



# EMPLOYMENT TRIBUNALS

## Claimant

## Respondent

Mr J Clough

v

ABG Couriers Ltd (in administration)

**Heard at:** Manchester

**On:** 28 September 2022

**Before:** Employment Judge Johnson

## Appearances

**For the Claimants:** appeared in person and accompanied by his mother Mrs H Clough

**For the Respondent:** did not attend (administrator not attending)

# JUDGMENT

- (1) The claimant confirmed that he did not wish to proceed with his complaint of disability discrimination, but because no formal application had been made for permission to include this complaint, there was no need to formally dismiss this complaint upon withdrawal by the claimant as it had never formally been accepted as a complaint to determine at the final hearing.
- (2) Although the respondent had indicated to the claimant that he was given notice of his dismissal on 31 July 2022, the claimant was not given formal notice of his dismissal until 4 September 2022 when he received a copy of the letter informing him that he had been dismissed.
- (3) The claimant was summarily dismissed on 4 September 2022, but the employer was not entitled to do so, and the claimant is entitled to statutory notice under section 86 Employment Rights Act 1996.
- (4) The claimant was entitled to 9 weeks statutory notice based upon his 9 years completed service from 15 October 2011 until 4 September 2021.
- (5) Consequently, the claimant's effective date of termination ('EDT') is extended until the date when that statutory notice had ended. This means that the EDT was 6 November 2021.

- (6) The claimant was not paid any salary from the respondent's asserted EDT of 1 August 2021 until he was notified of his dismissal on 4 September 2021. Accordingly, as this period of the loss of earnings claimed did not form part of post-EDT loss of earnings, the claimant was permitted to amend his claim to include a complaint of unlawful deduction of wages contrary to section 13 Employment Rights Act 1996. This effectively constitutes a 'relabelling' of the existing complaints brought and was clearly contemplated within the claim form and the claimant's schedule of loss. Considering the claimant's unrepresented status, this decision was in the interests of justice and in accordance with the overriding objective under Rule 2.
- (7) As a consequence, the complaint of unfair dismissal is well founded and succeeds. This is subject to:
- a) the compensatory award being limited by reason of the claimant being determined as unfit for work by the DWP and therefore in receipt of Personal Independence Payments ('PIP') from 17 September 2021.
  - b) The compensatory award being subject to an uplift of 25% by reason of the failure by the respondent to follow in any real way the code of practice provided by ACAS in relation to disciplinary procedures and contrary to section 207A Trade Union and Labour Relations (Consolidation) Act 1992.
- (8) The complaint of failure to pay notice pay is well founded and succeeds in that contrary to section 86, the claimant is entitled to statutory notice pay of 9 weeks' from 4 September 2021.
- (9) The complaint of unlawful deduction of wages is well founded and succeeds and the claimant is entitled to unpaid wages from 1 August 2021 until 4 September 2021.
- (10) The complaint of holiday pay is well founded and succeeds and the claimant is entitled to unpaid holiday pay in respect of 5.6 weeks pay.
- (11) The respondent shall pay to the claimant compensation in respect of her successful complaint in the sum of **£15,378.45 (Fifteen Thousand, Three Hundred and Seventy-Eight Pounds Forty-Five Pence)** and calculated as follows:

Unfair dismissal	Subtotal/Total
<b>Basic award</b>	
1. Completed years of service at date of effective termination = <b>9 years</b>	
2. Weeks pay = <b>£449.50</b>	
3. Years of completed service where the claimant was aged 41 years or over = <b>9 (therefore 1 ½ weeks pay for each completed year)</b>	
4. Calculation for redundancy payment is therefore: <b>(£449.50 x 9) x 1 ½ = £6068.25</b>	
	<b>£6068.25</b>

<p><b>Compensatory award</b></p> <ol style="list-style-type: none"> <li>1. The claimant was declared to be unfit for work by DWP and in receipt of PIPs from 17 September 2021, (until a review in 2024).</li> <li>2. As the EDT was 6 November 2021, the claimant would not have been fit to work from this date and was in receipt of relevant benefits.</li> <li>3. Accordingly, no compensatory award is payable in respect of immediate loss of earnings as the claimant remains unfit for work.</li> <li>4. The claimant is entitled to an award for loss of statutory rights and this is calculated at £400</li> <li>5. Taking into account the 25% uplift for the respondent's failure to comply with ACAS guidance, this is increased to £500</li> </ol>	<b>£500.00</b>
<p><b>Unpaid wages</b></p> <ol style="list-style-type: none"> <li>1. The claimant was not paid his wages from 1 August 2021 until the date when he was informed of his dismissal by letter on 4 September 2021.</li> <li>2. His gross weekly pay was £449.50.</li> <li>3. 5 weeks x £449.50 = £2247.50</li> </ol>	<b>£2247.50</b>
<p><b>Notice Pay</b></p> <ol style="list-style-type: none"> <li>1. The claimant did not receive his statutory notice pay of 9 weeks from 4 September 2021 until 6 November 2021.</li> <li>2. His gross weekly pay was £449.50</li> <li>3. 9 weeks x £449.50 = £4045.50</li> </ol>	<b>£4045.50</b>
<p><b>Holiday Pay</b></p> <ol style="list-style-type: none"> <li>1. The claimant was entitled to 5.6 weeks' paid holiday in the most recent leave year before the EDT.</li> <li>2. The claimant had not taken any of this leave entitlement by the EDT.</li> <li>3. His gross weekly pay was £449.50</li> <li>4. 5.6 weeks x £449.50 =</li> </ol>	<b>£2517.20</b>
<p><b>Subtotal</b></p>	<b>£15,378.45</b>
<p><b>Grand total</b></p>	<b>£15,378.45</b>

**Recoupment**

Prescribed Element – nil (no relevant award made in respect of the period between the EDT and the date of today's hearing.

Prescribed Period – 6 November 2021 (EDT) to 28 September 2022 (final hearing)

Total Award - £15,378.45

Balance – nil (the prescribed element being nil)

*Note 1: The claimant confirmed that he has been in receipt of benefits from the DWP, including PIP payments and confirmed to me that he understands that he may need to discuss the question of recoupment of benefits with the DWP regardless of the information provided above concerning recoupment.*

*Note 2: At the date of the hearing, the Tribunal noted that the respondent company's administrators have applied to Companies House on 9 August 2022, made an application to proceed from administration to dissolution of the company. The Companies House record does not indicate that any further steps have been taken with this administration, but it is understood that the claimant will contact the administrator to discuss this judgment as soon as possible.*

*suspended following an application made by the claimant on 16 February 2022. It is understood that this suspension will remain in place for a period of 6 months until August 2022, and it will then be lifted or extended should the claimant or another make an appropriate application.*

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Employment Judge Johnson

Date: ...27 September 2022.....

Sent to the parties on: 3 October 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.



## NOTICE

### THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990 ARTICLE 12

Case number: **2414214/2021**

Name of case: **Mr J Clough** v **ABG Couriers Ltd (In Administration)**

Interest is payable when an Employment Tribunal makes an award or determination requiring one party to proceedings to pay a sum of money to another party, apart from sums representing costs or expenses.

No interest is payable if the sum is paid in full within 14 days after the date the Tribunal sent the written record of the decision to the parties. The date the Tribunal sent the written record of the decision to the parties is called **the relevant decision day**.

Interest starts to accrue from the day immediately after the relevant decision day. That is called **the calculation day**.

The rate of interest payable is the rate specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as **the stipulated rate of interest**.

The Secretary of the Tribunal is required to give you notice of **the relevant decision day, the calculation day, and the stipulated rate of interest** in your case. They are as follows:

**the relevant decision day** in this case is: 3 October 2022

**the calculation day** in this case is: 4 October 2022

**the stipulated rate of interest** is: **8% per annum**.

Mr S Artingstall  
For the Employment Tribunal Office

## GUIDANCE NOTE

1. There is more information about Tribunal judgments here, which you should read with this guidance note:  
[www.gov.uk/government/publications/employment-tribunal-hearings-judgment-guide-t426](http://www.gov.uk/government/publications/employment-tribunal-hearings-judgment-guide-t426)

If you do not have access to the internet, you can ask for a paper copy by telephoning the Tribunal office dealing with the claim.

2. The payment of interest on Employment Tribunal awards is governed by The Employment Tribunals (Interest) Order 1990. Interest is payable on Employment Tribunal awards if they remain wholly or partly unpaid more than 14 days after the **relevant decision day**. Sums in the award that represent costs or expenses are excluded. Interest starts to accrue from the day immediately after the **relevant decision day**, which is called **the calculation day**.
3. The date of the **relevant decision day** in your case is set out in the Notice. If the judgment is paid in full by that date, no interest will be payable. If the judgment is not paid in full by that date, interest will start to accrue from the next day.
4. Requesting written reasons after you have received a written judgment does **not** change the date of the **relevant decision day**.
5. Interest will be calculated as simple interest accruing from day to day on any part of the sum of money awarded by the Tribunal that remains unpaid.
6. If the person paying the Tribunal award is required to pay part of it to a public authority by way of tax or National Insurance, no interest is payable on that part.
7. If the Secretary of State has claimed any part of the sum awarded by the Tribunal in a recoupment notice, no interest is payable on that part.
8. If the sum awarded is varied, either because the Tribunal reconsiders its own judgment, or following an appeal to the Employment Appeal Tribunal or a higher court, interest will still be payable from **the calculation day** but it will be payable on the new sum not the sum originally awarded.
9. The online information explains how Employment Tribunal awards are enforced. The interest element of an award is enforced in the same way.