



EMPLOYMENT TRIBUNALS

Claimant: Ms M Mallinson

Respondent: Mallinson Fabrications Limited

Heard at: Manchester (by CVP)

On: 5, 6 and 7 October 2020

Before: Employment Judge Ross

REPRESENTATION:

Claimant: Ms L Quigley, counsel

Respondent: Mr C Breen, counsel

JUDGMENT

The judgment of the Tribunal is that:

1. The claimant's claim for unfair dismissal is well-founded and succeeds, but by reason of the principle in the case of **Polkey v A E Dayton Services Limited [1987] UKHL 8** I find it was wholly inevitable that the claimant would have been fairly dismissed within 28 days of 14 January 2019 (the effective date of termination).
2. The claimant's claim for wrongful dismissal succeeds, and the claimant is entitled to damages in the sum of seven weeks' pay based on the amount she was receiving weekly at the termination of employment.
3. The claimant's claim for unlawful deduction from wages pursuant to section 13 of the Employment Rights Act 1996, that the respondent failed to pay the National Minimum Wage as required by the National Minimum Wage Act 1998, is not well-founded and fails.
4. The claimant's claim for maternity pay is dismissed given the claimant was in receipt of maternity pay during the maternity pay period. (At the time the claimant was unaware of the nature of the payments).
5. The claimant's claim for payment in lieu of accrued but untaken holidays on the termination of employment pursuant to section 13 Employment Rights Act 1996 and regulation 14 Working Time Regulations 1998 is successful. I award the

claimant her statutory entitlement for the holiday year 1 January 2018 to 31 December 2018 and her pro rata entitlement for the year 1 January 2019 to 14 January 2019. (I am not satisfied that the respondent refused to permit the claimant to exercise her right to statutory leave under regulation 13 or regulation 13A Working Time Regulations 1998).

Remedy

6. The respondent is ordered to pay the sum of £3,718.32 to the claimant within 14 days of the date of this Judgment.

Employment Judge Ross

Date: 8 October 2020

JUDGMENT SENT TO THE PARTIES ON
9 October 2020

FOR THE TRIBUNAL OFFICE

Note

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.



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: **2405490/2019**

Name of case: **Ms M Mallinson** v **Mallinson Fabrications Limited**

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: 9 October 2020

"the calculation day" is: 10 October 2020

"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.