



EMPLOYMENT TRIBUNALS

Claimant: N Copus

Respondent: Intu Uxbridge

UPON a reconsideration of the judgment dated **18 May 2022** on the Tribunal's own initiative under rule 73 of the Employment Tribunals Rules of Procedure 2013, and without a hearing,

RECONSIDERATION JUDGMENT ON REMEDY

The judgment of the Tribunal is that the Respondent shall pay to the Claimant (subject to the recoupment order below) compensation for unfair dismissal totaling **£14,624.11**.

This includes a basic award of **£3,019.11**. (1 age multiplier x 6 years full employment x £503.19 gross).

The compensatory award comprises an award for loss of earnings post dismissal of £10,150 (immediate loss of earnings period 9 October 2020 to 3 April 2021) and £400 compensation for loss of statutory rights, both of which are subject to an uplift of 10% for unreasonable failure to follow the ACAS Code of Practice on Disciplinary and Grievance Procedures, giving a total compensatory award of **£11,605**.

Recoupment for the purposes of regulation 4 of the Employment Protection (Recoupment of Benefits) Regulations 1996:

1. The total monetary award is £14,624.11.
2. The prescribed element (i.e. the amount representing loss of earnings) is £10,150.
3. The prescribed period is 9 October 2020 (the date of dismissal) to 3 April 2021 (the date after which no award for loss of earnings has been made).
4. The monetary award exceeds the prescribed element by £4,474.11.

The monetary award exceeds the potential recoupment figure of £2,244.19 (£438.55 Universal Credit and £1805.64 job seeker's allowance) by **£12,379.92** and that is the amount that the Respondent must pay to the Claimant within 14 days of the sending of this judgment.

In the event of the DWP not recouping the £2,244.19 from the Respondent, the Respondent will be bound by regulation 8(8) of the 1996 Regulations to pay the balance of the total compensation for unfair dismissal to the Claimant.

REASONS

Background

1. I am of the view that in the interests of justice the judgment dated 18 May 2022 (the 'Judgment') should be reconsidered as the figure for Job Seeker's allowance applied by the Tribunal in calculation of the recoupment element of the remedy award is incorrect.
2. The Judgment used a figure of £106.2, based on evidence before the Tribunal at the hearing. After the Judgment was issued the Tribunal received a letter from the Department for Work and Pensions ('DWP') dated 7 July 2022 in which it stated the correct figure for the claimant's Job Seeker's allowance, was £1805.64. The Tribunal wrote to the claimant and has received further documentary evidence from the claimant which confirms the correct figure is £1805.64.
3. Accordingly, Judge Hutchings is of the view that the Judgment should be reconsidered and wrote to both parties on 28 March 2023 stating that the Tribunal considered it necessary to recalculate the remedy awarded to the claimant to reflect the error to the recoupment figure as a result of the Tribunal using an amount of £106.21 for job seekers allowance. If either party thought that the Judgment should not be reconsidered, they were asked in this letter to write to the Tribunal by 18 April 2023, giving reasons, and to set out their views on whether the reconsideration can proceed without a hearing. Neither party has written to the Tribunal raising objections to a reconsideration of the Judgment nor requesting a hearing. Therefore, I proceed with a reconsideration of the Judgment without a hearing.
4. The procedure upon a reconsideration application is set out below. Due to the incorrect figure for Job Seeker's allowance being used in the recoupment calculation, the Judgment dated 18 May 2022 is varied such that an amount of £1805.64 is used to calculate the recoupment.

The law: rules on reconsideration

5. Any reconsideration of a judgment must be determined in accordance rules 70 to 73 of the Employment Tribunal Rules of Procedure 2013, as follows:

RECONSIDERATION OF JUDGMENTS

Principles

70. A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied, or revoked. If it is revoked it may be taken again.

Application

71. Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was

sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

Process

72.— (1) 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 (including, unless there are special reasons, where substantially the same application has already been made and refused), 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. (2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at 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. (3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.

Reconsideration by the Tribunal on its own initiative

73- Where the Tribunal proposes to reconsider a decision on its own initiative, it shall inform the parties of the reasons why the decision is being reconsidered and the decision shall be reconsidered in accordance with rule 72(2) (as if an application had been made and not refused).

6. In accordance with rule 70, a tribunal may reconsider any judgment “where it is necessary in the interests of justice to do so”. On reconsideration, the decision may be confirmed, varied, or revoked. If it is revoked it may be taken again.
7. In determining the question of a reconsideration, the Tribunal must have regard to the overriding objective, to deal with cases fairly and justly. This obligation is set out in Rule 2 of the 2013 Regulations and includes: (a) ensuring that the parties are on an equal footing; (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues; (c) avoiding unnecessary formality and seeking flexibility in the proceedings; (d) avoiding delay, so far as compatible with proper consideration of the issues; and (e) saving expense.

Employment Judge Hutchings

Date: 22 May 2023

JUDGMENT SENT TO THE PARTIES ON

7 June 2023

FOR THE TRIBUNAL OFFICE