



EMPLOYMENT TRIBUNALS

Claimant: Miss Lesley Burrill

Respondent: Mr Avarinth Sivasithamparam t/a Ansdell Wines

HELD AT: Liverpool

ON: 18 January 2022

BEFORE: Employment Judge Ganner

REPRESENTATION:

Claimant: In person

Respondent: Did not attend

JUDGMENT

The judgment of the Tribunal is that:

1. The claimant was unfairly dismissed.
2. The respondent has failed to pay the claimant's holiday entitlement for 63.8 hours on termination of her employment and is ordered to pay the claimant the gross sum of £568.35 calculated as set out in the Schedule.
3. It is just and equitable under section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 to increase the claimant's compensation for unfair dismissal by 25% because of the respondent's unreasonable failure to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures.
4. The respondent is ordered to pay to the claimant the sum of £4,757.09 for unfair dismissal, calculated as set out in the Schedule. This includes an award for loss of her statutory rights.
5. A schedule which sets out how the sums which are due to the claimant have been calculated is attached.

6. The Recoupment Regulations apply as set out in the Schedule.

Employment Judge Ganner
Date: 18 January 2022

JUDGMENT SENT TO THE PARTIES ON
25 January 2022

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.

Schedule Calculation of Awards

Holiday Pay

1. The claimant was entitled to a payment in lieu of 63.8 hours accrued but untaken holiday. The claimant's hourly rate of pay at the termination date was £8.91 per hour.

$$63.8 \text{ hours} \times \text{£}8.91 = \text{£}568.35$$

Unfair Dismissal

2. Basic Award

The claimant began employment with Ansdell Wines on 11 November 2015. On or about 5 March 2021 her employment was transferred to the respondent, who had taken over the business. (Regulation 4 Transfer of Undertakings (Protection of Employment) Regulations 2006). She was aged 58 at date of dismissal and had accrued five years' continuous employment (7.5 qualifying weeks x gross/net weekly pay of £160.38 = £1,202.85.)

$$\text{Total basic award} = \text{£}1,202.85$$

3. Compensatory Award

The claimant started a new job on 5 November 2021 so is claiming a loss of wages between 29 June 2021 and 4 November 2021. The claimant's gross/net pay was £160.38.

18.4 weeks x £160.38 net weekly pay	£2,950.99
Loss of statutory rights	£400.00
Uplift of 25% in respect of failure to follow the ACAS Code	<u>£837.75</u>
Total compensatory award	£4,757.09

4. Recoupment

The claimant was paid Jobseeker's Allowance until she started her new job on 5 November 2021.

For the purposes of regulation 4 of the Employment Protection (Recoupment of Benefits) Regulations 1996, the total award is £5,959.94.

The prescribed element is £2,950.99. The prescribed period is 30 June 2021 to 18 January 2022. The total monetary award is £5,959.94.

The excess of the total monetary award over the prescribed element is £3,008.95.



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: **2410473/2021**

Name of case: **Miss L Burrill** v **Avarinth Sivasithamparam
t/a Ansdell Wines**

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: 25 January 2022

"the calculation day" is: 26 January 2022

"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.

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

Recoupment of Benefits

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

The Tribunal has awarded compensation to the claimant, but not all of it should be paid immediately. This is because the Secretary of State has the right to recover (recoup) any jobseeker's allowance, income-related employment and support allowance, universal credit or income support paid to the claimant after dismissal. This will be done by way of a Recoupment Notice, which will be sent to the respondent usually within 21 days after the Tribunal's judgment was sent to the parties.

The Tribunal's judgment states: (a) the total monetary award made to the claimant; (b) an amount called the prescribed element, if any; (c) the dates of the period to which the prescribed element is attributable; and (d) the amount, if any, by which the monetary award exceeds the prescribed element. Only the prescribed element is affected by the Recoupment Notice and that part of the Tribunal's award should not be paid until the Recoupment Notice has been received.

The difference between the monetary award and the prescribed element is payable by the respondent to the claimant immediately.

When the Secretary of State sends the Recoupment Notice, the respondent must pay the amount specified in the Recoupment Notice to the Secretary of State. This amount can never be more than the prescribed element of any monetary award. If the amount is less than the prescribed element, the respondent must pay the balance to the claimant. If the Secretary of State informs the respondent that it is not intended to issue a Recoupment Notice, the respondent must immediately pay the whole of the prescribed element to the claimant.

The claimant will receive a copy of the Recoupment Notice from the Secretary of State. If the claimant disputes the amount in the Recoupment Notice, the claimant must inform the Secretary of State in writing within 21 days. The Tribunal has no power to resolve such disputes, which must be resolved directly between the claimant and the Secretary of State.