



EMPLOYMENT TRIBUNALS

Claimant: Mr T Tofa
Respondent: Bupa Care Homes
Heard at: Leeds **On:** 7th March 2017
Before: Employment Judge Lancaster

Representation

Claimant: Did not attend
Respondent: No appearance entered and did not attend

JUDGMENT AT A REMEDY HEARING

1. It is declared that the Claimant was unfairly dismissed.
2. The Respondent is ordered to pay to the Claimant a basic award of compensation in the sum of £2857.84
3. The Respondent is ordered to pay to the Claimant compensation for loss of earnings in the notice period in the sum of £2414.80
4. The Respondent is further ordered to pay to the Claimant compensation for the loss of his statutory employment rights in the sum of £450.00
5. The Respondent is further ordered to pay costs to the Claimant in the sum of £250 in reimbursement of his tribunal issue fee.
6. All further claims for compensation are stayed

REASONS

1. This claim was served at the address of the care home where the Claimant had worked, Cleveland House, Cleveland Road, Edgerton, Huddersfield HD1 4PN. No Response has been entered.

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2. A rule 21 judgment on liability only was therefore issued in default of any response. That was sent out on 21st February 2017 and the listed final hearing for 7th March 2017 was converted to a remedy hearing only.
3. The Claimant was requested to provide the full legal title of the company he worked for within 7 days but has not done so. Although the claim was brought against Bupa Care Homes and the rule 21 judgment was issued in that name that is a trading name only. Cleveland House is indeed a Bupa Care Home, but that does not clearly identify the legal entity which employed the Claimant to work there.
4. Because the case was listed for a remedy hearing the Claimant was required to pay a hearing fee of £950. He has not done so.
5. The standard letter sent out by the Employment Tribunal Central Office on 1st March 2017 is not well worded. It reads "Unless you make a payment or submit a valid application for help with fees within 7 calendar days, your Fee-Hearing will be rejected or dismissed accordingly". However applying the ordinary rules of construction within rule 4 of the Employment Tribunals Rules of Procedure 2013 the fee would not be required to be paid before midnight on 8th March 2017 at the earliest.
6. The Employment Tribunals Rules of Procedure 2013, rule 40, do not therefore come into potential operation at this stage. The claim, on which the Claimant already has a liability judgement, cannot in any event be dismissed in its entirety without further order simply by reason of subsequent non-payment of a fee.
7. Accordingly in the absence of the Claimant I have determined those parts of the remedy claim which can be calculated on the papers. In addition to a declaration that he has been unfairly dismissed the Claimant is entitled to a basic award. His gross weekly wage is calculated from the monthly figure of £1548 to be £357.23 (1548 x12/52). The Claimant had 8 years' continuous service for all of which he was between the ages of 22 and 41 and he is therefore entitled under section 119 of the Employment Rights Act 1996 to 8 weeks' pay which is £2857.84.
8. Further it is apparent from the claim form that the Claimant had not got another job by the date of the issue of the claim, which is beyond the period of 8 weeks' statutory notice to which he would have been entitled. It is therefore possible to calculate 8 week's net pay on the basis of a monthly take-home figure of £1308.00. That is £301.85 per week (1308 x12/52) over 8 weeks which is £2414.80.
9. Beyond that it is not possible without hearing evidence to make any proper assessment of the compensation for loss of earnings to which the Claimant would be entitled. Any such additional claims are therefore stayed and may not be pursued without further application to the Tribunal to determine the issues concerning the non-payment of any hearing fee.
10. Also I award the discretionary sum of £450 to compensate the Claimant for his loss of statutory rights in employment: he will have to work for 2 years in any future employment before he acquires the right to claim unfair dismissal and he has lost the right to his 8 week's notice.

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11. Because the Claimant has already paid an issue fee of £250 he is entitled to be reimbursed that sum by the Respondent under an order for costs pursuant to rules 75 (1) (b) and 78 (1) (c) of the Employment Tribunals rules of Procedure 2013
12. I am aware that absent any further information as to the identity of the employer this judgement against Bupa Care Homes may not in fact prove to be enforceable by the Claimant. He is however, entitled to recognition that his claim – which has not been defended by his former employer at the Bupa Care Home where he worked – has monetary value in so far as that can presently be ascertained.

Employment Judge Lancaster

Date 7 March 2017

Sent on 8 March 2017