



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Ms N Metcalf

v

St Anne's Community Services

Before: Employment Judge JM Wade (in chambers)

JUDGMENT

On its own initiative the Judgment sent to the parties on 13 January 2025 is varied as follows:

1 The Tribunal makes the following Compensatory Award: £ 42,712.15.

On the respondent's application for a stay:

2 The Tribunal refuses the respondent's application that this award be stayed.

REASONS

1. Rule 68(1) of the Employment Tribunal Procedure Rules 2024 permits a Tribunal to reconsider a Judgment of its own motion and Rule 71 provides that Rule 70(3) to (5) shall apply. .
2. Paragraphs 45-46 of the Reasons sent to the parties on 12 February 2025 set out why it appeared in the interests of justice to reconsider the Judgment (in essence a grossing up error).
3. The parties have commented in writing on the Tribunal's proposal. Neither has requested a hearing having been invited to state their position and the Tribunal considers it is in the interests of justice to determine this matter without a further hearing (bearing in mind the costs to the public purse and to the parties).
4. The respondent's contention that the excess of the Tribunal's awards over £30,000 can be accommodated by the claimant's personal allowance of £12,570 such that no grossing up is required has been considered, together with the claimant's

opposition to that point (which would have resulted in a further reduction of the Compensatory Award to £40,169.72).

5. The difference in sum is small. The respondent is a charity but a large one which operates statutory services. The respondent's position can be summarised as follows: it is unjust that the claimant will receive a windfall of £2542.40 in grossing up allowance, when in reality she will pay no tax. The claimant's position is that her tax position is, as yet unknown, no findings have been made, and she may receive other taxable income in the 2024/2025 tax year such that she will lose out if the sum is not grossed up as the Tribunal has proposed (at 20%).
6. The respondent's counter schedule identified the need to gross up sums but - as previously confirmed - there was no time in the hearing time for submissions on grossing up in the particular circumstances of the Tribunal's assessment on loss. The Tribunal did not make (and does not have available to it) findings about the claimant's likely income or tax position at the time the award is paid, albeit we did have some evidence that new starter JSA, which is taxable income, is now being paid. While Yorkshire Housing Ltd v Cuerden UKEAT/0397/09/SM identifies that a proper approach to grossing up must be as accurate as possible, in the absence of agreement the Tribunal is faced between doing its best with the available material and having a satellite hearing simply to identify the likely tax position in the tax year of payment (which by the time of such a hearing will likely take us into the next tax year).
7. The Tribunal's assessment is always an exercise in doing its best with the available information. Any assessment will have the prospect of under compensating or over compensating depending on how matters unfold. Were the claimant to receive unexpected income such that the compensatory award when paid is taxed at a higher rate, she will be undercompensated. Similarly, if her earned income position improves in the next tax year and the sum is not paid until that next tax year.
8. The reality is that people may organise their affairs in the way they see fit and the amount of tax actually paid will not always equate precisely to the sum identified in a grossing up exercise.
9. In these circumstances, and taking into account the alternative - a further hearing with further findings on the matter - I consider the interests of justice are not served by an own initiative reconsideration beyond that proposed by the Tribunal and on the basis proposed by the respondent.
10. It is convenient in the circumstances to also address the stay application in this Judgment, which is made on the basis that the respondent has arguable grounds of appeal to challenge the remedy judgment and may struggle to recover sums if its appeal is successful.
11. Our findings recognise that the respondent's financial position had worsened in 2022, but there is no up to date information, other than that the sum will be paid out of charitable funds/reserves. Its income (we have already recorded) is around £45 million a year. The claimant has waited a long time for the disposal of her case, and financial remedy is an important part of that. This is not a case where the risk

of difficulty in recovery should an appeal be successful outweighs the prejudice to the claimant in having justice delayed, and the stay is refused.

12. Finally and for the sake of completeness, I see that the letter inviting the parties' submissions noted "£42712.12" (a typing error) as opposed to £42712.15 which is within the written reasons and is the appropriate sum.

Employment Judge JM Wade

Date 7 March 2025

RECONSIDERATION JUDGMENT AND
REASONS SENT TO THE PARTIES ON

Date: 10th March 2025

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