

Hollow victories

an update on the non-payment of Employment Tribunal awards

Summary

In September 2004, a Citizens Advice report, *Empty justice*, set out evidence from the advice work of Citizens Advice Bureaux relating to the non-payment of Employment Tribunal awards, and the immense legal and financial obstacles that claimants face when trying to enforce such unpaid awards in the civil courts. Whilst it was not possible, at that time, for us to make any estimate of the proportion of all Employment Tribunal awards that go unpaid, *Empty justice* concluded that such non-compliance by employers is “extensive and quite possibly on the increase”.

Since the publication of *Empty justice*, we have conducted a survey of Citizens Advice Bureaux, with a view to providing further information on the incidence of non-payment of Employment Tribunal awards. The findings indicate that, each year, the CAB service in England and Wales deals with some 650-700 cases of non-payment. This amounts to one in 20 of the some 13,000 awards made by Employment Tribunals in England and Wales.

As only a relatively small proportion of all Employment Tribunal claimants are represented or advised by a CAB, this suggests that the proportion of all Employment Tribunal awards that go unpaid – at least initially – and that must therefore be enforced through legal action in the civil courts is somewhat higher than ‘one in 20’. Such a high rate of non-compliance by employers represents a serious threat to the overall effectiveness and credibility of the Employment Tribunal system.

The Government has acknowledged that non-payment of Employment Tribunal awards is a problem, and that the existing enforcement regime is “unsatisfactory”. It has also indicated that its forthcoming Courts and Tribunals Bill “may provide a suitable legislative vehicle” for reform, and that it is considering “a number of options [for reform]”, including those canvassed in *Empty justice*. This report sets out the full findings of our survey, as well as other recent evidence from Citizens Advice Bureaux, and re-iterates our recommendation that the Courts and Tribunals Bill include provision for unpaid Employment Tribunal awards to be directly enforced by the State.

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Introduction

Every year, Citizens Advice Bureaux deal with more than 500,000 employment-related advice enquiries, from both workers and employers. Many of these involve the redundancies, company mergers and other business changes that are inevitable in any dynamic economy. Some are made by small employers in need of information or advice on how to meet their legal obligations to their workforce. But in the vast majority of cases the enquirer is a worker who has been denied one or more of his or her statutory workplace rights by an employer.

In such cases, Citizens Advice Bureaux can assist the worker to approach their employer and, if necessary, assert their rights by making a formal complaint under now statutory grievance procedures.¹ And, where the employer proves to be unresponsive or intransigent, Citizens Advice Bureaux can advise on and assist with the making of a claim to an Employment Tribunal. However, the tribunal process is unduly legalistic and increasingly adversarial, and thus extremely daunting – especially to pregnant women, new and lone parents, very young and elderly workers, people with mental health problems, and other vulnerable individuals.

In the case of pregnant women and new mothers, for example, the Equal Opportunities Commission has suggested that “the odds are stacked against them [pursuing a tribunal claim] at a time when they need to protect their own and their baby’s health, their career, and their income”.² The great majority of low paid workers are non-unionised, so do not have access to the advice and representational services of a trade union, and ‘legal aid’ for basic advice in relation to the making of a tribunal claim is not available to all but the

very lowest paid workers.³ Every year, about one-third of all Employment Tribunal claims are withdrawn by the claimant before the case reaches a hearing, and research by the Department of Trade & Industry has found that in 51 per cent of such cases this is because the applicant considers there to be too much stress, difficulty, fuss or expense involved in continuing.⁴

For most low paid, non-unionised workers, the cost of legal representation at an Employment Tribunal hearing is prohibitive – there is no legal aid at all for such representation, and the resources of Citizens Advice Bureaux and other sources of free representation (such as community law centres) are extremely limited. And, increasingly, claimants face intimidation from some employers’ legal representatives, in the form of unjustified threats to ask for ‘costs’ of up to £10,000 in the event that the claim is ultimately dismissed by the tribunal.⁵

For low paid and non-unionised workers, therefore, pursuing an Employment Tribunal claim to a full hearing represents a significant challenge, and one that is likely to involve considerable investment of time and energy. Yet our September 2004 report, *Empty justice*, demonstrated that, even where an Employment Tribunal claim is successfully pursued to its conclusion, a favourable ruling and the making of a financial award by the tribunal can prove to be a hollow victory. All too often, and despite the sometimes immense time and effort put into the preparation of the claim and its presentation at the Tribunal hearing, the employer against whom the claim has been brought – and the award made – simply fails to pay up.

1 Since 1 October 2004, new Regulations require all employers to have legal minimum procedures for dealing with grievances, disciplinary action and dismissal, and Employment Tribunals will normally not accept a claim based on a grievance (such as denial of a statutory employment right) unless the claimant has written to his or her employer and waited at least 28 days without a response.

2 *Tip of the iceberg: interim report of the EOC’s investigation into discrimination against new and expectant mothers in the workplace*, Equal Opportunities Commission, September 2004.

3 The New Policy Institute has estimated that just one in six low paid workers belong to a trade union; see: Howarth, C. & Kenway, P., *Why worry any more about the low paid?* New Policy Institute, October 2004.

4 Source: *Findings from the 2003 Survey of Employment Tribunal Applicants*, Employment Relations Research Series No 33, DTI, August 2004.

5 For further information, see: *Employment Tribunals: the intimidatory use of cost threats by employers’ legal representatives*, Citizens Advice, March 2004. In fact, Employment Tribunals may make costs awards even greater than £10,000, but such awards must be referred to a County Court or the High Court for assessment.

In England and Wales, Employment Tribunals have no power to enforce their awards. As a result, where an employer does not pay the award within the stipulated period (42 days), the claimant must seek enforcement of the award through the civil courts (principally, the County Courts). However, apart from being dauntingly legalistic – to the extent that even some court officials appear unsure of the exact procedure to be followed by claimant and court alike – the process is both costly (due to the need to pay court fees, and quite possibly to engage the services of a solicitor) and time-consuming.

Furthermore, such enforcement action in the civil courts carries no guarantee of success. For, in addition to simply ignoring it, there are a number of strategies by which employers – and especially rogue employers – can try to frustrate such enforcement action, and a range of circumstances in which it ultimately proves impossible to obtain the amount now owed (i.e. including interest and court fees). For example, it is not uncommon for those seeking to enforce an unpaid Employment Tribunal award made against a former employer (i.e. with whom they no longer have regular contact) to discover that the company in question has ceased trading, and that the employer is now operating much the same business but as a new company (against which the award cannot readily be enforced, even in the civil courts).

Concluding that non-payment of Employment Tribunal awards by employers is “extensive and quite possibly on the increase”, *Empty justice* recommended the creation of an entirely new enforcement regime, with unpaid awards being directly enforced by the State. In short, where an employer fails to pay an award within a reasonable period, the State should pay the award to the claimant and then pursue the employer for that amount plus the associated costs of enforcement. *Empty justice* suggested that such State-sponsored enforcement could be conducted, as now, through the civil courts, but might be

better conducted through more direct action, such as adding the amount of the award (plus enforcement costs) to the employer’s owed tax.

At the time of publication of *Empty justice*, it was not possible, on the basis of the information then available, for Citizens Advice to make any estimate of the proportion of all Employment Tribunal awards that are not paid by employers, and which must therefore be enforced in the civil courts. However, since that time, we have conducted a survey of Citizens Advice Bureaux on their experience of such non-payment (and enforcement) of Employment Tribunal awards. The findings of this survey not only provide, for the first time, an indication of the proportion of all Employment Tribunal awards that go unpaid, but support the conclusions of *Empty justice* more generally.

Findings from the survey of Citizens Advice Bureaux

The survey was conducted by means of a multiple-choice questionnaire, directly mailed in late November 2004 to all 459 Citizens Advice Bureaux in England and Wales (and also posted on the Citizens Advice intranet, CABlink). The questionnaire sought data from the bureaux in relation to their experience of the non-payment and enforcement of Employment Tribunal awards since 1 January 2003, i.e. during the two-year period 2003-2004. Bureaux were encouraged to complete the questionnaire irrespective of whether or not they had dealt with cases of non-payment and/or enforcement during this period. The vast majority of questionnaires were completed during December 2004 and January 2005.

The survey questionnaire was completed and returned to Citizens Advice by 106 (23.1 per cent) of the 459 Citizens Advice Bureaux in England and Wales. As bureaux participated in the survey on a self-selection basis, the 106

who did so are not a random sample of all 459 bureaux. However, the response rate (almost one in four) is sufficiently large for the findings to be significant, and in any case the sample of 106 bureaux is broadly representative of all 459 bureaux in terms of regional location and their share both of all advice enquiries and of all employment-related advice enquiries.

General findings

Of the 106 bureaux that participated in the survey, 82 (77 per cent) had, in the past two years, successfully assisted one or more clients to make a claim to an Employment Tribunal, only for the employer to fail to pay the award. Between them, these 82 bureaux had dealt with 309 such cases of non-payment of an Employment Tribunal award (i.e. a client whom they had assisted to make the tribunal claim). Six bureaux had dealt with 10 or more such cases during the survey period.

A further two bureaux, who reported that they had not assisted any clients to make a claim to an Employment Tribunal only for the employer to fail to pay up, reported that they had nevertheless assisted a total of three clients, who first approached them subsequent to the making of an award and its non-payment by the employer, to take enforcement action in the civil courts.

In total, 75 (71 per cent) of the 106 bureaux had, over the past two years, assisted one or more clients to take enforcement action in the civil courts in respect of an unpaid Employment Tribunal award. Between them, these 75 bureaux had provided such assistance to a total of 178 clients.

Survey findings: the incidence of non-payment of ET awards

Assuming that the 106 bureaux that completed the survey are representative of all 459 Citizens Advice Bureaux in England and Wales, this would suggest that, each year, the CAB service in England and Wales deals with

some 650-700 cases of non-payment of an Employment Tribunal award. This amounts to five per cent – or one in 20 – of the some 13,000 awards made by Employment Tribunals in England and Wales each year.

The Employment Tribunal claims handled by Citizens Advice Bureaux (and their outcomes) are almost certainly not representative of all such claims (and their outcomes). This is not least because the employers of CAB clients, who are typically small and operating in low-profitability sectors of the economy, are not representative of all the employers against whom Employment Tribunal claims are brought.

However, as only a relatively small proportion of all Employment Tribunal claimants are represented or assisted by Citizens Advice Bureaux – research by the DTI indicates that no more than about seven per cent of all claimants are represented or assisted by a CAB⁶ – the total number of Employment Tribunal awards that go unpaid each year must be at least several times 650-700, and the proportion of all awards that go unpaid therefore somewhat higher than 'one in 20'. Certainly, anecdotal evidence from law centres and the Trades Union Congress (TUC) indicates that, like Citizens Advice Bureaux, law centres and individual trade unions regularly deal with such cases of non-payment, and regularly have to assist with attempted enforcement in the civil courts.

Such a high rate of non-compliance represents a serious threat to the overall effectiveness and credibility of the Employment Tribunal system. But it is also unfair to those employers – the great majority – who comply with tribunal rulings that some are so easily able to flout the law.

The survey findings also support the conclusion of *Empty justice* that such non-payment of Employment Tribunal awards is "quite possibly on the increase". Asked to say whether, in their opinion, the incidence of

non-payment of Employment Tribunal awards is, relative to previous years, 'increasing', 'decreasing' or 'much the same', 24 (35 per cent) of the 68 bureaux who expressed a view said that it is 'increasing', while 44 (65 per cent) said that it is 'much the same'. None expressed the view that the incidence of non-payment is 'decreasing'.⁷

Survey findings: the taking of enforcement action in the civil courts

As noted above, 75 (71 per cent) of the 106 Citizens Advice Bureaux that completed the survey had, in the two-year period 2003-2004, assisted one or more clients to take enforcement action in the civil courts in respect of an unpaid Employment Tribunal award. Between them, these 75 bureaux had assisted a total of 178 such clients.⁸

Assuming that the 106 bureaux that completed the survey are representative of all 459 Citizens Advice Bureaux in England and Wales, this would suggest that, each year, the CAB service in England and Wales provides assistance in some 375-425 cases of enforcement of an unpaid Employment Tribunal award in the civil courts. Given that, as noted above, the CAB service deals with only a relatively small proportion of all Employment Tribunal claims, it again seems reasonable to conclude that the total number of such cases of enforcement of an unpaid Employment Tribunal award in the civil courts in England and Wales is several times this figure. This represents a not insignificant administrative and financial burden on the civil courts, and one that conflicts with the wider strategy of the Department for Constitutional Affairs to "reduce the proportion of disputes which are resolved by resort to the [civil] courts".

The survey findings also support the conclusion of *Empty justice* that the process

for enforcing unpaid Employment Tribunal awards through the civil courts is not only dauntingly legalistic, but presents would-be users with a variety of financial and other obstacles. Asked for their opinion on how 'easy' it is for a successful Employment Tribunal claimant, faced with non-payment of the award by the employer, to enforce the award by means of enforcement action in the County Court, 33 (33 per cent) of the 101 bureaux who expressed an opinion stated that it is 'very difficult', while 28 (28 per cent) stated that it is 'difficult' and a further 27 (27 per cent) stated that it is 'fairly difficult'. Twelve (12 per cent) of the 101 bureaux said that it is 'easy', and only one expressed the view that it is 'very easy'.⁹

Similarly, amongst the 75 bureaux who reported having assisted one or more clients with enforcement action in the County Court in the past two years – arguably those best placed to express an opinion on the current enforcement process – 25 (33 per cent) said that it is 'very difficult' for such persons to enforce an unpaid award in the County Court, 21 (28 per cent) said that it is 'difficult', and 18 (24 per cent) said that it is 'fairly difficult'. Ten (13 per cent) of the 75 bureaux said that it is 'easy', and one said that it is 'very easy'.

Other recent evidence from Citizens Advice Bureaux

Since the publication of *Empty justice*, in September 2004, Citizens Advice Bureaux throughout England and Wales have continued to report individual cases of non-payment of an Employment Tribunal award, as well as cases of fruitless enforcement action in the civil courts (mainly the County Courts). The following cases are illustrative of this recent evidence.

⁷ Thirty-eight bureaux selected 'cannot say' as their answer to this question.

⁸ It is not possible to ascertain, from the survey data, what proportion of these 178 clients had been assisted by the bureau to make the Employment Tribunal claim that had led to the award, and what proportion had first approached the bureau *subsequent* to the making of an award and its non-payment by the employer. However, on the basis of anecdotal evidence from Citizens Advice Bureaux (i.e. incidental to this survey), it seems likely that the bureau had assisted with the Employment Tribunal claim in the great majority of these 178 cases.

⁹ Five bureaux selected 'cannot say' as their answer to this question.

A CAB in Birmingham reported having assisted an elderly woman to obtain an Employment Tribunal award of more than £11,000 in respect of unpaid wages, unpaid redundancy pay and unfair dismissal from her job (as a barmaid) of some 13 years. The employer had subsequently failed to pay any of the award, and so the CAB had assisted the client to register the unpaid award in the County Court (a process which required the client to pay a £30 court fee). However, the employer had still not responded, and the client had then reluctantly decided that she could not face the stress, or afford the time and money, to pursue the award through further enforcement action in the County Court.

A CAB in Nottinghamshire reported being approached by a woman who had won an Employment Tribunal award of more than £6,000 in respect of pregnancy-related unfair dismissal from her job with a double-glazing company. The employer had not paid any of the award, and had not responded to letters from the client.

A man who sought advice from a CAB in Essex had won an Employment Tribunal award of some £10,000 in respect of unpaid holiday pay and unfair dismissal from his job with a construction company. The employer had subsequently failed to pay any of the award, and so the CAB had assisted the client to register the unpaid award in the County Court – to no avail.

A CAB in Norfolk reported being approached by a woman who had been awarded some £8,000 by an Employment Tribunal in respect of sex discrimination and pregnancy-related unfair dismissal from her job as a delivery driver for a home-improvement

company, but had not yet received any of the award from her former employer.

A man who sought advice from a CAB in Hertfordshire had won an Employment Tribunal award of £1,500 some five months previously. When his former employer had failed to pay the award within the stipulated 42 days, he had paid £30 to register the unpaid award in the County Court. However, his former employer had still not paid any of the award.

Reporting a case of non-payment to Citizens Advice in October 2004, **Leeds CAB** suggested that “when clients win at an Employment Tribunal, they should not have to go to court to enforce the payment awarded to them. Our client is disappointed and disgruntled that, after so much effort and stress, he is still out of pocket. We imagine that he has lost confidence in any justice that the Employment Tribunal system metes out”. Similarly, **Lincoln CAB** noted in a report to Citizens Advice in October 2004: “it is too easy for employers to evade paying Employment Tribunal awards (and ACAS settlements). The system really has no teeth to help wronged employees”. And, the same month, noting that it “regularly sees clients with this problem [of non-payment of an Employment Tribunal award]”, **Stratford-upon-Avon CAB** suggested that “awards should be enforceable against the company without further action [by the claimant] being needed”.

In November 2004, **Plymouth City Centre CAB** reported that, since October 2002, it had assisted 48 clients to make and pursue an Employment Tribunal claim. In 18 of these 48 cases, the claimant had won an award at a Tribunal hearing (in 18 other cases the claimant had reached an ACAS-conciliated settlement of the claim, in two cases the claim had been dismissed by a tribunal, in nine cases the claimant had withdrawn the claim before reaching a full hearing, and one case

was ongoing). And, in nine of the 18 cases in which the claimant had won a tribunal award, it had been necessary to initiate enforcement action in the County Court after the employer had failed to pay the award. The unpaid awards ranged from £300 in respect of unpaid holiday pay, to £1,300 in respect of unfair dismissal; six of the nine awards were for more than £1,000.

In one of these nine cases, the claimant had, with the assistance of the bureau, paid court fees to register the unpaid award – of £1,250 for unpaid wages, unpaid holiday pay and wrongful dismissal from his job as a security guard – in the County Court and obtain a warrant of execution (i.e. an order to send the County Court Bailiffs to take control of and sell the employer's assets to the value owing to the claimant). However, in the words of the claimant, "the company kept changing their name" and so the Bailiff was unable to secure any assets. Asked (by the bureau) to comment on his experience of the enforcement process, the claimant stated: "the CAB did as much as they could to help, but I think [my former employer] has been in this situation before and knows how to avoid the Bailiffs etc."

As in the above case, in many of the cases reported by Citizens Advice Bureaux the employer has ceased trading as the company

against which the Employment Tribunal claim has been brought, but has then re-started what is essentially the same business under a new company name (against which the award cannot readily be enforced, even in the civil courts).

For example, a CAB in Essex reported assisting a woman who had been awarded £10,000 by an Employment Tribunal in respect of pregnancy-related unfair dismissal. The client had not received any money from her former employer who, after going into liquidation, had bought back all his original assets from the liquidator and started up a new company.

Reporting four separate cases of non-payment of an Employment Tribunal award, **Forest of Dean CAB** suggested that "the law should be changed so that individuals cannot just close down a company, leave all its debts – including Employment Tribunal awards – behind and then set up a new company, often with a very similar name and trading from the same premises". Similarly, **Vale Royal CAB** noted, in a report to Citizens Advice: "we all know about individuals who hide behind limited companies which cease trading and then the same individual re-appears trading again with another limited company".

Conclusions and recommendations

The Government has acknowledged, in a White Paper on tribunal reform published in July 2004, that non-payment of Employment Tribunal awards (and also of ACAS-conciliated settlements of an Employment Tribunal claim, an issue addressed in *Empty justice* but not in this report) is a problem, and that the existing enforcement regime is “time-consuming” and “unsatisfactory”.¹⁰ As noted in *Empty justice* in September 2004, the White Paper set out the Government’s intention to use its forthcoming Courts and Tribunals Bill to reform the existing enforcement regime so that both unpaid Employment Tribunal awards and unpaid ACAS-conciliated settlements can be enforced “as if [they] were an order of the civil courts”.

Shortly after the publication of the White Paper in 2004, Department for Constitutional Affairs officials indicated to Citizens Advice that, by this, the Government meant that it would elevate the legal status of Employment Tribunal awards (and also that of ACAS-conciliated settlements), so as to obviate the need for these to first be registered in the County Court before an application can be made to the Court to use one of its various enforcement mechanisms.¹¹ *Empty justice* concluded that this welcome move would in fact fall well short of the action required, and urged the Government to go further and establish an entirely new enforcement regime under which unpaid awards (and unpaid ACAS-conciliated settlements) should be paid to the claimant by the State and then directly enforced against the employer by the State, perhaps by adding the unpaid award or

settlement (plus enforcement costs) to the employer’s ‘owed tax’.

More recently, however, Ministers have indicated that “reform is very much on the agenda”, that officials in the Department for Constitutional Affairs and the Department for Trade and Industry are jointly considering “the detail of the proposed reforms”, and that “a number of options are under discussion, including those canvassed in [*Empty justice*].”¹² And, as of late February 2005, more than 65 Members of Parliament have signed an Early Day Motion in support of the conclusions and recommendations of *Empty justice*.¹³

Citizens Advice hopes very much that the further evidence set out in this report, including the findings of our survey of Citizens Advice Bureaux, will assist Ministers and officials in the Department for Constitutional Affairs and Department for Trade and Industry in considering the content of the Courts and Tribunals Bill, which we understand is likely to be published (for consultation) in draft form in March or April 2005.

To our mind, this evidence reinforces the case for more fundamental reform of the existing enforcement regime than a simple elevation of the legal status of awards (and ACAS-conciliated settlements) to that of an order of the civil courts. As is evident from many of the case examples set out in both this report and *Empty justice*, the registration of an unpaid award in the County Court frequently fails to secure payment of the award by the employer. And it is the subsequent stages of

¹⁰ *Transforming Public Services: Complaints, Redress and Tribunals*, a White Paper issued by the Department for Constitutional Affairs, July 2004, Cm 6243. In March 2003, the Government announced its intention to accept the key proposal of the August 2001 report of the review of tribunals led by Sir Andrew Leggatt (the ‘Leggatt Report’), and create a unified tribunal service within the Department for Constitutional Affairs by 2008. This service will be constituted from the ten largest central government tribunals – including the Appeals Service (social security and child support appeals), Employment Tribunals (and the Employment Appeal Tribunal), the Special Educational Needs & Disability Tribunal, Mental Health Review Tribunal, the Immigration Appellate Authority, and the Criminal Injuries Compensation Appeals Panel – with other smaller tribunals joining as appropriate after 2008.

¹¹ See *Empty justice* for further information on these enforcement mechanisms.

¹² Letter, dated 1 November 2004, from Baroness Ashton of Upholland, Parliamentary Under Secretary of State, Department for Constitutional Affairs.

¹³ Early Day Motion 573, tabled on 21 January 2005 by Andy King, MP.

enforcement action that present the most serious financial and practical barriers to claimants. As **Forest of Dean CAB** comments in a report to Citizens Advice: “registering the unpaid award in the County Court and getting a County Court Judgment (CCJ) is easy enough, but enforcement is almost impossible”.

We therefore recommend that:

- The Government includes, in its forthcoming Courts and Tribunals Bill, the necessary provisions to establish a regime for the enforcement of unpaid Employment Tribunal awards (and unpaid ACAS-conciliated settlements of an Employment Tribunal claim) by the State, rather than by the individual claimant.

As already indicated above, this State-sponsored enforcement could be conducted, as now, through the civil courts, but might be better conducted through more direct action, such as adding the amount of the unpaid award or settlement (plus enforcement costs) to the employer’s ‘owed tax’.

In taking this position, we note that the Government favours direct enforcement action in the case of those who fail to pay fines imposed by Magistrates Courts. In January 2005, for example, the Department for Constitutional Affairs announced “tough new sanctions” under which fine defaulters could “have their vehicles clamped, be refused credit or have the outstanding debt automatically taken from earnings or benefits”. Emphasising the “need to continue

to press home the message that what the court says goes”, the Courts Minister, Christopher Leslie MP, stated that “we must look at new ways of enhancing and improving compliance in the first instance and enforcement for those who fail to comply”.¹⁴

If such direct, pro-active enforcement is appropriate for individuals found to have broken the law by Magistrates Courts, then we would suggest it must also be appropriate for employers found to have broken the law by Employment Tribunals.

Whilst the benefit to individual claimants of such a State-led enforcement regime would be immense, the net cost to the taxpayer would be negligible, for several reasons. Firstly, the total number of awards and ACAS-conciliated settlements that currently go unpaid is *relatively* small – almost certainly no more than a few thousand. Secondly, the very existence of a State-led, rather than claimant-led, enforcement regime would no doubt greatly improve employer compliance, reducing the number of awards that actually need to be enforced, as employers would know that – unlike many claimants now – the State would not give up on enforcing the award. And, thirdly, the administrative and other costs of enforcement in those cases in which direct enforcement is needed could be recovered in full from the employer, along with the unpaid award. Only in the rare case where it ultimately proves impossible to reclaim the award (and costs) from the employer via the tax system would there be any cost to the taxpayer.

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