



EMPLOYMENT TRIBUNALS

Claimants: Mrs A Berrington

Respondents: The Book People Limited
(in Administration)

JUDGMENT

Employment Tribunals Rules of Procedure 2013, Rule 21

The respondent not having presented a response to the claims, with the consent of Administrators granted on 27 April 2020 and on the information before the Judge,

The judgment of the Tribunal is that:

1. The claim of unfair dismissal is successful in accordance with section 94 of the Employment Rights Act 1996 and the respondent is ordered to pay the claimant a basic award of **£3937.50** and a compensatory award of **£22,260.10**.
2. The claim of age discrimination is successful in accordance with section 39 of the Equality Act 2010 and the respondent is ordered to pay compensation for injury to feelings of **£12,365**.
3. The claim for breach of contract is successful and the respondent is ordered to pay the claimant the gross sum of **£11,030.70**.

REASONS

1. The claimant claimed unfair dismissal, age discrimination and breach of contract. No response was presented to the claims by the respondent.
2. The respondent is in administration. On 27 April 2020 the administrators provided consent for the claims to proceed.
3. On a full consideration of the file of proceedings it was possible to issue this Judgment under Rule 21 in respect of the claims without a hearing.
4. On the information provided, the Tribunal makes the following findings.

5. The claimant was employed at the Human Resources Manager from 5 September 2014 until 10 January 2020 when her role was made redundant.

6. The claimant's gross monthly salary was £4166.

7. The respondent appointed administrators on 16 December 2019.

8. The claimant disputed that her role was redundant because it was filled by a new and younger person.

9. The claimant claims age discrimination and compensation for injury to feelings of £12,365.

10. The claimant subsequently made a claim to the Redundancy Payment Service and received payment for accrued annual leave on termination of employment (holiday pay) in accordance with regulation 14 of the Working Time Regulations 1998 and statutory notice pay in accordance with section 86 of the Employment Rights Act 1996 of £1469.30.

11. The claimant was in fact contractually entitled to 3 months notice pay (£12,500) and claims the balance of her notice pay which is £11,030.70.

12. The claimant worked for the respondent for 5 complete years. The claimant's date of birth is 6 January 1969. In accordance with the Employment Rights (Increase of Limits) Order 2019 the maximum amount of a weeks pay for the purpose of calculating a basic award is £525. In accordance with section 119 of the Employment Rights Act the claimant is, based on her age during her service, entitled to a basic award of £3937.50.

13. If the claimant has received a redundancy payment the amount of basic award payable will be reduced by the amount of redundancy payment paid to the claimant in accordance with section 122(4) of the Employment Rights Act 1996.

14. The claimant has secured alternative employment at a lower wage from June 2020 and has earned £16 per hour and worked 4 days per week. The claimant claims a gross compensatory award of £25,000. The claimant is entitled to a net compensatory award of £20,833.

Grossing Up

15. The claimant is entitled to receive a level of compensation that reflects what she would have received in wages had she remained in employment. It is therefore necessary to perform a grossing up calculation in order that the claimant has sufficient funds to meet any charge for income tax on the award.

16. In the tax year 2021/2022 the claimant will earn £24,576. The personal allowance for this year is £12,750.

17. The current tax bandings are as follows:

Up to £12,750 = 0%

£12751 - £50,270 = 20%

£50,271 - £150,000 = 40%

Over £150,000 = 45%

18. The first £12,750 of the claimant's salary is tax free. The next £11,826 is subject to the basic rate of 20%.

19. If an employee earns wages that are subject to the basic rate of 20% tax, they can earn an additional £37,700 that would be subject to this rate. This equates to net earnings of £30,160.

20. In this claimant's case, she will earn £11,826 that will be subject to 20% tax; therefore, the net earnings in this bracket will be £9460.80. When that net figure is deducted from £30,160 it leaves a net figure of £20,699.20 available to the claimant. This is the additional net amount the claimant could earn in the basic rate tax bracket.

21. In accordance with section 401 of the Income Tax (Earnings and Pensions) Act 2003, the first £30,000 of any award on termination of employment is tax free. The injury to feelings award of £12,365 and the basic award of £3937.50 is deducted from this £30,000 tax free amount and leaves £13,697.50 of the tax free sum to be applied to the compensatory award.

22. Once the £13,697.50 is applied to the compensatory award of £20,833 it leaves a figure of £7135.50 which will be subject to tax.

23. It has been established that the claimant has £20,699.20 available in the 20% tax bracket. Therefore, I can determine that the remaining £7135.50 of the compensatory award will be subject to 20% tax.

24. Therefore, in order to ensure that the claimant receives £7135.50, it is necessary to gross up that amount by 20%. When that calculation is performed the gross amount is £8562.60.

25. It is then necessary to add the £8562.60 to the tax free element of the compensatory award of £13697.50, and this equates to a grossed up total compensatory award of £22,260.10.

26. The claimant received Employment Support Allowance for approximately 3 months after the termination of her employment. The Employment Protection (Recoupment of Jobseekers Allowance and Income Support) Regulations 1996 do not apply to compensation paid for breach of contract. As the claimant's contractual notice period was for a duration of 3 months, the Regulations do not apply to the subsequent payment of the compensatory award.

Date: 15 December 2021

JUDGMENT SENT TO THE PARTIES ON
16 December 2021

FOR THE TRIBUNAL OFFICE

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.



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: **3301560/2020**

Name of case: **Mrs A Berrington** v **The Book People Limited
(in administration)**

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 judgment day" is: 16 December 2021

"the calculation day" is: 17 December 2021

"the stipulated rate of interest" is: **8%**

Mr S Artingstall
For the Employment Tribunal Office

INTEREST ON TRIBUNAL AWARDS

GUIDANCE NOTE

1. This guidance note should be read in conjunction with the booklet, 'The Judgment' which can be found on our website at www.gov.uk/government/publications/employment-tribunal-hearings-judgment-guide-t426

If you do not have access to the internet, paper copies can be obtained by telephoning the tribunal office dealing with the claim.

2. The Employment Tribunals (Interest) Order 1990 provides for interest to be paid on employment tribunal awards (excluding sums representing costs or expenses) if they remain wholly or partly unpaid more than 14 days after the date on which the Tribunal's judgment is recorded as having been sent to the parties, which is known as "the relevant decision day".
3. The date from which interest starts to accrue is the day immediately following the relevant decision day and is called "the calculation day". The dates of both the relevant decision day and the calculation day that apply in your case are recorded on the Notice attached to the judgment. If you have received a judgment and subsequently request reasons (see 'The Judgment' booklet) the date of the relevant judgment day will remain unchanged.
4. "Interest" means simple interest accruing from day to day on such part of the sum of money awarded by the tribunal for the time being remaining unpaid. Interest does not accrue on deductions such as Tax and/or National Insurance Contributions that are to be paid to the appropriate authorities. Neither does interest accrue on any sums which the Secretary of State has claimed in a recoupment notice (see 'The Judgment' booklet).
5. Where the sum awarded is varied upon a review of the judgment by the Employment Tribunal or upon appeal to the Employment Appeal Tribunal or a higher appellate court, then interest will accrue in the same way (from "the calculation day"), but on the award as varied by the higher court and not on the sum originally awarded by the Tribunal.
6. 'The Judgment' booklet explains how employment tribunal awards are enforced. The interest element of an award is enforced in the same way.