



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs A Waring

**Respondent:** Tudor Contract Cleaners Limited

**Heard at:** Manchester

**On:** 17 February 2023

**Before:** Employment Judge Feeney  
Mrs C Bowman  
Mr M Stemp

## REPRESENTATION:

**Claimant:** Written representations, Mr A Effiong, Consultant

**Respondent:** Written representations, Mr B Hedley, Consultant

# JUDGMENT ON RECONSIDERATION

On reconsideration the unanimous judgment of the Tribunal is that the claimant's application for a reconsideration of the remedy judgment promulgated on 28 November 2022 succeeds. Accordingly, the compensation awarded to the claimant is increased. In relation to injury to feelings by £1,500. Accordingly, the new award for injury to feelings is £16,500. The interest consequently is increased to £3,743 making a total new injury to feelings figure of £20,243. The tribunal award that sum and order the respondent to pay the same.

## REASONS FOR RESERVED JUDGMENT ON RECONSIDERATION

1. Following the remedy hearing in this case which was held on 21 November 2022 the Judge realised on writing up the judgment that the panel had mistaken an application for a Simmons -v- Castles uplift with a general uplift as there appeared to be no grounds for a general uplift no uplift was awarded and at the time of giving an oral decision neither party queried this. On realising this had been overlooked the Judge wrote to the parties on 25 November 2022 and asked for both parties agreement to apply the 10%

Simmons -v- Castle uplift. Unsurprisingly the claimant agreed however the respondent refused by an email of 28 November stating that

“we do not agree these figures, we appreciate the Tribunal’s mistake however the original injury to feelings award must have been considered by the Tribunal as just and equitable in the circumstances. Therefore we consider that in accordance with the overriding objective it will be in the interests of justice to reduce the injury to feeling award to accommodate the 10% uplift to make the total sum of the award of the original £15,000, otherwise the claimant is getting overcompensated from the Tribunal’s original assessment of what an appropriate award should be for injury to feelings”.

2. In view of this a judgment and written reasons were issued as per the oral judgment that had been delivered on 21<sup>st</sup> November. The claimant’s representative then applied for a reconsideration of the issue judgment on 2<sup>nd</sup> December 2022. The Judge was absent at the time and in fact retired on 31<sup>st</sup> December 2022. On returning fee paid at the beginning of February the matter was referred to the Judge. The claimant relied on this being prejudicial and unjust to the claimant which would be a greater disadvantage than that suffered by the respondent.

### **The Law**

3. Rule 70 et al of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 Schedule 1 applies. In Rule 72 says “an Employment Judge shall consider any application made under Rule 71, if the Judge considers that there is no reasonable prospect of the original decision being varied or revoked the application shall be refused and the Tribunal shall inform the parties of the refusal, otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge’s provisional views on the application. I had already expressed my provisional views on writing to the parties prior to the promulgation of the judgment and after discussing the matter with the panel.
4. If the application has not been refused under paragraph 1 the original decision shall be reconsidered after a hearing unless the Employment Judge considers having regard to any response to the notice provided under paragraph 1 that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations. The respondent and claimant had made written representations regarding the issue. The panel was consulted again, allowed the reconsideration and proceeded to determine it .

### **Simmons -v- Castle (2012) CA**

5. Because of the change in the costs regime in a personal injuries case the rate of general damages to be paid in compensation to a victim of tort changed. A question arose as to whether this should apply to awards for non-pecuniary losses before the Employment Tribunal where costs are not normally awarded to a successful party. The Court of Appeal eventually provided an authoritative ruling on the point in DeSouza -v- Vinci Construction UK Limited 2017 Court of Appeal finding in favour of the argument that the 10% uplift should apply to Employment Tribunal awards in respect of non-pecuniary losses because the language of the Equality Act 2010 made plain that awards in Tribunal are to be comparable with County Court awards.

### **Decision**

6. In the light of the case law referred to above it is compulsory to apply a 10% uplift to an injury to feelings award. The Tribunal panel have considered the point prior to the issuing of the judgment and considered that had they realised the Simmons -v- Castle uplift was being referred to they would have applied a 10% increase to the injury to feelings award of £15,000. Accordingly, the judgment promulgated on 28<sup>th</sup> November and given orally on the 21<sup>st</sup> November is varied as follows. The claimant is awarded £16,500 for injury to feelings including the Simmons -v- Castle uplift and the claimant is awarded interest of £3,743 rather than £3,395. A total of £20243. The respondent is ordered to pay the same.

Employment Judge Feeney  
10 March 2023

JUDGMENT AND REASONS SENT TO THE PARTIES ON  
16 March 2023

FOR THE TRIBUNAL OFFICE

### **Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://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: **2400650/2020**

Name of case: **Mrs A Waring** v **Tudor Contract Cleaners Limited**

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 March 2023

**the calculation day** in this case is: 17 March 2023

**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.