



EMPLOYMENT TRIBUNALS

Claimant: Mr K Banda

Respondents: (1) Charmaine Ndambo; (2) Stofell Pretorius; (3) Edworks Limited (in creditors' voluntary liquidation) .

Heard at: Manchester (by CVP) **On:** 17-20 June 2024

Before: Employment Judge Leach, Ms H Sheard, Mr A Clarke

REPRESENTATION:

Claimant: In person

First and second Respondent: Mr Marriott (solicitor)

Third respondent; did not attend, no representation.

JUDGMENT

A. Wrongful Dismissal

1. The claimant's application to amend his claim to include a wrongful dismissal complaint is granted.
2. The claimant was wrongfully dismissed and is entitled to be compensated for loss of 11 weeks' notice. The third respondent shall pay the claimant the sum of **£9868.10**. This figure has been calculated using gross pay to reflect the likelihood that the claimant will have to pay tax on it as Post Employment Notice pay.
3. The third respondent must now pay this amount to the claimant.

B. Unfair Dismissal

1. The complaint of unfair dismissal is well founded. The claimant was unfairly dismissed.

2. The third respondent shall pay to the claimant the following sums:-
 - a. A basic award of **£7994**. This is calculated in accordance with the schedule attached.
 - b. Compensation for loss of statutory rights - **£500**.
3. The Third Respondent must now pay these amounts to the claimant.

C. Complaints under the Equality Act 2010.

1. In deciding to dismiss the claimant and in dismissing him, the respondents unlawfully discriminated against the claimant for a reason related to his disability, contrary to section 15 Equality Act 2010. The claimant is awarded a total of **£33,343.57** as detailed in the schedule attached.
2. The first second and third respondents must now make this payment to the claimant. They are jointly and severally liable to do so
- 3.
4. The complaints of (1) direct discrimination and (2) a failure to make reasonable adjustments fail and are dismissed.

Employment Judge **Leach**
Date 24 June 2024

JUDGMENT SENT TO THE PARTIES ON
2 July 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.

SCHEDULE

A. Compensation for breaches of the Equality Act 2010

1. Injury to feelings.

1.1	An injury to feelings award	£15,000
1.2	10% uplift (failure to follow ACAS Code)	£ 1,500
1.3	Interest (from the date of dismissal – 5 November 2022 to at a rate of 8% for the middle of the period 5 November 2022 (date of dismissal) to date of hearing (20 June 2024))	£2140.93

Total injury to feelings award **£18,640.93**

2. Compensation for Financial Loss

Net financial Losses were incurred over a period of 40 weeks (20 January 2023 – the date when the 11 week notice period should have ended – to 31 October 2023 – date when third respondent ceased trading). Loss is based on a week's net pay (plus employer pension contributions) of £605.84.

2.1 40 weeks' loss = 40 x 605.84 = £24233.60

2.2 There is a chance that the claimant would not have continued in full time employment and with full time earnings for the whole of this period. That reduced chance is assessed so as to provide for a 30% reduction in the net financial loss amount. Loss following adjustment is £16,963.52

2.3 Account for adjustment for unreasonable failure to follow the ACAS Code; a 10% uplift of £1696.35

The adjusted amount is £18,659.87

2.4 Deduct income received in this period.

2.4.1 Employment Support Allowance £7353.70

2.4.2 Income from other employment £ 816.31

Amount following these deductions for mitigation £10,489.86

2.5 Add interest from mid-way point of period of loss (15 June 2023) to date of hearing (20 June 2024) at a rate of 8% per annum. of £850.68

Total compensation for financial loss **£11,340.72**

B. Basic Award calculation

The claimant had 11 years of continuous employment.

The dismissal date was 5 November 2022

Claimant was aged 48 at date of dismissal.

A week's pay earned by the claimant exceeded the statutory maximum applicable at the date of dismissal of £571.

The Calculation is as follows:

5 years x 1 x 571 PLUS 6 years x 1.5 x 571 = **£7994**

C. Grossing Up

The compensation payable under the Equality Act 2010 are to compensate for the discriminatory dismissal and as such these amounts, together with the basic award, will be taxable under s401 Income Tax Earnings and Pensions Act 2003.

The basic award and compensation payable under the Equality Act 2010 exceeds £30,000.

Basic award of £7994 PLUS Injury to feelings -£18,640.93 PLUS compensation for financial loss - £11,340.72 Total = £38,475.65

A "Grossing up calculation has been carried out to assess the amount that is payable in order for the claimant to receive the full amount of £38,475.65 after deductions of 20% income tax at a rate of 20% and National Insurance at a rate of 8%.

The amount is **£41,331.57**

The unfair dismissal basic award is then subtracted from this. This leaves **£33,343.57**. This is the total amount payable by the respondents to the claimant as compensation for discrimination.

The 3 respondents are jointly and severally liable for this amount.



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990 ARTICLE 12

Case number: **2410145/2022**

Name of case: **Mr K Banda** v **1. Charmaine Ndambo
2. Stofell Pretorius
3. Edworks Limited (in
voluntary liquidation)**

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 July 2024

the calculation day in this case is: 3 July 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.