



EMPLOYMENT TRIBUNALS

Claimant: Ms N Jones

Respondents: The Home Office

HELD AT: Liverpool

ON: 12 May 2017

BEFORE: Employment Judge Shotter
Mr R Tyndall
Mr R Cunningham

REPRESENTATION:

Claimant: Written submissions
Respondent: Written submissions

JUDGMENT

The unanimous judgment of the Tribunal is as follows:

1. The Judgment promulgated on 26 November 2016 is reconsidered under Rule 70 of the Tribunal Rules 2013 in the interests of justice and the Judgment is varied to include a recalculation of the compensation for unlawful disability discrimination in the terms set out below.
 - 1.1 The respondent is ordered to pay compensation for unlawful disability discrimination in the sum of £3245.45 loss of earnings, £914.72 pension contributions and £445.15 in respect of unpaid childcare vouchers totalling £4605.32 together with £460.53 10% uplift for failure to follow the ACAS Code totalling £5065.85.
 - 1.2 The respondent is ordered to pay compensation for unlawful disability discrimination in the sum of £6,600 injury to feelings together with interest at 8% in the sum of £528 totalling £7128.00 together with a 10% uplift for failure to comply with the ACAS code in the sum of £712.80 totalling £7840.80.

- 1.3 The respondent is ordered to pay compensation for unlawful disability discrimination in the sum of £2,000 for psychiatric personal injury together with a 10% uplift for failure to comply with the ACAS Code in the sum of £200.00 totalling £2200.00.
2. The respondent is ordered to pay to the claimant the sum of £1200 for reimbursement of Employment Tribunal fees.

REASONS

1. This is a reconsideration Hearing following promulgation of the Tribunal's judgment and reasons on remedy sent to the parties on 26 November 2016 ("the promulgated Judgment"), the Tribunal having found the respondent had unlawfully discriminated against the claimant under Section 20 – 22 of the Equality Act 2010 when it failed in its duty to make reasonable adjustments from 5th June 2014 to 5th January 2015.
2. The Tribunal has before it the claimant's application dated 12 December 2016, an email from the respondent to the Tribunal sent 14 December 2016 together with the respondent's calculation of the sums it considers just and payable under the judgment, and the respondent's letter of 5 May 2017 attaching a calculation of the sums the respondent considered payable. The parties agreed this hearing would take place without their attendance and upon consideration of written submissions.
3. Under rule 70 of the Tribunal Rules 2013, a judgment will only be reconsidered where it is 'necessary in the interests of justice to do so'. There is an underlying public policy principle that there should be finality in litigation. Reconsiderations are not a method by which a party can take a second bite of the cherry. Upon reconsideration of a judgment, a Tribunal has a wide discretion and may confirm, vary or revoke the original decision and, if revoked, the decision may be taken again - rule 70.
4. The Tribunal has dealt with this application following the same order as the claimant.

The discrepancy in the calculation

5. The Tribunal agreed there is a discrepancy in the calculation and accepts in part, the calculation put forward by the claimant as follows:

Loss of earnings

- 4.1 £3245.45 as agreed between the parties and remains as ordered by the Tribunal.

Loss of pension

- 4.2 There is a difference of £83.11 between the parties, the respondent putting forward the figure of £831.61, the claimant £914.72, the same amount originally ordered by the Tribunal. The Tribunal at the remedy hearing had carried out a

detailed calculation based on the information provided by the parties in respect of pension, there is no application before it from the respondent to revoke this figure, and thus the figure of £914.72 is not revoked and remains as ordered by the Tribunal.

Loss of childcare vouchers

4.2 Childcare vouchers have been agreed at £445.15 as previously ordered by the Tribunal.

Interest on injury to feelings

4.3 Injury to feelings with interest has been agreed at £7870 between the parties, the Tribunal did not accept this figure and calculated it at £7840.80 broken down into £6,600 injury to feelings, 8% of £6,600 is £528 totalling £7128 and 10% uplift for failing to follow ACAS amounts to £712.80. The respondent's figure of £1270 interest is incorrect, and it appears this is the figure adopted by the claimant. The total award should therefore be £7840.80 and not £7870 which is revoked and amended to read £7840.80. It also appears that the claimant in the figure of £7870 has included a higher percentage than 18% (the total of ACAS uplift and interest.) The correct figure taking into account 8% interest followed by 10% ACAS uplift is £7840.80 and the figure in paragraph 2 of the promulgated judgement is revoked and substituted by 8% interest on £6,600 at £528 and 10% uplift thereon for failing to follow the ACAS Code at £712.80 and not £780.00. The total award is £7840.80. Thus the schedule is incorrect in this respect and has been amended accordingly.

Personal injury

4.4 The figure for personal injury has been agreed at £2000 as originally ordered by the Tribunal.

Tribunal fees

4.5 The Tribunal fees total £1200. The respondent has not commented on this aspect of the claimant's application. The Tribunal accepts the submissions put forward on behalf of the claimant that is just and equitable for the claimant to be reimbursed her fees under Rule 75 and 76(4) of the Employment Tribunal Rules . The fact the claimant did not succeed on all of her claims should not deprive her of reimbursement of the Employment Tribunal fees she incurred. It is notable there was no application for reimbursement of fees until this reconsideration; had there been the Tribunal would have awarded reimbursement of fees. The Judgment is amended to include the following:

"The respondent is order to pay to the claimant the sum of £1200 for reimbursement of Employment Tribunal fees."

Injury to feelings award

6. The Tribunal has considered the parties representations relating to the claimant's application for an increase in the injury to feelings award by £1000 to total

£6,600. The claimant argues the respondent's failure to apologise aggravated the injury to feelings she suffered, and that the Tribunal "does not appear to have factored the lack of the apology into the size of the award..." The Tribunal does not agree with the claimant's analysis.

7. Paragraph 53 in the promulgated Judgment is clear. The lack of apology was taken into account by the Tribunal who then placed the claimant into the lower end of the middle Vento band. This decision was influenced by the respondent's lack of an apology and the Tribunal, as set out in paragraph 55, took into account the general principles underlying awards for injury to feelings before arriving at the figure it did. The claimant seeks to increase the award by £1000; taking into account all of the evidence before it and the difficulties in assessing injury to feelings in this case, when considering remedy the Tribunal were of the view the claimant fell into the lower middle band and the just and equitable sum of £6,600 was appropriate taking into account that lack of apology. The injury to feelings award will not be revoked and stands as ordered.

ACAS uplift

8. The Tribunal has considered the parties representations concerning the claimant's application for an increase in the ACAS uplift. The claimant appears to be arguing, in short, that as the ACAS uplift was not pleaded the Tribunal ordered a 10% uplift. The claimant's belief in this regard is misconceived. It was irrelevant to the Tribunal's consideration whether the ACAS uplift had been pleaded or not when it came to considering the ACAS uplift, and amount of any increase. The Tribunal considered the respondent's actions in relation to the claimant's grievance, the Tribunal's starting point being the maximum 25% uplift. Paragraphs 80 and 81 of the promulgated Judgment sets out why the Tribunal decided it was just and equitable to award 10% in all the particular circumstances of this case, taking into account the respondent's actions. A 25% uplift may have been more applicable had the respondent fundamentally failed to comply with the ACAS Code of Practice, which the Tribunal found was not the case despite finding the respondent being in breach. The 10% increase to the awards arising out of the respondent's failure to comply with the ACAS Code of Practice will not be increased by 15%, it will stand at 10% and in this respect the ACAS uplift award will not be revoked. Paragraph 73 to 82 of the promulgated Judgment sets out the Tribunal's consideration of this issue, particularly at 81.

Amended Schedule

Loss of net earnings

6 September 2014 to 30 November 2014
(12 weeks @ £309.09) - £1854.54

1 - 7 December 2014
(1 week @ £309.09) - £309.09

Total: £4018.17

Less 50% reduction:	£2009.09
8 th December to 5 th January 2015 (4 weeks @ £309.09)	£1,236.36
Total loss of earnings:	<u>£3245.45</u>

Pension contributions of £374. 82 per month

Employer's contributions:
 November 2014 : (374.82-26.95) £347.87
 December 1st to 7th £86.26

Total: £434.13

Less 50% reduction November to 7 December 2014	£217.06
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Employee's contributions:
 September 2014: £29.21 (129.19-29.21)
 October 2014: £43.50 (129.19-83.89)
 November 2014: £122.41 (121.16-6.78)
 December 1st to 7th: £29.73

Total: £224.85

Less 50% reduction November to 7 December 2014	£112.43
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December: 8th to 31st

Employer's contributions - £374.82	
Employee's contributions -£129.19	£504.01

1 – 5 January 2015
 Employer's contributions- £59.97
 (374.82 x12 divided by 365 x 5)

Employee's contributions - £21.24
 (129.19x12 divided by 365 x 5)

Total;	£81.21
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Total pension contributions:	<u>£914.72</u>
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Childcare vouchers - £177.66 per month

6th September 2014 to 7 December 2014 - £532.98

Less 50% reduction November to 7 December 2014
£266.49

8th December 2014 to 5th January 2015
(4 weeks) £ 177.66

Total childcare vouchers: £445.15

Total:
£4605.32

Add 10% uplift £460.53

Total compensation
for unlawful disability discrimination £5065.85

Injury to feelings £6,600.00

8% Interest on injury to feelings £528
Uplift 10% for failing to follow ACAS Code- £712.80

Total compensation for injury to feelings:
£7840.80

Personal injury £2,000.00

Add 10% for failing to follow ACAS Code £200

Total compensation for personal injury: £2200.00

Total award: 15106.65

12.05.2017 Employment Judge Shotter

JUDGMENT AND REASONS SENT TO THE PARTIES ON

18 May 2017

FOR THE SECRETARY OF THE TRIBUNALS



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: 2400786/2015

Name of case: Miss N Jones v Home Office

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: 18 May 2017

"the calculation day" is: 19 May 2017

"the stipulated rate of interest" is: 8%

MR S ARTINGSTALL
For the Employment Tribunal Office