5348/56.

Case No. 2101804-07 & Others (see attached annexe)

RESERVED JUDGMENT

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**Respondent**
Mr D Galt & Others (see attached annexe)	National Starch & Chemical Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT:	Liverpool	**ON:**	2 November 2007
CHAIRMAN:	Mr D Reed	**MEMBERS:**	Mr KJ Bott Mr D Morris

REPRESENTATION:

For the claimant:	Mr C Pryor, Counsel
For the respondent:	Ms C Gregory, Solicitor

JUDGMENT

The majority judgment of the Tribunal is that the claimants were unlawfully discriminated against on the ground of their age.

REASONS

1. In this case the claimants alleged they had been unlawfully discriminated against on the ground of their age. Specifically, they had been dismissed by reason of redundancy by their former employers, National Starch & Chemical Limited ("the Company") and had received enhanced redundancy payments. They claimed that the calculation of those payments favoured employees who were older than they were and accordingly were unlawful.

2. For the Company it was conceded that the claimants had been treated less favourably than other employees by reason of their age but they claimed that

the treatment was a proportionate means of achieving a legitimate aim and was therefore lawful.

3. We heard on behalf of the Company from Mr Kavangh, UK Operations Manager and we also heard from one of the claimants, Mr Galt. Our attention was directed to a number of documents and we reached the following findings.

4. The Company, within the ICI group of companies, operates on a number of sites throughout the UK including Warrington, where the claimants were all employed.

5. The Company decided that the Warrington site would close at the end of 2006 and in June or July of that year entered into discussions with the recognised trade union with a view to bringing about that closure in an orderly fashion.

6. There had been a history at the site in question of enhancing the statutory redundancy payments made to employees who were redundant. Put shortly, employees would receive a payment of 3 weeks gross pay for each year of service under 40 years of age and 4 weeks gross pay for each year after that age.

7. It is clear that that was the offer that the employees and their representatives were anticipating would be made (in the light of past experience) and furthermore it was the offer that the Company knew would be the minimum acceptable. Accordingly, that enhanced redundancy scheme was put forward on behalf of the Company as part of a number of proposals and measures.

8. Discussions and negotiations took place over the ensuing months in relation to other payments the Company might make to those redundant employees (for example in relation to holiday pay and shift payments). At no stage was there any active negotiation in relation to the enhanced redundancy element and the Company was reasonably entitled to assume that the employees and their representatives were content with that arrangement.

9. The claimants' employment did indeed end at the end of 2006 and the relevant redundancy payment were made.

10. Under regulation 3 of the Employment Equality (Age) Regulations 2006, a person discriminates against another person if on the grounds of that person's age, he treats that person less favourably than he treats or would treat other persons, unless he can show the treatment to be a proportionate means of achieving a legitimate aim.

11. It was clear that the enhanced redundancy scheme effectively treated the claimants less favourably than employees who were older; some or all of the years they were entitled to count for the purpose of the relevant calculation were served at an age of under 40 and therefore entitled them to a "multiplier" of 3 rather than 4.

12. For the Company it was simply contended that the treatment was a proportionate means of achieving a legitimate aim.

13. As a side issue, we note that under regulation 33 of the 2006 Regulations there is specific provision made for enhancement of redundancy payments. The application of certain adjustments to the statutory scheme will not render such enhancements unlawful. It is correct to say that the adjustment applied by the Company was not one of those "approved" by regulation 33. On the other hand, it was presumably intended that those adjustments should not be exhaustive, otherwise regulation 33 would have prohibited the use of the defence in regulation 3 in circumstances other than those provided for in regulation 33.

14. The first issue for us to address was the question of what purpose the Company had that might be regarded as a "legitimate aim".

15. The Company clearly feared that, unless acceptable proposals were made to the employees in question, there was a possibility of industrial unrest. The purpose of offering the enhanced redundancy terms was to avoid such unrest and bring about an orderly and satisfactory closure of the Warrington site. In our view, this was clearly a legitimate aim.

16. We then had to consider whether the less favourable treatment of the claimants was a proportionate means of achieving that aim.

17. On one interpretation of the regulation, in order for this exception to apply, distinguishing between employees on the ground of their age must be intended to have a particular consequence and that consequence must be the legitimate aim.

18. If that interpretation was correct, then in our view the Company could not succeed. Mr Kavangh suggested that older workers ought to be favoured financially because they would find it harder to find new employment. However, he produced no evidence to substantiate that assertion. In any event we were satisfied that the Company did not decide to offer the scheme in order to ameliorate this disadvantage for older workers. It could not be said that favouring older workers in this way was something that the Company considered would be likely to reduce the possibility of industrial unrest, at least not where, as we were satisfied was the case, they had not consciously addressed that discrimination.

19. To put the matter another way, the disparate treatment on this analysis was a consequence of the actions of the Company; it was not meted out of itself to achieve the particular goal.

20. There was, however, an alternative analysis. Whilst, as we say, we were satisfied that the discriminatory effect of the enhanced scheme was not consciously considered by the Company, it was part of a package of measures implemented by the Company the purpose of which was the legitimate aim. The discriminatory impact of that package of measures upon the claimants amounted to treatment of them which was in this case a proportionate means of achieving that aim.

21. Clearly, the nature of the enhancement itself was relevant to whether that aim was being achieved by "proportionate" means. In this case, the enhanced scheme had a broad correspondence with the statutory scheme, in that there was a

"step up" at the age of 40. Furthermore, it was considerably more generous than the statutory scheme (and not only in relation to the number of weeks pay per year).

22. There was extensive consultation with the trade union in question which never raised any objection to this course of action. Whilst of course the absence of such an objection does not absolve the Company from its obligation to ensure that it acts lawfully, if it had been possible to regard the offer as wholly disproportionate, one would have been surprised that the trade union was apparently content with it.

23. On balance, the majority view of the Tribunal was that the former interpretation of the regulations was correct; while the purpose of offering the terms was the legitimate aim, it could not be said that the purpose of the disparate treatment inherent within those terms was that aim: it could not satisfactorily be said that the "purpose" of treating certain employees less favourably was to bring about an orderly closure of the site. In those circumstances, it followed that there had been unlawful discrimination.

24. For the sake of completeness, the minority view was simply in accordance of the second analysis referred to above – to the effect that were there is a disparate impact upon different ages of steps which, on the face of them, are wholly proportionate and reasonable, then notwithstanding that the issue is not consciously addressed by the employer, it can be said that the treatment is a means of achieving an end. Furthermore, in the circumstances of this case those means were proportionate and so there was no unlawful discrimination.

25. In any event, for the reasons set out above, the claimant's claims succeed and this matter will be re-listed for the consideration of remedy.

D REED
Chairman
29.11.07
RESERVED JUDGMENT

JUDGMENT SENT TO THE PARTIES ON
29th November 2007
AND ENTERED IN THE REGISTER
[illegible]
FOR THE SECRETARY OF THE TRIBUNALS
[PC]

Mr D Galt	2101804/07
Mr KJ Beckett	2101805/07
Mr MA Molyneux	2101808/07
Mr CJ Tomkins	2101810/07
Mr K Westhead	2101811/07
Mr BA Yeoman	2101813/07

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Case Numbers: 2101804/07
and others

SECOND JUDGMENT

EMPLOYMENT TRIBUNALS

BETWEEN

Claimants	**Respondent**
Mr D Galt And others (see attached annex)	National Starch and Chemical Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: Liverpool **ON:** 2 November 2007

EMPLOYMENT JUDGE Mr D Reed **MEMBERS:** Mr K J Bott
Mr D Morris

REPRESENTATION:

For the claimant: Mr Thomas, counsel
For the respondent: Miss C Gregory, solicitor

JUDGMENT

The judgment of the Tribunal is that the following awards of compensation are made to the claimants.

1. Mr Bucket - £438.38
2. Mr Galt - £1,689.71
3. Mr Molyneux - £563.20
4. Mr Tompkins - £855.03
5. Mr Westhead - £1,689.71
6. Mr Yeoman - £1,978.24

REASONS

1. This was a remedy hearing, following a determination in a reserved judgment that the claimants had been unlawfully discriminated against on the ground of age.

2. The claimants sought awards of compensation for both financial loss and injury to feelings.

Financial loss

3. The enhanced redundancy scheme implemented by the respondents provided for the payment of a redundancy payment consisting of three weeks' pay for years worked under the age of 40 and four weeks' pay for those worked over the age of 40.

4. We were urged on the part of the claimants to make an award to reflect a scheme whereupon four weeks' pay would have been paid for every year of service.

5. We were conscious that the measure of damages was the tortious one and we were therefore obliged to speculate as to the outcome had the respondents properly addressed this issue as the time.

6. We heard evidence, at the first hearing in this matter, of negotiations that had taken place elsewhere within the respondents' organisation, the result of which had been agreement to pay at a flat rate of 3½ weeks' pay for every year of employment. Furthermore, that agreement had provided for a week's pay to be "basic" pay i.e. excluding shift payments etc.

7. Our conclusion was that the overwhelming likelihood in the instant is that a similar agreement would have been reached on the site where the claimants worked had the question been raised and addressed there. However, we were conscious that at that particular site basic pay had not been adopted as the appropriate measure and we saw no reason to consider that basic pay would have been an element of the agreement at that site.

8. Accordingly, we concluded that the measure of the loss suffered by the claimants was the difference between the sums they actually received and those they would have received had they been calculated on the basis of 3½ weeks' pay per year of employment, but a week's pay not being restricted to basic pay.

Injury to feelings

9. We heard brief evidence on this subject from one of the claimants, Mr Yeoman. We were also shown a joint witness statement from the claimants (and we would not have taken a point on their absence for the purpose of determining the appropriate sum for injury to feelings).

10. In this context we were particularly conscious of the evidence given at the first hearing and the overall impression given by it. The particular arrangement adopted by the respondents was one that was, in our view, wholly acceptable to and unreservedly accepted by both the claimants and their Trade Unions. There was no objection raised to it with the respondents.

11. We did not consider Mr Yeoman was being deliberately dishonest in his evidence but we considered that matters might have "re-configured" themselves in his perception at a considerably later date.

12. In short, we did not consider that the adoption of these measures was the source of any sort of upset or concern to the claimants. In those circumstances we considered it was appropriate to make no award to represent injury to feelings.

13. Upon those declarations the parties agreed the sums referred to in the judgment, above.

MR D REED
Employment Judge
20.2.08

JUDGMENT SENT TO THE PARTIES ON
20th FEBRUARY 2008
AND ENTERED IN THE REGISTER
FOR THE SECRETARY OF THE TRIBUNALS
[JC]

Multiple Schedule

Case Number	Case Name
2101804/2007	Mr D Galt -v- National Starch & Chemical Limited
2101805/2007	Mr KJ Beckett -v- National Starch & Chemical Limited
2101808/2007	Mr MA Molyneux -v- National Starch & Chemical Limited
2101810/2007	Mr CJ Tomkins -v- National Starch & Chemical Limited
2101811/2007	Mr K Westhead -v- National Starch & Chemical Limited
2101813/2007	Mr BA Yeoman -v- National Starch & Chemical Limited

NOTICE
THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): 2101804/07 & others

Name of case(s): D Galt & others –v- National Starch & Chemical Limited

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding discrimination or equal pay awards or sums representing costs or expenses), shall carry interest where the sum remains unpaid on a day ("the calculation day") 42 days after the day ("the relevant judgment day") that the document containing the Tribunal's judgment is recorded as having been sent to the parties.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant judgment 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: 20th February 2008

"the calculation day" is: 3rd April 2008

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

For and on Behalf of the Secretary of the Tribunals

INTEREST ON TRIBUNAL AWARDS

GUIDANCE NOTE

1. This guidance note should be read in conjunction with the booklet 'The Judgment' which you received with your copy of the Tribunal's judgment.

2. The Employment Tribunals (Interest) Order 1990 provides for interest to be paid on employment Tribunal awards (excluding discrimination or equal pay awards* or sums representing costs or expenses) if they remain wholly or partly unpaid after 42 days.

3. The 42 days run from the date on which the Tribunal's judgment is recorded as having been sent to the parties and is known as "the relevant judgment day". The date from which interest starts to accrue is the day immediately following the expiry of the 42 days period called "the calculation day". The dates of both the relevant judgment 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