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## EMPLOYMENT TRIBUNALS

**Claimant:** Mr N Davis

**Respondents:** 1. Allen Ferguson Hope  
2. A H Joinery  
3. Allen Hope Joinery

**Heard at:** East London Hearing Centre **On: 16 March 2017**

**Before:** Employment Judge Ferris (sitting alone)

### Representation

**Claimant:** Mr D Kennelly (Counsel)

**Respondents:** Neither present nor represented

## JUDGMENT

The judgment of the Employment Tribunal is to award the Claimant **£12,831.45 against Mr Allen Ferguson Hope his ex-employer (First Respondent):-**

That award is made up as follows:

1 Unlawful deduction of wages:

- (i) 1 day's work unpaid 30 November 2015 on the basis that the Claimant was paid £390 per week net which would indicate a gross weekly wage of approximately £485 (but no tax or national insurance was ever paid by the Claimant's employer, the First Respondent, to HMRC) **£97** (gross one day's wages).
- (ii) Statutory annual leave; in the leave year beginning 1 April 2015 the Claimant had a statutory entitlement to 28 days for the leave year; the Claimant had worked 66.67% of the leave year as at his termination date (i.e. eight months from April to November so had a pro rata entitlement to 18 days; the Claimant had used 5 days of his annual leave in the leave year from 1 April 2015 to his termination date; the Claimant is therefore entitled to 13 days of

unpaid annual leave in respect of the April 2015 leave year; gross x £97 = **£1,261**.

Total unpaid wages £1,358.00

- 2 The Claimant was unfairly dismissed on 1 December 2015; it was a summary dismissal:

Basic Award – the Claimant's date of birth is 23 April 1988. He was employed for 3 years when he was aged under 22 for part of the year and for 4 years aged 22 and over. The Claimant's weekly gross pay £485 exceeds the applicable statutory maximum of £475 per week.  $(3 \times \frac{1}{2} \times £475) + (4 \times £475) = \mathbf{£2,612.50}$ .

- 3 Compensatory award:

- (i) Loss of earnings in respect of notice period 1 September 2015 to 18 January 2016. The Claimant was unemployed from 1 to 19 December 2015 (14 working days). The Claimant then worked as a self-employed courier at Henchman & Co Ltd from 20 December 2015 to 18 January 2016 (and thereafter) a period of 21 working days including paid Bank Holidays. No credit is given for earnings in this role. Thus  $35 \times £78 = \mathbf{£2,730}$ .
- (ii) Loss of earnings 19 January to 9 March 2016. The Claimant continued to work as a self-employed courier for Henchman & Co Ltd from 19 January 2016 to 9 March 2016, a period of 37 working days. Had he continued working for the Respondent his earnings for this period of 37 working days including paid Bank Holidays would have been  $37 \times £78 = £2,886$ . The Claimant's earnings as a courier in the period from 19 January 2016 to 9 March 2016 totaled £1,621.11 = £1,000 thus  $£2,886 \text{ minus } £1,621.11 = \mathbf{£1,264.89}$ .
- (iii) Loss of earnings 10 to 16 March 2016. The Claimant was unemployed from 10 to 16 March 2016 (5 working days) thus  $5 \times £78 = \mathbf{£390}$ .
- (iv) Loss of earnings 17 March to 21 October 2016. The Claimant has worked as a van driver for Tesco since 17 March 2017. The pay slips available to the Claimant cover the period 17 March to 23 September 2016, a period of 27 weeks and 1 working day (or 27.25 weeks giving a working week of 4 days). The pay slip dated 23 September 2016 shows a total earnings for this employment of £6,995.19 gross and deductions of £213.20 tax and £318.62 National Insurance, giving net pay for the period of £6,463.37. This is equivalent to £236.46 net per week. The Claimant's estimated pay for the period of 31 weeks and 1 day from 17 March to 21 October 2016 (i.e. the last day of the first part of the hearing) is  $31.25 \times £236.46 = £7,389.38$ . Thus  $£12,168 \text{ minus } £7,389.38 = \mathbf{£4,778.62}$ .
- (v) Loss of earnings 22 October 2016 to 22 February 2017 (i.e.

ending the day before the Claimant began a full-time role at Tesco and thereafter successfully mitigated his loss of earnings). 22 October 2016 to 22 February 2017 is a period of 17 weeks and 5 days. Losses have been calculated on the basis of £153.54 per week (i.e. the difference between the net £390 received from the Respondent and the average £236.46 received from the part-time Tesco role). The Tesco average figure of £236.46 was the amount used for the October 2016 hearing. The Claimant does not have complete pay slip records from October 2016 to February 2017 (due to Tesco pay slip errors) but the average of the two months available is £188.50. The Claimant is not seeking to increase his claim to account for this decreased average. Thus 17 weeks and 5 days x £153.54 a week = **£2,717.66**.

- (vi) Loss of statutory rights **£250**.
- (vii) Employer's failure to follow ACAS Code of Practice statutory 10% markup on compensatory award 10% of £12,091.77 is **£1,209.18**.
- (viii) No written contract. Statutory award of 2 weeks net pay thus 2 x £390 = £780.

**Thus total compensatory award = £14,080.95.**

4 Other claims:

- (i) No written reasons for dismissal on request; statutory award of 2 weeks net pay thus 2 x £390 = **£780**.

The grand total is **£18,831.45**.

5 **Less £6,000** received pursuant to the aborted settlement agreement of 21 October 2016 leaving a **total award of £12,831.45** which is payable forthwith.

Note: There is no recoupment because the Claimant made no claim for Job Seeker's Allowance at any material time.

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Employment Judge Ferris

24 March 2017