthly pay £1444 x 7.5 months x 0.8 £ 8664.00
(18 June 2021 – 1 February 2022)

Interest on loss of earnings

Loss of earnings award £ 10 110
Date of discrimination 18 June 2021
Calculation date 23 November 2022
Interest rate 8%
Number of days 521 days
Interest = 521 x 0.08 x 1/365 x £ 8664.00 = £ 989.35

Injury to feelings award £ 9000.00

The claimant's award is at the top end of the Lower Vento band to reflect the anger, distress, upset, anxiety and humiliation she felt

Interest on injury to feelings

Injury to feelings award £ 9 000
Date of discrimination 18 June 2021
Calculation date 23 November 2022
Interest rate 8%
Number of days 521 days
Interest = 521 x 0.08 x 1/365 x £ 9 000 = £ 1027.73

Holiday pay

21 days, 15 for 2021 plus 6 carried over
21000/365 = daily rate £ 57.53 x 21 = £ 997.08

Loss of statutory rights in unfair dismissal £ 250.00

Less, paid by John Janvier on 29 May 2021 (£ 1200.00)

Employment Judge Aspinall
Date 23 November 2022

JUDGMENT SENT TO THE PARTIES ON
2 December 2022

FOR THE TRIBUNAL OFFICE

Notes

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

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: **2411149/2021**

Name of case: **Miss E Bailey** v **1. Jon Janvier**
2. Energy Saving
Installers Limited (in
creditors' voluntary
liquidation)

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: 2 December 2022

the calculation day in this case is: 3 December 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 recoument 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.