



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr J Morley

**Respondent:** Reece Driscoll

**HELD AT:** Manchester

**ON:** 13 October 2022

**BEFORE:** Employment Judge Holmes

## REPRESENTATION:

**Claimant:** Ms A Goulden, Lay Representative

**Respondent:** Not in attendance – response not entered

# RESERVED JUDGMENT

It is the judgment of the Tribunal , no response having been entered, that :-

1. The claimant's claims of harassment on the grounds of his perceived sexual orientation are well founded and succeed.
2. The claimant is entitled to compensation, in respect of injury to his feelings, which the tribunal awards in the sum of **£2000.00** , which sum the respondent is ordered to pay to the claimant .
3. The claimant is entitled to interest on that award from the date of the discrimination, which the Tribunal takes as 15 March 2018 to the date of assessment 15 December 2022 in the sum of **£763.84** , which sum the respondent is also ordered to pay to the claimant.
4. All the claimant's other claims are dismissed upon withdrawal.

## REASONS

1. The final hearing of the claims by the claimant arising out of his employment with "The Cavity Claim Group", or Reece Driscoll , was listed before the Tribunal. By a claim form presented to the Tribunal on 9 July 2018 the claimant brought claims of unfair dismissal , sexual orientation discrimination, and for unpaid wages and holiday pay, arising out of his employment, as an apprentice it would seem, with either The Cavity Claim Group , or the individual respondent, between 13 November 2017 (the

claim form contains a typo) and 4 April 2018. He also made a claim for a redundancy payment.

2. There have been a number of preliminary hearings, and case management orders made, the first being by Employment Judge Holmes on 8 November 2019, sent to the parties on 28 November 2019.

3. Since then, the respondent, Reece Driscoll, has been served personally, and has participated in the proceedings. He has never, however, entered a response, and is considerably out of time for doing so. Consequently, by letter of 10 May 2022 the Tribunal confirmed that he had not entered a response, the provisions of rule 21(3) applied, and the respondent was only entitled to participate in any hearing to the extent permitted by the Employment Judge.

4. By that letter of 22 May 2022 the respondent was given permission to make written submissions in respect of the claims, which were to be sent to the Tribunal by 6 October 2022, but could take no further part in the proceedings.

5. No written submissions from the respondent have been received, and he did not attend, or seek to participate in, this hearing, of which he was given notice.

6. The claimant was again represented by Ms Goulden, his mother. She had provided the Tribunal with a hearing bundle, which included the claimant's witness statement, and his schedule of loss. The respondent did not appear, or seek to observe the hearing.

### **Discussion of the claimant's claims.**

7. The Employment Judge noted that since his orders on 8 November 2019 the Tribunal had been seeking further particulars of the claims that the claimant was making. This had been the subject of an unless order, which was then rescinded. The last order was therefore that of Employment Judge Johnson sitting on 8 December 2020, when he ordered (page 26 of the bundle) that the claimant provide this information by 28 January 2021. The claimant did so, or sought to do so, by the provision (probably in February 2022, for it appears that nothing happened on this case for a year) of the claimant's witness statement and the document that appears at page 41 of the bundle, which Ms Goulden agreed was "skeletal".

8. The Employment Judge considered that the claims made, or sought to be made, were best set out on page 2 of the claimant's witness statement, page 43 of the bundle, and Ms Goulden agreed.

9. He accordingly went through them with her, as follows, the text of the witness statement being shown in italic, and the Employment Judge's comments below.

### ***General statutory rights***

*I was asserting my statutory employment rights when I was dismissed.*

This is the claimant's claim of automatically unfair dismissal

*With reference to the Employment Rights Act 1996. The Respondent failed to adhere to section 1 .*

The Employment Judge clarified with Ms Goulden that the claimant was not seeking a determination of what the requisite particulars of employment should have been, though this failure may go to whether the Tribunal should make any additional award under s.38 of the Employment Act 2002.

*Protection against unlawful deduction from wages- section 13 Employment Rights Act 1996*

Whilst the box for arrears of pay had not been ticked, the claimant had, in part 9.2 of the claim form, set out the underpayments of wages that had occurred, and these claims were before the Tribunal.

*Itemised pay statement – section 8 , Employments Rights Act 1996.*

Again, the Employment Judge clarified with Ms Goulden that she was not seeking determination of what should have been contained in any itemised pay statement, this was another facet of the unlawful deductions claims.

*Right to be accompanied at a disciplinary or grievance hearing – section 10, Employment Rights Act 1999.*

Ms Goulden clarified that the claimant had sought to be accompanied in the final meeting, but this request was refused. This is a claim, and is referred to in box 8.2 of the claim form.

*Protection under the Data Protection Act 2018*

The Employment Judge explained how the Tribunal had no jurisdiction over such matters, which Ms Goulden accepted.

*Right to pension contribution from Employer under the auto-enrolment scheme – Pensions act 2008.*

Similarly, the Tribunal has no jurisdiction over such matters, which would have to be taken up with the Pensions Regulator, or Ombudsman, there being authority to the effect that employer's pension contributions are not wages for the purposes of unlawful deductions claims.

### ***Discrimination***

*Claimant claiming direct discrimination In regards to the sexual content and perceived sexual orientation.*

*It is illegal for an employer to discriminate because of my sexual orientation. I had not disclosed my sexuality .*

*It is my statutory right not to be treated less favourably because of Age , Disability , gender reassignment, marriage , civil partnership, pregnancy,or maternity, race, religion or belief, sex or sexual orientation (sic) – section 13 Equality Act 2010.*

*Right not to be harassed by unwanted conduct related to age, disability, gender reassignment, race, religion or belief, sex or sexual orientation -section 26(1) Equality Act 2010.*

*Right not to be sexually harassed – section 26(2), Equal Rights Act 2010.*

The Employment Judge could see how, in the claimant's witness statement and the documents, there were claims for harassment on the grounds of the claimant's perceived sexual orientation. He explained how (because of s.212 of the Equality Act 2010) direct and harassment claims were mutually exclusive, and these seemed more appropriately cast as harassment.

*Right not to be victimised because of protected act – Section 27, Equal rights Act 2010.*

The Employment Judge explained the need for the claimant to show that he had done a protected act, under the Equality Act 2010 in order for such a claim to succeed. He had not, in his witness statement, identified any such act, so this claim appeared to have no prospects of success. After the break Ms Goulden did raise the question of whether the claimant's complaint to ACAS and the CAB about deductions from his wages could be a protected act (he received one of the harassing texts after this) , but the Employment Judge explained how the act had to relate to the Equality Act, and as the claimant had not, it seems, raised this type of issue with ACAS or the CAB, it was the "wrong" type of protected act.

There was also discussion as to whether the claimant could also allege disability discrimination in the circumstances, but Ms Goulden accepted that this had not hitherto been pleaded, and that it would require an amendment to add such a claim, which, if permitted, would then require evidence (i.e more than the brief extract from the claimant's GP records that appears at page 44 of the bundle) of his condition.

### ***Detriment***

*Statutory right not to suffer detriment for exercising the right to be accompanied at a disciplinary or grievance hearing.*

*Not to suffer detriment for exercising rights in respect of health and safety cases- section 44 , employment Rights Act 1996.*

### ***Termination of Employment***

*Statutory minimum notice period- section 86, Employment Rights Act*

*Written statement of reasons for dismissal – section 92 Employment Rights Act 1996*

These issues were also discussed, and in part already had been in the discussion under General Statutory Rights above.

10. The Employment Judge pointed out to Ms Goulden how all the claims in the first and third sections of this document could only be maintained against the employer. The sole respondent is Reece Driscoll personally. Although the claimant had named Reece Driscoll, and The Cavity Claim Group as respondents, a search of Companies House revealed that the limited company had changed its name to Marketing Project Services Ltd. , and that company had been dissolved on 8 October 2019 following a compulsory strike off application made by the Registrar of Companies.

11. It might, however, have been the case that Reece Driscoll personally employed the claimant, a point first raised in the first preliminary hearing. Whilst the claimant had no payslips (despite the reference to one in a document), the extracts from his bank statements at page 52 of the bundle do show The Cavity Claims Group as the payer by BACS transfer of the claimant's wages. The Cavity Claims Group Limited was incorporated on January 2017, and was in existence when the claimant commenced his employment in November 2017, and remained in existence after it ended in April 2018. There was therefore at all material time a limited company by which the claimant could have been employed.

12. The Employment Judge explained that if the claimant wished to maintain the statutory employment based claims in these sections, he would have to show that he was employed by the respondent personally, and not the limited company. Whilst it had been hoped that Oldham College , who were involved in setting up the claimant's apprenticeship, could have assisted, they have no longer retained any documents which may cast light on this issue, and the claimant did not, therefore, ( after indicating in January 2021 that he would), pursue any application for an order against the College.

**The claimant's position after consideration of these issues.**

13. After an adjournment to discuss these matters and take instructions, Ms Goulden withdrew all his statutory claims based on his being employed by the respondent. The claimant was not going to seek to establish that the respondent personally employed him, so all those claims in the first and third sections are withdrawn, and will be dismissed upon withdrawal by the claimant.

14. That left only the discrimination claims going forward, which can, of course be maintained against the respondent personally. Ms Goulden confirmed that the claimant was not seeking to say (as he had not in his witness statement) that his dismissal was any form of discrimination, and , further, was not pursuing any victimisations claims.

15. In those circumstances, and on the basis that there is no response entered, and of the claimant's witness statement and the documents produced, the Employment Judge was satisfied that his claims of harassment on the grounds of his perceived sexual orientation were well founded, and succeed.

16. The claimant , however, had not, in his witness statement dealt with the effects of that harassment. Whilst it is unlikely that there will be any financial losses

flowing from it, the claimant does seek an award of injury to feelings, but had adduced no evidence that his feelings were injured, and to what extent.

17. He was therefore afforded an opportunity to make a further witness statement, dealing solely with the issue of the injury to feelings (and any losses if there are any) he suffered as a result of the acts of harassment that the Tribunal has found.

18. The claimant did so by a further witness statement provided to the Tribunal on 26 October 2022.

**Assessment of award for injury to feelings.**

19. The respondent sent the claimant the following texts, the first of which on 9 January 2018 reads:

*You know what watching big brother she's calling them all the mad thing about what I didn't know her ex is with my ex but she's really straight and boring my ex was bi ( don t want to say but your gay are you ) I m not but use to go qcm with my ex and her gay male friends and we use to get naughty I never with a guy but she with the girls you know what I mean*

and the second, on 15 March 2018 reads:

*Listen you little gay boy I'm the big gay boy and get on one let's talk before meetings I wi I listen to you before we go into meetings is that ok*

20. This latter text was after the claimant had raised an issue with his pay, and told the respondent that he had been to ACAS and the CAB.

**Assessment of award.**

21. In terms of the appropriate band of **Vento**, this must fall in the lowest band. Further, Tribunals should not make any award unless satisfied that the claimant has established that he has suffered an injury to feelings falling at least at the bottom of the lowest band, at the time, of £900 to £8600.

22. Whilst there are only two harassing texts, they are over a short period, and are sent from the claimant's boss. The first is in the context of a fairly salacious and inappropriate discussion about the respondent's sex life and sexual preferences, and the second is after the claimant had complained about deductions from his pay. Both are an abuse of the respondent's position as the claimant's employer, the second particularly so, given that the claimant had been to ACAS and the CAB.

23. The claimant's reaction is set out in his further witness statement, dated 26 October 2022. The Tribunal, however, has had to be careful not to take into account the injury to feelings which the claimant sustained by reason of the loss of his

employment, which is not alleged to have been an act of discrimination. Nonetheless the claimant has said that he felt shocked, nauseous, and angry when he received the texts. He found it hard to go to work , when he would be around the respondent.

24. Taking all these matters into account, and the fact that the second text in particular was an abuse of the respondent's position as the claimant's employer, an aggravating feature, the Tribunal considers that the appropriate award for injury to feelings is £2000.00

25. The claimant is entitled to interest, calculated from the date of discrimination 15 March 2018 to the date of calculation, 15 December 2022, 1736 days @ 8% , £0.44 per day

£2,000.00 x 8% per annum = £0.44 per day x 1736 days = **£763.84**

26. The Tribunal accordingly makes an award in respect of injury to feelings of £2,000.00 plus interest of £763.84.

Employment Judge Holmes  
Dated : 15 December 2022

JUDGMENT AND REASONS SENT TO THE PARTIES ON  
16 December 2022

FOR THE TRIBUNAL OFFICE



## NOTICE

### THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990 ARTICLE 12

Case number: **2413351/2018**

Name of case: **Mr J Morley** v **Reece Driscoll**

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: 16 December 2022

**the calculation day** in this case is: 17 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](http://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.