



EMPLOYMENT TRIBUNALS

Claimant: Harvinder Joshi
Respondent: British Telecommunications plc (BT)
Held on: 22 July 2023 on the papers
Before: Employment Judge G. King

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The judgment of the tribunal is that the claimant's application for reconsideration is allowed. The Remedy Judgment is amended as per the figures set out below.

REASONS

1. The Claimant as applied, under Rule 71 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the Rules"), for a reconsideration of the Remedy Judgment dated 10 March 2023 and which was sent to the parties on 9 April 2023.
2. The Claimant's application was made by an email dated 22 May 2023.
3. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 ("the Rules"). Under Rule 71 an application for reconsideration under Rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties. The application was therefore received outside the relevant time limit.
4. Under Rule 5, however, the Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in the Rules or in any decision, whether or not (in the case of an extension) it has expired.
5. The grounds for reconsideration are only those set out in Rule 70, namely that it is necessary in the interests of justice to do so.
6. The Tribunal finds that it is in the interests of justice to correct the errors contained within the original Remedy Judgment. Not to do so would leave

the Claimant in an unfair position and would defeat the purpose and intention of the original Remedy Judgment.

7. The Tribunal is satisfied that this application can be determined on the papers and without the need for a hearing.
8. The Tribunal is satisfied that making the order requested would be in accordance with the overriding objective of the Tribunal to deal with cases fairly and justly, in particular dealing with cases in a proportionate manner and saving expense
9. The Remedy Judgment of 10 March ordered the Respondent to pay compensation to the Claimant in the sum of £45,767.78 made up of the following:

Basic Award £16,320.00
Compensatory Award (after *Polkey* reduction of 75%) £26,819.82
Grossing up £2,627.96

Claimant's award: £45,767.78

10. The Claimant says that it is necessary for the Judgment to be reconsidered for the following reasons:
 - a) the Claimant's Job Seekers Allowance has been deducted from the Compensatory Award; and
 - b) the grossing up calculation is incorrect.
11. The parties have now received recoupment notice from the Secretary of State and they seek to recoup £657.03. As the sums have already been deducted from the Compensatory Award, this results in the JSA sums being deducted twice from the Claimant, leaving the Claimant in an unfair position.
12. The Tribunal agrees that this would leave the Claimant in an unfair position. The Compensatory Award is therefore reconsidered and adjusted to include the sum of £657.03 (which is then subject to recoupment as per the notice from DWP). Therefore, the total Compensatory Award (after the *Polkey* reduction of 75%) is ordered as:

$£83,127.51 + £12,321.00 + £12,487.78 = £107,936.29$
 $£107,936.29 \times 75\% = £80,952.22$
 $£107,936.29 - £80,952.22 = £26,984.07$

Compensatory Award: £26,984.07

13. The grossing up element of the Compensatory Award appears to have been calculated incorrectly. The Tribunal agrees that this would leave the Claimant in an unfair position.
14. The Tribunal accepts that the correct calculation should be to add 20% onto the award so that when 20% is deducted for tax it would come out with the

net figure. The Tribunal accepts that this would leave the Claimant in an unfair position. The Tribunal has reconsidered grossing up calculation, and orders that the correct grossing up calculation is as follows:

Grossing Up Calculation:

$£30,000.00$ (tax free allowance) - $£16,320.00$ (Basic Award) = $£13,680.00$

$£26,984.07$ - $£13,680.00$ = $£13,304.07$ (which is subject to tax)

$£13,304.07/6 \times 10$ = $£22,173.45$

$£13,680$ + $£22,173.45$ = $£35,853.45$

Total Grossed Up Compensatory Award: $£35,853.45$

Total Grossed Up Award (including Basic Award): $£52,173.45$

Employment Judge G. King
Date: 15 August 2023