EMPLOYMENT TRIBUNALS

Claimant: **Mrs V Pearson**

Respondents: **(1) Belsteads Group Ltd.**
(2) Ms K Pollard
(3) Mr A Cussell
(4) Ms J Turner

DECISION ON APPLICATION BY RESPONDENTS 1, 3 AND 4 FOR RECONSIDERATION OF REMEDY JUDGMENT
(Rules 70-72 Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013

1. Respondents 1, 3 and 4 made an application in writing on 22 December 2023 for reconsideration, in the interests of justice, of the Tribunal's remedy judgment in this case which was sent to the parties on 13 December 2023. Reasons for the Remedy Judgment were sent to the parties on 7 February 2024.

2. The Employment Judge has considered the application for reconsideration under Rule 71. Apologies are due to the relevant parties for the late decision; unfortunately, the application was not sent to Employment Judge Elgot until 14 February 2024.

3. The Claimant has had the opportunity to respond to the application and has sent a written submission dated 18 February 2024

4. I consider that there is no reasonable prospect of the original remedy decision being varied or revoked and the application for reconsideration is REFUSED.

5. The reasons for refusal are as follows :-

    5.1 Respondents 1, 3 and 4 divide their application for reconsideration into two parts. First, they contend that the Tribunal has no power to award interest on compensation for injury to feelings caused by the detrimental actions of the Respondent done on the ground that the Claimant made protected disclosures.

    5.2 Respondents 1,3 and 4 cite the terms of the Employment Tribunals (Interest on Awards in Discrimination Cases) 1996 and make the argument set out in paragraph 7 of the application for reconsideration. They ask that the total award of interest in the sum of £3,357.44 should be revoked.

5.3 I decline to revoke the award of interest. This is because the 2004 decision of the Employment Appeal Tribunal in Virgo Fidelis Senior School v Boyle [2004] IRLR 268 establishes that detriment suffered by whistleblowers should be regarded by tribunals as a serious breach of discrimination legislation and successful claims of that kind fall to be compensated in the same way as discrimination particularly in relation to injury to feelings awards (and aggravated damages if applicable).

5.4 In those circumstances there are several first instance employment tribunal precedents promulgated over a number of years for the award of interest on those sums which are identified as compensation for injury to feelings, for example in case number 3201374/2014 Korshunova v Eiger Securities, a decision of the East London Employment Tribunal (EJ Foxwell) sent to the parties on 23 March 2018. In that case the same regime of compensation, including interest, was applied to whistleblowing detriment as would apply to discrimination.

5.5 The Claimant also refers me to another East London case numbered 3201818/2017 (EJ Jones) in which the Tribunal made a consistent award of interest on compensation for successful public interest disclosure claims.

5.6 Secondly, Respondent 1 has misunderstood a part of the Remedy Judgment. There is no *'free standing award'* of two weeks' pay made under section 38 Employment Act 2002. The award is made in accordance with section 38(**3**) of the 2002 Act where there has also been an award to the Claimant in relation to other claims to which the proceedings relate, whereupon it is mandatory for the Tribunal to make an award, payable by R1, of the minimum amount of two weeks' pay if the conditions are met. The Remedy Judgment makes it clear in paragraph 8 that '*the Claimant having succeeded in some of her other claims and the Tribunal having found that R1 was unreasonably in breach of its duty under section 1 of the 1996 Act we make an award…'*. I am also satisfied that all the parties understood, during the remedy hearing, the basis on which the section 38 award was made.

5.7 I do not agree with the analysis put forward by R1 that the requirement in section 38(3)(b) that there should be a breach of sections 1(1) and /or 4(1) Employment Rights Act 1996 at the time *when the proceedings were begun* (i.e. at the date of the presentation of the ET1) means that if the failure to give a statement of employment particulars has been rectified before the ET1 claim is lodged then the award under section 38(3) cannot be made. My interpretation of the statutory language is that if 'when the proceedings are begun' a breach has already occurred during the employment of the Claimant, it need not be a continuing and/or persistent breach but it has nevertheless occurred, prior to the presentation of the claim, and it sits there waiting to be compensated in accordance with Part 3 of the 2002 Act once the proceedings have been concluded.

6. In all the circumstances the application for reconsideration is refused.

Employment Judge B Elgot
Dated: 22 February 2024