EMPLOYMENT TRIBUNALS

Claimant: Mr R Bores

Respondent: Virtalis Limited

Heard at: Liverpool **On:** 4 December 2023
12 January 2024
(in Chambers)

Before: Employment Judge Benson

REPRESENTATION:

Claimant: Mr R Wayman, Counsel
Respondent: Mr E Stenson, Counsel

RESERVED JUDGMENT AND REASONS

The judgment of the Tribunal is that:

1. The Tribunal does not have jurisdiction to determine the claim of unfair dismissal as the claimant was not employed in Great Britain nor able to show a sufficiently strong connection with Great Britain and British Employment law. That claim is dismissed.

2. **The respondent breached the claimant's contract by not paying him notice pay. The respondent is ordered to pay the claimant the agreed sum of 3326.53 euros net of tax as damages for breach of contract.**

REASONS

Claims and Issues

1. By a claim form presented on 3 August 2023 the claimant brought claims of "ordinary" unfair dismissal and wrongful dismissal. The respondent resists those claims and filed a response on 25 September 2023.

2. Today's hearing was a public preliminary hearing to determine the jurisdictional issues raised by the respondent in its grounds of response (paragraphs 1 and 2) and, at the discretion of the Employment Judge, to consider the wrongful dismissal complaint if appropriate.

3. The issues to be determined were whether the Tribunal had jurisdiction to hear the claimant's claim based upon its territorial scope as the claimant is a Dutch national – the respondent contends the relevant case law (including the authorities set out in **Lawson v Serco Limited [2006] ICR 250** (and others) gives the Tribunal jurisdiction; further, whether the claims of "ordinary" unfair dismissal and wrongful dismissal are time barred because the effective date of termination was 23 January 2023 and early conciliation was not commenced until 24 April 2023.

Evidence and Submissions

4. The Tribunal heard evidence from the claimant and from Mr Barry Hill, a director of the respondent company.

5. I was referred to a bundle of documents which had been agreed and received both written and oral submissions from Mr Wayman and Mr Stenson, for which I am grateful.

6. I was referred to various authorities within the submissions, including those set out below.

Findings of Fact

7. The claimant is a Dutch national and throughout his employment with the respondent he carried out his role from his home in the Netherlands. He commenced his employment on 1 July 2020 when he was recruited to the role of CEO. Initially the company had offices in Manchester, Malaysia, USA and Germany, however by the time of the claimant's employment ending the respondent had offices in Manchester and the USA. The majority of the respondent's staff, and indeed its Head Office, were and still remain located in the UK. The respondent had no business connections with the Netherlands, other than one client.

8. The claimant was a director of the respondent business until 23 January 2023 when he resigned his role as CEO and director. His employment in that role was governed by a service agreement. Although that service agreement indicated that the claimant's place of work was the company's office in the UK, that did not materialise, as the claimant did not have the right to work in the UK (without applying for a visa) and in any event Covid restrictions resulted in the claimant working solely from the Netherlands. During his employment. the claimant would travel to the UK

one or two days per month at such times as the Covid restrictions allowed it. For reasons set out below, the other terms of the claimant's service agreement are not relevant to my decision.

9. Following financial difficulties with the respondent company, such that it was on the verge of administration in December 2022, Mr B Hill, together with his business partner Mr A Hill and a private equity company, took control of the business in order to affect an immediate restructure and avoid its insolvency. 60 jobs were lost. It was agreed as part of the restructure that the claimant along with other senior members of the management team would resign as directors.

10. At a meeting on 15 January 2023 between Mr Hill and the claimant, the claimant resigned from his role as CEO as he did not consider he was the right person to lead the company through the restructure. It was agreed during that meeting that the claimant would however remain as an employee with the business, but as a special adviser. Mr Hill's reasons for this were that he wished to avoid any further turmoil at that time and wanted to retain good relationships with clients, including Santander with whom the claimant had a good relationship. He therefore offered a different role to the claimant, that being of special adviser, in which he would have the role of finding potential strategic alliances with companies who could re-sell their services and look for potential exit partners to whom Mr Hill could sell the company towards late 2023. That meeting took place over lunch and following the meeting a memorandum of understanding was agreed between them. I was referred to that document, which is dated 17 January 2023 and signed by both Mr Hill and the claimant (page 77 of the bundle).

11. That memorandum of understanding confirmed that:

- The claimant would resign from his current role as CEO with effect from Friday 20 January 2023.
- He would receive retrospective bonus payments.
- He would receive a payment of £40,000 in recognition of work already done.
- He would assume a new role as special adviser to Virtalis Limited which would commence on 23 January 2023 and the conditions would be as set out in the standard Virtalis employment contract. It specified however the main points for clarity. These were that the special adviser role would be part-time of an average of two days per week, activities would be jointly agreed between the claimant and the CEO of Virtalis Limited and would focus on sales activities with major current and future clients and with a focus on potentially securing an exit for the Virtalis group of companies.
- Remuneration would be 80,000 euros per year.
- The payment in recognition of work done would be paid by instalments and would not be dependent on any future performance or on his role of special adviser; and

- There would be no associated bonuses in his role as special adviser other than allocation of shares which may be jointly agreed at a later date.

12. The contents of the memorandum of understanding were stated to be mutually accepted by both parties in acting good faith and would transfer to a formal letter of agreement without significant modification to the content within a period of 14 days.

13. No formal letter of agreement was ever put in place. The claimant commenced the new role on 23 January 2023 as agreed. There was no break in his employment, and he was paid for the whole of the month of January. The respondent did not send the claimant a new contract of employment until 16 February 2023. When it was sent, it was on the respondent's standard terms and conditions which were familiar to the claimant, as he regularly issued them to his staff when in the position of CEO.

14. The relevant terms of that contract were:

a. The document refers to UK legislation only (ERA)

b. That the contract required UK travel

c. That the contract of employment would be governed by and construed in accordance with English Law and the employee agreed to submit to the non-exclusive jurisdiction of the English Courts.

15. By email dated 8 March 2023 (which was initially held up in the claimant's outbox) the claimant made some minor amendments to the contract, including deleting a term that his continuous employment with the company for the purposes of the Employment Rights Act 1996 would commence on 23 January 2023 and that no other period should count towards his continuous employment. He also deleted that the first three months of his employment should be a probationary period during which his performance and suitability for continued employment would be monitored. He deleted the term that during the probationary period his employment could be terminated in writing with one week's notice. He also removed any references to his normal place of work being the UK. Clause 3.1 of that agreement stated:

> "Your employment under this agreement commenced on the commencement date and shall continue until terminated by either party giving the other not less than one month's notice in writing."

16. During February and March 2023, the respondent became dissatisfied with the claimant and for reasons which are not relevant to the preliminary issue his employment was terminated on 24 March 2023, the respondent says by reason of capability.

17. During the claimant's time as a special adviser:

- He was a Dutch national.

- He worked from home, and it was agreed that his place of work was not the UK, and he amended the contract to confirm that this.
- He was not permitted to live or work in the UK without a visa, which he did not possess.
- He was paid in euros and paid his income tax to Dutch tax authorities.
- He did not pay any tax or national insurance in the UK, and he was not entitled to pay into a workplace pension.
- He was paid in euros throughout.
- His role was to seek strategic alliances and exit partner was focussed upon the USA and Europe.

The Law.

Territorial Issue

18. The Employment Rights Act 1996 only applies to employment in Great Britain. However, in exceptional circumstances it may cover working abroad. As summarised by the Court of Appeal in Bates van Winkelhof v Clyde and Co LLP and anor 2013 ICR 883, CA:

a. where an employee works partly in Great Britain and partly abroad, the question is whether the connection with Great Britain and British employment law is sufficiently strong to enable it to be said that Parliament would have regarded it as appropriate for the employment tribunal to deal with the claim — Ravat v Halliburton Manufacturing and Services Ltd 2012 ICR 389, SC:

b. where an employee works and lives wholly abroad, it will be more appropriate to ask whether his or her employment relationship has much stronger connections both with Great Britain and with British employment law than with any other system of law — Duncombe v Secretary of State for Children, Schools and Families (No.2) 2011 ICR 1312, SC.

23. In Lawson v Serco Ltd and two other cases 2006 ICR 250, HL. His Lordship Lord Hoffman accepted that Parliament must have intended, as a general principle, for the unfair dismissal rules to apply to 'the employee who was working in Great Britain'. He divided employees into three categories for the purpose of establishing whether a UK tribunal has territorial jurisdiction to hear a claim of unfair dismissal under S.94(1): (i) The standard case, where the question will depend on whether the employee was working in Great Britain at the time of dismissal, rather than on what was contemplated when the contract was entered into. Though they are not determinative of that question, the terms of the contract and any prior contractual relationship between the parties may be of relevance in determining whether the employee was actually working in Great Britain or on a casual visit. (ii) Peripatetic employees who, owing to the nature of their work, do not perform services in one territory, and; (iii) Expatriate employees, who work and are based abroad. His

Lordship accepted that there may be other qualifying situations but stated that in order to come within the scope of S.94(1), employees would need to show 'equally strong connections with Great Britain and British employment law'.

24. The leading authority on whether an employee who works and is based abroad — Lord Hoffmann's so-called 'expatriate employee' — is within the territorial reach is Duncombe v Secretary of State for Children, Schools and Families (No.2) 2011 ICR 1312, SC: Lady Hale, giving the judgment of the Court, summarised Lawson (above) to the effect that, to be covered by the ERA, the employment must have much stronger connections both with Great Britain and with British employment law than with any other system of law. In the Supreme Court's view, that was established in the case before it. Her Ladyship set out several factors that indicated in that decisions sufficiently strong connections with British employment law.

25. The territorial scope of unfair dismissal law came before the Supreme Court once more in Ravat v Halliburton Manufacturing and Services Ltd 2012 ICR 389, SC, a case involving circumstances that could not easily be fitted into any of the three categories identified in Lawson. There the Court — Lord Hope giving the only reasoned opinion — reiterated the comments of Lady Hale in Duncombe that Lawson did not set down a hard and fast rule, and that it would be an error of law for a tribunal to attempt to 'torture' factual circumstances to make them fit one of the Lawson categories. Those categories were but examples of a general principle: the right to claim unfair dismissal will only exceptionally cover employees working and based abroad and, for it to apply, the employment must have stronger connections with Great Britain and British employment law than with any other legal system. Lord Hope observed that this was the critical issue: although the general rule was that the place of employment is decisive, it is not an absolute rule. Ordinarily, such a connection derives from the work being done in Great Britain (Lord Hoffmann's 'standard' cases) but in repealing the old S.196 ERA Parliament had disavowed an absolute rule, which led to the conclusion that there must be exceptions — cases where the work is done outside Great Britain but the connection is still sufficiently strong. Two such exceptions were the peripatetic and expatriate categories identified in Lawson. The reason why an exception can be made in such cases is that the connection between Great Britain and the employment relationship is sufficiently strong for it to be presumed that Parliament must have intended S.94(1) to apply to that employment. Lord Hope reasoned that, for an expatriate employee to fall within S.94(1), it will be necessary to show that he or she is exceptional, as there would ordinarily be a greater connection to the country where the employee lives and works.

26. In Bleuse v MBT Transport Ltd and anor 2008 ICR 488, EAT, B, a German national, was employed by a company registered in England but he lived in Germany and worked solely in mainland Europe. His unfair dismissal claim failed because, as the EAT held, although he worked for a company based in the UK, he did not operate out of the UK and had virtually no connection with it. It made no difference that his contract provided that it was to be governed by, and construed in accordance with, English law as S.204 ERA makes it plain that the law of the contract of employment is 'immaterial'. The only issue was whether, as a matter of fact, B was based in the UK and neither the terms of the contract nor its applicable law determined that question. It should also be noted that in the Supreme Court —

albeit without any consideration of S.204 — had taken the view that a choice of governing law clause is a material consideration that can be taken into account by a tribunal when determining whether it has jurisdiction.

27. The case of Lodge v Dignity and Choice in Dying and anor 2015 IRLR 184, EAT, illustrates that Lord Hoffmann's category of 'expatriate employees' is not restricted to the specific examples given in Lawson. L, an Australian citizen, was employed as head of finance by a not-for-profit British company at its office in London. Her contract was governed by the law of England and Wales. In December 2008, she decided to move back to Australia because her mother was unwell. It was agreed that she would continue to work remotely from her home in Melbourne via a VPN (virtual private network) connection to the London office, an arrangement that continued until she resigned in 2013. The EAT accepted that L had not been 'posted' to Australia but had moved there of her own volition. Nevertheless, she did not lose her right to bring claims under the ERA for unfair constructive dismissal and whistleblowing detriment merely because, instead of working as a physical employee in the London office, she worked as a virtual employee from Australia. All of the work that L did from Australia was for the benefit of her employer's London operation. Other relevant factors were her undisputed contention that she had no right to bring a claim in Australia and the fact that a grievance brought by her in Melbourne had been handled in London under the terms of the staff handbook.

28. It is important to note, however, Lord Hoffmann's emphasis in Lawson on the fact that it is only in exceptional circumstances that expatriate employees will be entitled to claim unfair dismissal. This point was reiterated by the Supreme Court in Ravat when it stressed that a truly expatriate employee would need to show an 'especially strong connection with Great Britain and British employment law'.

29. In Creditsights Ltd v Dhunna (above) the Court of Appeal ruled that this does not mean that it is necessary for an employment tribunal to draw a comparison between the merits of the two jurisdictions and decide which would be more favourable to the claimant. The object of the exercise is simply to decide whether an employee is able to except him or herself from the general rule by demonstrating that he or she has sufficiently strong connections with Great Britain and British employment law.

30. Even if the facts of a case seem to be on all fours with those of another case, all cases should be considered by applying the principles set down in the leading authorities and not by extrapolation from the facts of decided cases. Rogers v Deputy Commander (as Trustee of the Garrison Amenities Fund) and anor EAT 0455/12

31. Ministry of Defence v Wallis and anor 2011 ICR 617, CA — the Court of Appeal following the Supreme Court's decisions in Duncombe and Ravat made it clear that cases in which work done outside the UK gave rise to the right to claim unfair dismissal in the UK would be exceptional. There must not only be a stronger connection, but a *much* stronger connection, both with Great Britain and British employment law, than with any other system of law, to enable it to be said that it would be appropriate for the employee to have a claim for unfair dismissal in Great Britain.

32. In many of the cases discussed above, one of the factors included in the factual backdrop against which employment tribunals have determined the 'sufficient connection' test is the existence of a choice of national law clause within the terms of the relevant contract. Rarely is this held to be a determining factor, but it is often regarded as being a relevant one.

33. Jeffery v British Council and another case 2019 ICR 929, CA, Underhill LJ accepted that there was nothing erroneous about treating a specifically negotiated provision as having greater strength than a standard form provision that neither party had consciously sought to include. A jurisdiction clause in an employee's contract of employment is a relevant — although not decisive — factor when determining whether his or her employment has a sufficiently close connection to Great Britain. But it is likely to be a weightier consideration if it has been specifically negotiated and less weighty if it is merely part of the employer's standard form contract.

Wrongful Dismissal

Subject to certain conditions and exceptions not relevant here, the Tribunal has jurisdiction over a claim for damages or some other sum in respect of a breach of contract which arises or is outstanding on termination of employment if presented within three months of the effective date of termination (allowing for early conciliation): see Articles 3 and 7 of the Employment Tribunals (England and Wales) Extension of Jurisdiction Order 1994.

Conclusions

Territorial Issue

34. The parties agreed that I must assess the position at the time of the claimant's dismissal. I have found that this was on 24 March 2023 and at that time the claimant was employed as a special advisor.

35. As an employee living and working outside the UK, the claimant may fall within the "expatriate" category described by LJ Hoffman in Lawson, but only if he can show that his circumstances are exceptional. As explained by Lady Hale in Duncombe, the right to claim unfair dismissal will only exceptionally cover employees working and based abroad and, for it to apply, the employment must have stronger connections with Great Britain and British employment law than with any other legal system. In carrying out this exercise, I must look at the various factors which the parties have put forward in order to reach a view. The burden is on the claimant to show why his circumstances are exceptional.

36. The claimant contends that:

a. the claimant being permitted to work remotely in the UK from The Netherlands amounts to the "something more" (per Lawson and Lodge").

b. The claimant's employment did have a much stronger connection with both GB and with British employment law than any other system of law (per Duncombe).

c. That the connection was especially strong, such that an exception can be made for the claimant not withstanding the fact that he lived as well as worked abroad; and

d. The connection was sufficiently strong to enable it to be said that it would be appropriate for him to have a claim for unfair dismissal in GB (per Ravat).

37. He relies upon the follows relevant factors: that the claimant was employed under a contract governed by English law; the terms of that contract repeatedly made reference to English law; that he had no particular connection to The Netherlands other than he lived and paid taxes there; the respondent had no operations there other than one client; the nature of the claimant's role was not connected with his geographical location and his previous contract provided for any bonus in sterling.

38. Some of the factors put forward by the claimant were based upon his contention that it was the CEO contract which applied to him, which for the reasons set out above was not the contract upon which he was employed at the time of his dismissal, though I am permitted to consider arrangements at earlier stages of his employment as part of my considerations.

39. The respondent says that there are no such exceptional circumstances. Mr Stenson took me though the facts of Lawson and the joined cases as a demonstration of what was necessary for sufficiently strong connections with GB to exist. He refers to Bleuse, where the claimant's connection was not found to be sufficiently close and says that the claimant's case is on all fours with its facts.

40. The factors which the respondent relies upon include: The claimant is not from the UK, he doesn't live here, he did not and could not work in the UK without a visa, he did not operate out of the UK, his work as a special adviser was carried out primarily internationally outside the UK, he paid no UK tax or national insurance, he did not and could not pay into a workplace pension in the UK, It says that his connection was with the Netherlands. That was where he was based and it was his place of work, he was paid in euros through accountancy arrangements set up in The Netherlands. He lived there and is a Dutch national.

41. For an expatriate employee to fall within S.94(1) ERA, it will be necessary to show that he or she is exceptional, as there would ordinarily be a greater connection to the country where the employee lives and works (per Lord Hope in Ravat)

42. I have weighed up these factors and concluded that the claimant's connection with the UK is not sufficiently strong such that an exception can be made out.

43. A number of the factors which the claimant relies upon are the provisions within his contract which refers to English law and the non-exclusive jurisdiction of the English courts. Following his acceptance of the new role as special adviser, it is his new terms and conditions which are relevant. Such provisions are not conclusive, but just one factor which I must take into account. I note that this is a standard form contract and on this occasion was not specifically negotiated following the change of role. Although his CEO contract had similar provisions, his role had changed significantly. This factor carries less weight in my considerations because of this.

44. The claimant relies upon the EAT decision in Lodge. Mr Wayman accepts that the claimant was "truly expatriate", and not "posted", but says that it doesn't matter whether an employee is "posted" or works abroad at their own request. He relies upon HHJ Clark's finding that this 'makes [him] no different from the employee posted to work abroad with [his] consent". I accept that just because the claimant wasn't "posted" to work abroad that does not prevent him from being capable of falling within the "expatriate" category.

45. Even if a previous authority has similar facts as in this case, I am not bound to come to the same conclusions and must carry out my own assessment of the relevant factors. I consider that Ms Lodge's position and the facts of her case are different than that of the claimant.

46. Mr Wayman refers to Ms Lodge's work in Australia being for the benefit of the business in the UK and that as the claimant's work was also done for the benefit of the UK company, that is a relevant factor for me to consider. In Lodge the employee's initial place of work was in the UK. She continued to carry out the same work but from computer screen based in Australia rather than on a desk in the UK. There was an ongoing connection with Great Britain. The claimant however had never worked in the UK. It was never intended in his new role as special advisor that he would be based in the UK. His role, other than retaining the relationship with Santander by remaining associated with the company, was to seek strategic alliances and exit partnerships. This was focussed upon companies and businesses primarily in the USA and Europe. Although this would have ultimately benefitted the respondent UK business and its investors and it was intended that he would visit for meetings, this role had little connection with the UK. This was different from Ms Lodge and from his previous role as CEO where he had a more active involvement with the UK employees and business, albeit from his place of work in The Netherlands.

47. The respondent says that Bleuse is on all fours with the facts of this case. The facts are similar but again it is for me assess all factors.

48. The factors which are put forward by the respondent, I find point away from a close connection with Great Britain. The claimant's pay, pension and tax arrangements are all aligned with his work and residence in The Netherlands, rather than the UK. He has no right to work in the UK and has never sought to do so. Since 2021 he would have required a visa to do so, but there was no suggestion that he had ever applied. He removed the provision in the new special advisor contract concerning his place of work being in the UK.

49. I was provided with little evidence as to the claimant's employment rights or protection under The Netherlands law. Other than the provisions of his contract referring to English Law and courts as set out above, the claimant has not shown that he has a much stronger connection with British employment law than that in the Netherlands.

50. I conclude therefore that the claimant has not shown a stronger connection with Great Britain and British employment law than with any other legal system, which is sufficiently strong to amount to exceptional circumstances such that he should have the right to bring a claim of unfair dismissal pursuant to section 94(1) Employment Rights Act 1996.

Wrongful Dismissal

51. The claimant's employment terminated on 24 March 2023. Early conciliation commenced on 24 April and concluded on 5 June 2023. The claim was filed on **3 August 2023**.

52. It is accepted that on 20 January 2023 the claimant resigned from his role as CEO. I find that he did not on that date resign from his employment. Discussions had taken place on 15 January between Mr Hill and the claimant in which this had been agreed. It was agreed and recorded in the memorandum of understanding that the new role which the claimant had agreed to undertake would be on the respondent's standard terms and conditions which he was very familiar with.

53. I accept on the balance of probabilities that both parties understood that this was a reference to the use of a more standard contract than the individually negotiated service agreement which the claimant had when he was CEO. In fact, when the claimant returned the amended contract, he had only made very few changes, those being ones which would be obvious and apparent to both parties. It was never intended that the claimant's place of work would be the UK and therefore it was clear that the standard contract would not apply in that respect, nor that there would be a probationary period. The standard contract had a notice period of one month. The claimant did not amend that.

54. I consider that it was a misunderstanding of Mr Hill's as to the impact of the resignation of the claimant from his position in the CEO role. He had assumed that by the claimant resigning as CEO and starting a new role, his employment would automatically terminate. That was not what the claimant understood or indeed what occurred. The claimant's employment continued. It also appears not to have been what the respondent's internal advisor, who prepared the draft standard contract for the claimant, understood. In his email exchange with Mr Hill, he asked "whether these changes now are a change of role, rather than a new employment". Mr Hill responded: "Robert resigned from his original role and this is now a brand new contract in a completely different role". The claimant understood that he was accepting a different role with continuity of employment on different terms and conditions. What however is clear is that both parties agreed and understood that the new role as special adviser would be on different terms and although a new contract was never signed, the memorandum of understanding was.

55. I find that the terms of employment which applied at that date were what is set out in the memorandum of understanding, being the standard terms, but with the removal of the place of work provisions, and the removal of the probationary period, which would not be effective as the claimant had continuity of service and was not in his first three months of employment (clause 2.1); and the amendment of the term stating his that his employment commenced on 23 January 2023. The correct commencement date was 1 July 2020.

56. The claimant did not seek to amend the standard notice period at clause 3.1 which provides for one month's notice on either side. This is the notice period which applied to him.

57. I therefore find that the terms of employment which applied to the claimant were those set out in the standard terms of employment (as amended) and as he was not in his probationary period (having commenced employment in 2020) the notice period which he was entitled to was one month.

58. The parties have agreed that the claimant was paid one week's notice. He is therefore due the balance of his notice period during which the parties have agreed he would have been paid 3326.53 euros net of tax.

Employment Judge Benson
Date: 28 February 2024
Varied on 29 April 2024

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON
2 May 2024

FOR 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.

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, 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.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990 ARTICLE 12

Case number: **2407871/2023**

Name of case: **Mr R Boers** v **Virtalis Limited**

Interest is payable when an Employment Tribunal makes an award or determination requiring one party to proceedings to pay a sum of money to another party, apart from sums representing costs or expenses.

No interest is payable if the sum is paid in full within 14 days after the date the Tribunal sent the written record of the decision to the parties. The date the Tribunal sent the written record of the decision to the parties is called **the relevant decision day**.

Interest starts to accrue from the day immediately after the relevant decision day. That is called **the calculation day**.

The rate of interest payable is the rate specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as **the stipulated rate of interest**.

The Secretary of the Tribunal is required to give you notice of **the relevant decision day**, **the calculation day**, and **the stipulated rate of interest** in your case. They are as follows:

the relevant decision day in this case is: 2 May 2024

the calculation day in this case is: 3 May 2024

the stipulated rate of interest is: **8% per annum**.

Mr S Artingstall
For the Employment Tribunal Office

GUIDANCE NOTE

1. There is more information about Tribunal judgments here, which you should read with this guidance note: www.gov.uk/government/publications/employment-tribunal-hearings-judgment-guide-t426

   If you do not have access to the internet, you can ask for a paper copy by telephoning the Tribunal office dealing with the claim.

2. The payment of interest on Employment Tribunal awards is governed by The Employment Tribunals (Interest) Order 1990. Interest is payable on Employment Tribunal awards if they remain wholly or partly unpaid more than 14 days after the **relevant decision day**. Sums in the award that represent costs or expenses are excluded. Interest starts to accrue from the day immediately after the **relevant decision day**, which is called **the calculation day**.

3. The date of the **relevant decision day** in your case is set out in the Notice. If the judgment is paid in full by that date, no interest will be payable. If the judgment is not paid in full by that date, interest will start to accrue from the next day.

4. Requesting written reasons after you have received a written judgment does **not** change the date of the **relevant decision day**.

5. Interest will be calculated as simple interest accruing from day to day on any part of the sum of money awarded by the Tribunal that remains unpaid.

6. If the person paying the Tribunal award is required to pay part of it to a public authority by way of tax or National Insurance, no interest is payable on that part.

7. If the Secretary of State has claimed any part of the sum awarded by the Tribunal in a recoupment notice, no interest is payable on that part.

8. If the sum awarded is varied, either because the Tribunal reconsiders its own judgment, or following an appeal to the Employment Appeal Tribunal or a higher court, interest will still be payable from **the calculation day** but it will be payable on the new sum not the sum originally awarded.

9. The online information explains how Employment Tribunal awards are enforced. The interest element of an award is enforced in the same way.