



EMPLOYMENT TRIBUNALS

REMEDY JUDGMENT

BETWEEN

CLAIMANT

MS S DAUD

V

RESPONDENT

LONDON NORTH EASTERN
RAILWAY LIMITED

HELD AT: LONDON CENTRAL
(BY VIDEO)

ON: 7 JULY 2023

EMPLOYMENT JUDGE: MR M EMERY

REPRESENTATION:

For the claimant: Mr P Powlesland (counsel)
For the respondent: Mr A Leonhardt (counsel)

REMEDY JUDGMENT

The respondent is ordered to reinstate the claimant on or before **15 September 2023**.

The respondent is ordered to pay to the claimant back pay, benefits and pension contributions in the sum of **£50,894.64**

Summary Reasons

1. At the remedy hearing I provided reasons for the Order for Reinstatement. The outstanding issues were the calculation on salary and benefits, whether a date for reinstatement could be agreed between the parties.

2. The respondent has indicated it does not agree with the Order for reinstatement and may challenge it. It has provided salary, benefit and pension figures and calculation. The claimant was invited to comment on the figures, her representative says it does not agree with them but has provided no alternative figures or sums.
3. The respondent provided a suggested date for reinstatement. Unfortunately, that date has now passed and the revised date is above.
4. The figures presupposes that no pay award has been made for any period as stated by the respondent in its submission. If that is now wrong, the parties are expected to agree the revised figures.

The law

5. *Employment Rights Act 1996 .s114 - Order for reinstatement*

(1) An order for reinstatement is an order that the employer shall treat the complainant in all respects as if he had not been dismissed.

(2) On making an order for reinstatement the tribunal shall specify—

(a) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal (including arrears of pay) for the period between the date of termination of employment and the date of reinstatement,

(b) any rights and privileges (including seniority and pension rights) which must be restored to the employee, and

(c) the date by which the order must be complied with.

(3) If the complainant would have benefited from an improvement in his terms and conditions of employment had he not been dismissed, an order for reinstatement shall require him to be treated as if he had benefited from that improvement from the date on which he would have done so but for being dismissed.

(4) In calculating for the purposes of subsection (2)(a) any amount payable by the employer, the tribunal shall take into account, so as to reduce the employer's liability, any sums received by the complainant in respect of the period between the date of termination of employment and the date of reinstatement by way of—

(a) wages in lieu of notice or ex gratia payments paid by the employer, or

(b) remuneration paid in respect of employment with another employer,

and such other benefits as the tribunal thinks appropriate in the circumstances.

The calculation

6. The salary & benefits calculation

- a. Date of dismissal 19 July 2022; Date of reinstatement 15 September 2023 = 424 days
- b. Gross salary at dismissal £28,510 per annum
- c. Attendance allowance of £4,506 pa
- d. London allowance of £3,348 pa
- e. Travel pass, rail leisure card etc. £4,000 pa
- f. Gross salary and benefits - **£40,364**
- g. Daily salary rate $40,364/365 = £110.59$
- h. $£110.59 \times 424 =$ **£46,890.16**
- i. The sum at (h) to be subject to the deduction of tax and national insurance as though the claimant was an employee throughout the relevant period.

7. Pension calculation

- a. Figures provided by pension fund on 17 July 2023 (363 days):
Employee contribution: £1,371.33
Employer contribution: £2,057.03
- b. Total annual contributions $£3,428.36 / 363 \times 365 = £3,447.25$
- c. $£3,447.25 / 365 \times 424 =$ **£4,004.48**

EMPLOYMENT JUDGE EMERY

Dated: 1 September 2023

Judgment sent to the parties
On

01/09/2023

For the staff of the Tribunal office

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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Judgments are published online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.