



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 110349/2009**

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**Held in Glasgow on 30 January 2024**

**Employment Judge S MacLean  
Tribunal Members T Jones and M McAllister**

10 **Ms Frances Lorna Nicoll**

**Claimant  
Represented by:  
Ms L McSporran -  
Solicitor**

15 **Glasgow City Council**

**Respondent  
Represented by:  
Mr S Miller -  
Solicitor**

### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

20 The judgment of the Tribunal is that:

1. Under rule 64 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, the work of the claimant is of equal value to the work of her comparator.
2. The interest on the arrears of remuneration is to be calculated in accordance with regulation 6(1)(b) of the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996.

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### **REASONS**

#### **Introduction**

3. The claims of equal pay and sex discrimination (direct, indirect and victimisation) were sent to the Tribunal on 24 June 2009. Following a stage 2 equal value hearing, on 24 August 2023, Stuart Walls, ACAS independent

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expert issued a report concluding that the work of the claimant was equal value to that of her comparator (the independent report).

4. On 9 November 2023, this hearing was fixed at which it was anticipated that Mr Walls would attend so that that consideration could be given to admitting the independent report as evidence.
5. On 29 January 2024, the Tribunal was advised that following discussion the parties had agreed that the only issue in dispute was the question of interest on sums to be awarded. There being no further dispute about the question of equal value and the terms of the independent report, Mr Walls did not need to attend.
6. At the hearing the Tribunal was advised that of consent the parties agreed that the work of the claimant was equal to that of the work of the comparator. The Tribunal issued a consent judgment under rule 64 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.
7. The Tribunal was advised that the parties had discussed and agreed the loss of earnings between the claimant and her comparator between 2006 and 2015 (when the claimant reached BS4 Proven grade). The issue that the Tribunal was asked to decide was whether, in the circumstances of this case, to award interest from the mid-point rather than the entire period of the claim would represent a serious injustice.
8. The claimant gave oral evidence. No documents were provided. The Tribunal made the following findings.

### **Findings in fact**

9. In 2006 in addition to her Strathclyde pension fund, the claimant took out a small personal pension. In 2007 she cancelled the personal pension as she could no longer afford to make payments.

### **Discussion and deliberations**

10. The parties referred to the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 (the regulations). The Tribunal has

no discretion under the regulations to decide the rate of interest to be awarded. The rate of interest provided for in section 9 of the Sheriff Courts (Scotland Extracts Act 1892 is 8 percent.

- 5 11. Under regulation 6(1)(b) interest rates on arrears of remuneration only begins to accrue from the mid-point date rather than over the whole period in respect of which arrears are awarded. This is the date half way between the date of contravention of the equality clause and the date on which the tribunal calculates the interest.
- 10 12. Under regulation 6(3) the tribunal may award interest for a different period if it considered that serious injustice would be caused if it followed the rules set out in regulation 6(1).
- 15 13. Ms McSporran referred to the EAT decision in *Ministry of Defence v Cannock and others* [1994] ICR 918 when the tribunal departed from the normal procedure for calculating the interest period. In this case, like the present one, the whole of the loss had been sustained before the mid-point. Mr Miller accepted that the statutory provisions expressly cater for the exceptional case. What is exceptional is a matter for the tribunal. This case does not assist in clarifying why the tribunal took the “exceptional” route. There was no definition of “serious injustice”.
- 20 14. Ms McSporran said that the claimant was now 61 years of age; these proceedings have taken 18 years through no fault of the claimant; judicial interest is calculated on a simple rather than compound basis; she has loss of investment return. The Tribunal’s approach should be, as suggested in *Cannock*, to take a sensible, fair and robust approach.
- 25 15. Mr Miller said that the normal procedure effectively gives the claimant interest on arrears of remuneration at 4 percent from 29 April 2009. He referred to the cases of *Farstad Supply AS v Enviroco Limited* [2011 CSOH] 153 and *NHBC v Scott Hogarth Homes* [2017] CSOH that provide an explanation about the judicial rate of interest being an approximation for the loss of income which the expended funds could have generated. The cases also referred to  
30 the mismatch between the judicial rates and the market rates. In these cases,

which cover a similar period, the judicial rate substantially over compensated the pursuer. The claimant had failed in Mr Miller's view to show any injustice if the Tribunal adopted the normal procedure far less any serious injustice. He said that the time it has taken to for the proceedings was a neutral factor.

5 16. The Tribunal considered that while it was entitled to take a broad brush approach it was not satisfied that there was serious injustice to the claimant justifying the Tribunal taking the exceptional route.

17. The Tribunal appreciated that this case has taken longer than was anticipated when the case was sisted for the outcome of an EHRC investigation and mass  
10 litigation relating to the respondent's job evaluation scheme. The Tribunal did not agree with Ms McSporran that the respondent was more in control. At first instance the respondent was successful in the mass litigation. The respondent did not seek to recall the sist in this case at that stage knowing that the decision in the mass litigation had been appealed. The ultimate  
15 decision following appeal had a bearing on these proceedings as the respondent did not seek to rely on the job evaluation scheme. It seemed to the Tribunal that in some respects the claimant had benefitted from the sist and consequent delay in her claim being considered as some issues that she would otherwise have needed to address were determined in other  
20 proceedings.

18. Accordingly, the Tribunal concluded that the interest calculation on arrears of remuneration should be calculated in terms of regulation 6(1)(b) of the regulations.

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**S MacLean**  
**Employment Judge**

**31 January 2024**  
**Date**

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**Date sent to parties**

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