



EMPLOYMENT TRIBUNALS

BETWEEN

Mrs A O'Mahony

Claimant

AND

Priory Healthcare Limited

Respondent

RECONSIDERATION JUDGMENT

The claimant's application dated 12 January 2023 for a reconsideration of the Judgment sent to the parties on 29 December 2022 in part succeeds and in part is refused.

REASONS

1. The application in respect of the grossing up of the remedy Judgment succeeds. The correct calculation of compensation for the claimant's unfair dismissal and unlawful detriment is:
 - (a) £30,000 (tax free allowance) - £3,255.84 (basic award) = £26,744.16 remaining of tax free allowance
 - (b) £6,394.50 (compensatory award) + £22,000 (injury to feelings) = £28,394.50 of which £26,744.16 will be tax free
 - (c) leaving £1,650.34 taxable at claimant's marginal tax rate and therefore to be grossed up (if for example that rate is 20% the calculation would be $£1,650.34 \div 0.8 = £2,062.93$).
2. Total award being $£3,255.84 + £26,744.16 + (\text{say}) £2,062.93 = £32,062.93$.
3. The claimant is asked to confirm to the Tribunal (cc the respondent) within 7 days what her actual marginal tax rate is and an amended Remedy Judgment will be prepared reflecting the correct amount payable. She is asked also to confirm what, if any, sums have already been received.

4. There is however no reasonable prospect of the decision regarding the claimant's entitlement to holiday pay being varied or revoked. The claimant is right that in the Judgment the wrong reference appeared for the Supreme Court decision in Harpur Trust v Brazel. For clarity, it was the Supreme Court decision that was taken into account.
5. However, in her application and interpretation of the Harpur Trust decision the claimant is conflating part time and part year workers. She worked a fixed number of hours each week over the whole year. She was a part time but not a part year worker and accordingly is not within the scope of the decision.

Employment Judge Andrews
11 March 2023

Judgment sent to the parties and entered in the Register on:

for the Tribunal Office