



EMPLOYMENT TRIBUNALS

Claimants: Unison & others
(see attached schedule)

Respondents: 1. Orchard Day Nursery (Liverpool) Limited (in creditors
voluntary liquidation)
2. The Secretary of State for Business and Trade

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

1. The complaint by Unison under case number 2407636/2023 seeking a protective award under section 189 Trade Union and Labour Relations (Consolidation) Act 1992 is well-founded. The first respondent failed in its duty to consult the individual claimants and their former colleagues under section 188 of that Act.
2. The first respondent is ordered to pay to each employee of a description in respect of which Unison was recognised, being the individuals named in the schedule to this judgment, remuneration for the protected period of 90 days starting on **30 March 2023**, the date the first dismissal took effect.
3. The recoupment regulations apply to payments made by way of the protective award.
4. The complaints by the individual claimants named in the schedule seeking a protective award are dismissed as the individual employees do not have standing to bring such a claim.
5. The complaints of unfair dismissal brought by the individual claimants named in the schedule are all well founded. The reason for the dismissal in each case was that the claimant had taken part in the activities of an independent trade union at an appropriate time, rendering each dismissal unfair under section 152(1) of the Trade Union and Labour Relations (Consolidation) Act 1992.
6. The first respondent is ordered to pay each claimant a basic award of **£6,959**. No compensatory awards are made.
7. The recoupment regulations do not apply to the unfair dismissal basic awards.

8. The remaining money complaints brought by individual claimants against the first respondent are dismissed upon withdrawal, the claimants having received payments from the Insolvency Service.

Regional Employment Judge Franey

9 July 2024

JUDGMENT SENT TO THE PARTIES ON
16 July 2024

.....
AND ENTERED IN THE REGISTER

.....
FOR THE TRIBUNAL OFFICE

Schedule

Case Number	Claimant Name
2407637/2023	Ms Julie Anders
2407638/2023	Ms Abi Beckett
2407639/2023	Ms Theresa Bradley
2407640/2023	Ms Hayley Burns
2407641/2023	Ms Diana Aida Chaparro Escobedo
2407642/2023	Ms Leah Cheshire
2407643/2023	Ms Donna Cooke
2407644/2023	Ms Marie Darwin
2407645/2023	Ms Julia Doolan
2407646/2023	Ms Melissa Jane Ellison
2407647/2023	Ms Joanne Ford
2407648/2023	Ms Nicole Gibbs
2407649/2023	Ms Jeanette Gore
2407650/2023	Ms Jennifer Grey
2407651/2023	Ms Michelle Heyes
2407652/2023	Ms Natasha Higgs
2407653/2023	Ms Danielle Houghton
2407654/2023	Ms Abigail Howard
2407655/2023	Ms Sharon Johnston
2407656/2023	Ms Elle Jones
2407657/2023	Ms Maureen Kelly
2407658/2023	Ms Philippa Kilroe
2407659/2023	Ms Ella Lawrie
2407660/2023	Ms Leandra McDonough
2407661/2023	Ms Nadine McNeilis
2407662/2023	Ms Maria Murphy

2407663/2023	Ms Katherine Owens
2407664/2023	Ms Sian Parkinson
2407665/2023	Ms Michelle Patterson
2407666/2023	Ms Kelly Pollard
2407667/2023	Ms Suzanne Ravenscroft
2407668/2023	Ms Gillian Ravenscroft
2407669/2023	Ms Heather Roberts
2407670/2023	Mr Mark Roberts
2407671/2023	Ms Colette Ronan
2407672/2023	Ms Sophie Ruddock
2407673/2023	Ms Morgan Sherlock
2407674/2023	Ms Emma Simons
2407675/2023	Ms Rebecca Sinclair
2407676/2023	Ms Gemma Smart
2407677/2023	Ms Joanne Todd
2407678/2023	Ms Catherine Walsh
2407679/2023	Mr Christian Webster
2407680/2023	Ms Ashley Williams
2407681/2023	Ms Amy Woodall

Claimant: Unison & others

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**ANNEX TO THE JUDGMENT
(PROTECTIVE AWARDS)**

Recoupment of Benefits

The following particulars are given pursuant to the Employment Protection (Recoupment of Benefits) Regulations 1996, SI 1996 No 2349.

The respondent is under a duty to give the Secretary of State the following information in writing: (a) the name, address and National Insurance number of every employee to whom the protective award relates; and (b) the date of termination (or proposed termination) of the employment of each such employee.

That information shall be given within 10 days, commencing on the day on which the Tribunal announced its judgment at the hearing. If the Tribunal did not announce its judgment at the hearing, the information shall be given within the period of 10 days, commencing on the day on which the relevant judgment was sent to the parties. In any case in which it is not reasonably practicable for the respondent to do so within those times, then the information shall be given as soon as reasonably practicable thereafter.

No part of the remuneration due to an employee under the protective award is payable until either (a) the Secretary of State has served a notice (called a Recoupment Notice) on the respondent to pay the whole or part thereof to the Secretary of State or (b) the Secretary of State has notified the respondent in writing that no such notice is to be served.

This is without prejudice to the right of an employee to present a complaint to an Employment Tribunal of the employer's failure to pay remuneration under a protective award.

If the Secretary of State has served a Recoupment Notice on the respondent, the sum claimed in the Recoupment Notice in relation to each employee will be whichever is the less of:

- (a) the amount (less any tax or social security contributions which fall to be deducted by the employer) accrued due to the employee in respect of so much of the protected period as falls before the date on which the Secretary of State receives from the employer the information referred to above; OR
- (b) (i) the amount paid by way of or paid as on account of jobseeker's allowance, income-related employment and support allowance or income support to the employee for any period which coincides with any part of the protected period falling before the date described in (a) above; or

- (ii) in the case of an employee entitled to an award of universal credit for any period (“the UC period”) which coincides with any part of the period to which the prescribed element is attributable, any amount paid by way of or on account of universal credit for the UC period that would not have been paid if the person’s earned income for that period was the same as immediately before the period to which the prescribed element is attributable.

The sum claimed in the Recoupment Notice will be payable forthwith to the Secretary of State. The balance of the remuneration under the protective award is then payable to the employee, subject to the deduction of any tax or social security contributions.

A Recoupment Notice must be served within the period of 21 days after the Secretary of State has received from the respondent the above-mentioned information required to be given by the respondent to the Secretary of State or as soon as practicable thereafter.

After paying the balance of the remuneration (less tax and social security contributions) to the employee, the respondent will not be further liable to the employee. However, the sum claimed in a Recoupment Notice is due from the respondent as a debt to the Secretary of State, whatever may have been paid to the employee, and regardless of any dispute between the employee and the Secretary of State as to the amount specified in the Recoupment Notice.



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990 ARTICLE 12

Case numbers: **2407636/2023 & others**

Name of cases: **Unison & others** v **1. Orchard Day Nursery
(see attached
schedule) (Liverpool) Limited (in
creditors voluntary liquidation)
2. The Secretary of State for
Business and Trade**

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: 16 July 2024

the calculation day in this case is: 17 July 2024

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

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.