

# THE INDUSTRIAL TRIBUNALS

CASE REF: 9826/18

**CLAIMANT:** Shona Boyle  
**RESPONDENT:** Caterpillar (NI) Ltd

## REMEDIES JUDGMENT

The tribunal awards the claimant £305,719.00 in compensation and orders that the claimant is entitled to the benefit of having an equality clause inserted into her contract of employment as particularised in this judgment.

### CONSTITUTION OF TRIBUNAL

**Employment Judge:** Employment Judge Wimpress  
**Members:** Ms M O’Kane  
Mrs T Cregan

### APPEARANCES:

**The claimant was represented by Ms Rachel Best, KC, instructed by McCartan Turkington Breen, Solicitors**

**The respondent was represented by Mr Peter Bloch, Engineering Employers Federation**

1. As agreed by the parties and directed by the tribunal a further hearing was arranged to determine what compensation the claimant was entitled to following the tribunal’s decision in her favour on liability.
2. The tribunal received a written submission on remedies from Ms Best KC together with two reports by ASM Chartered Accountants the first dated 4 November 2022 and a further Addendum Report dated 9 April 2024.
3. During the course of the remedies hearing it became apparent that the information contained in the figures contained in these reports were not up to date and the tribunal accordingly gave directions as to the filing of a revised Schedule of Loss. There was some slippage in the provision of this. The

revised Schedule of Loss was received by 31 May 2024 and Mr Bloch helpfully confirmed on 30 June 2024 that the figures contained in the report were agreed.

4. The only matter of disagreement between the parties was on which of the three comparators the claimant's compensation and ongoing salary should be based the tribunal having previously determined that the claimant was engaged in like work to each of her chosen comparators - Mr Kennedy, Mr Nesbitt and Mr Cullinan.
5. Ms Best submitted that the claimant was entitled to select Mr Cullinan as her comparator for the purpose of assessing compensation. Ms Best cited ***Ainsworth v Glass Tubes and Components Ltd [1977] IRLR 74*** as authority for the proposition that the selection of the comparator was a matter for the claimant. As appears from ASM's reports Mr Cullinan is the highest paid of the comparators. Ms Best also submitted that the claimant was entitled to rectification of her remuneration from July 2018 onwards with an amendment of the equality clause inserted in her contract of employment. This was not in dispute.
6. Mr Bloch submitted that Mr Cullinan was not the appropriate comparator for the purposes of assessing compensation as he was recruited externally and came in at a higher salary point for the grade and his pay was also enhanced as a result of performance reviews. Mr Bloch submitted that a better approach would be to assess compensation on the basis of median or average remuneration as between the three comparators. Mr Bloch was unable however to cite any authority in support of this approach.
7. In response Ms Best submitted that liability could not be re-opened, the material factor defence had been rejected by the tribunal, the respondent's pay system was not transparent and pointed out that as Mr Bloch accepted there was no authority for the approach suggested by him. Ms Best also placed reliance on the decision of the tribunal in ***Margaret Mercer v C & H Jefferson Solicitors 2019 NIIT 01083 -15 IT (22 May 2019)*** and in particular paragraphs 16.1 to 16.2. In that case the tribunal held that the claimant was entitled to be paid the same and the highest paid comparator and rejected contentions by the respondent that it should be otherwise based on a calculation of that comparator's salary which was not included as a genuine material factor in its defence of the claim.

## CONCLUSIONS

8. The tribunal accepts Ms Best's submission that the claimant is entitled to select Mr Cullinan as her comparator for the purposes of addressing the issue of compensation. No lawful basis has been established by the respondent for assessing compensation using an average or median figure as between the three comparators. Nor is it permissible to distinguish the comparators on the basis of the factors identified by Mr Bloch during the remedies hearing as this would amount to revisiting liability issues which have already been determined.

9. As the respondent has failed to establish its genuine material factor defence under Section 1(3) of the Equal Pay Act (Northern Ireland) 1970, the equality clause, which is deemed to be included in the claimant's contract of employment by virtue of Section 1(2), will operate to modify the contractual term in her contract of employment in relation to annual salary and benefits so that it is no less favourable than that of her comparator, Mr Cullinan from July 2012 as this is a standard case with the arrears falling six years before the day on which the proceedings were instituted. The modified contractual term will be incorporated into her contract of employment from the date of the presentation of her claim on 9 July 2018 and will remain in place going forward from that date.
  
10. The claimant's salary as of April 2024 is £59,945 gross which is comprised of a basic salary of £54,545 and a car allowance of £5,400. In addition, going forward the claimant's employer pension contribution and annual shares are to be calculated at 6% and 3% of basic salary respectively with annual bonuses assessed in line with the rates for Grade 24 staff.

### **Compensation**

#### 11. Summary of Loss to 31 March 2024

##### Loss to 16 November 2022

Net loss of earnings	£100,159.00
Loss of share contributions	£2,942.00
Loss of employer pension contributions	£6,218.00

##### Sub-total £109,319

Interest to 16 November 2022 £33,991.00

Interest from 16 November 2022 to 31 March 2023 £9,003.00

Loss of car allowance £40,560.00

##### Sub-total £83,554

##### Loss from 16 November 2022

Net loss of earnings £24,070.00

Loss of share contributions £558.00

Loss of employer pension contributions £1,117.00

Sub-total £25,745

Interest from 16 November 2022 to 31 March 2023 £1,079.00

**Total loss including interest before grossing up £179,138.00**

**Grossed up loss of earnings £305,719.00**

**TOTAL COMPENSATION £305,719.00**

12. This is a relevant decision for the purposes of the Industrial Tribunals (Interest) Order (Northern Ireland) 1990.

Employment Judge: 

Date and place of hearing: 15 April 2024, Belfast.

This judgment was issued to the parties on: 18 July 2024

This judgment will be entered in the register within 14 days.