



# EMPLOYMENT TRIBUNALS

BETWEEN

*Claimant*

*Respondent*

Mr K Patterson

AND

Electrical Waste Recycling  
Group Limited

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Heard at: North Shields

On: 23 May 2017

Before: Employment Judge Hargrove

### *Appearances*

For the Claimant: Mr S Sweeney of Counsel

For the Respondent: Mr M Palmer of Counsel

## JUDGMENT ON REMEDY

It is adjudged as follows:

- 1 By agreement between the parties the compensatory award exceeds the statutory cap and the respondent is in those circumstances ordered to pay to the claimant the sum of £78,962.
- 2 The respondent is ordered to pay the balance due in respect of the basic award amounting to £958.
- 3 The respondent is ordered to pay to the claimant the Tribunal fees of £1,200.

## REASONS

- 1 There are two issues which have been agreed between Counsel as requiring a decision at this stage. The first is the date on which the claimant commenced employment with the predecessor to the respondent. The claimant has said consistently throughout these proceedings that he started work in 2001 and

became a Director of the previously named company in 2002 – see the ET1 and his original witness statement. I would not expect him now to be able to produce documentary evidence to confirm that fact. I have taken into account the argument put forward by Mr Palmer that his CV produced in December 2016 speaks of his engagement as a Director starting in 2002 but I do not find that that is at all convincing as contradictory evidence as to when he commenced his employment. I find therefore that he was employed from a date in early 2001. The ET1 says 1 January. The claimant said in his evidence a little later but certainly before June 2001.

- 2 The second issue relates to the compensatory claim for loss of earnings to date and, it is claimed, for a future period. The claimant was dismissed with effect from 3 June 2016 and claims loss of earnings from that date less a payment in lieu of notice and a small amount earned for consultancy work since his dismissal, and for a period in the future. It is common ground that once an employee establishes a loss of earnings flowing from his dismissal the burden lies upon the respondent to prove that he has not taken reasonable steps to mitigate his loss. In practice in most cases the principal evidence available on this issue will be that coming from the claimant although it is not strictly necessary provided he establishes a loss. It is not usual to find specific evidence from an employer that someone has failed to mitigate his loss, except that the employer may be able to produce evidence that from the date of dismissal other jobs suitable for the employee have been available for which the employee has not applied. That is not the situation in this case since the respondent has produced evidence today of vacancies existing only in the last week or two. The factors which I have taken into account are as follows.
- 3 First, the claimant has at least since October 2002 been a Director of and from 2004 Managing Director and Sales and Marketing Director in a highly specialised area of electrical and electronic waste recycling as set out in particular in paragraph 5 of the Reasons for the original judgment. I accept that this is a particularly narrow field of expertise although clearly the claimant would have transferable skills as a sales and marketing director. Secondly a problem which I accept has made it particularly difficult to find alternative employment was the absence of any access to a reference upon which he could reasonably rely, at least of a confidential nature to establish his track record. I have considered whether he was unreasonable in not at least making enquiries of the respondent following his dismissal about a reference. But, having regard to the real reasons for the dismissal which I have found as a fact, redundancy being a sham reason; and the state of the relationship with the respondent at the time of the dismissal, I have accepted that it was not unreasonable of him not to trust the respondent to provide any confidential reference which would be of any assistance to him.
- 4 I now summarise the evidence which the claimant has produced of attempts to find alternative employment. He registered with two recruitment agencies, one being Catalyst. The exchange of e-mails between the claimant and this agency in May this year, 2017, does not however identify a specific date when he registered although clearly contact was made through that agency with a lighting company, AMBX, for a post as Chief Executive, CEO, at the end of

October 2016 for which he went to a final interview. In December 2016 and January 2017 he was in discussions with a small company CBS, a manufacturer of explosives with whom he had four meetings. From November 2016 he was also registered with an agency Executive Limited. He was referred to a recruitment consultant, Suzanne Brown, at the end of November 2016 for help in producing a CV. I accept that initially the claimant did take steps only to find alternative employment in the very narrow field in which he had experience for a long period of time since 2001/02 namely in the electrical recycling industry including to a Mr Froggat of Convex Limited in February 2017. There is an exchange of e-mails with Peter Moody of GAP Group – see e-mail of 8 February 2017 which appears to confirm formal meetings and interviews over a period of 10 months which would take it back to July 2016. Also contact with AVC Reco from October 2016 to date and I find that it is probable that he will find employment in the next three months either with that company or another company.

- 5 He has not however restricted his job search, as the respondent has claimed during the course of this hearing, only to the narrow field in which he previously worked although he did at first in the period immediately following his dismissal. There is some documentary evidence supporting approach to other employers including Freighter in September 2016 and also in that month an approach to a US company in the photographic market, Polar Pro. I also accept that for at least the last five months his CV has been circulated by the agencies named in response to advertisements for jobs in a far wider field.
- 6 There is I accept a lack of documentary evidence of contemporaneous efforts to find alternative employment in the initial period of three months following his dismissal but his dismissal was sudden and was sprung upon him unexpectedly after a long period of stable employment. It was not easy for the claimant at the age of 53 to be thrown upon the jobs market at such short notice. I am not impressed by the respondent's late production only in the last week of lists of current job vacancies for many of which the claimant is not qualified and does not have relevant experience, although I do accept that it would be and would have been reasonable for him for some time to have made speculative applications for employment in fields in which he was not particularly qualified or experienced.
- 7 In these circumstances I find that the respondent has failed to establish that the claimant has not made reasonable attempts to find alternative employment. I also find that it is highly unlikely that the claimant would find a job at anything like his past salary without a reference and without independently establishing a current track record. I find on the balance of probabilities that the claimant will find employment by 23 August 2017 at a salary in the region of £65,000 gross or £45,480 net. I also express the view that it will be at least 6 months from August 2017 before it could be reasonably argued that any future loss would no longer be attributable to his dismissal.

**EMPLOYMENT JUDGE HARGROVE**

**JUDGMENT SIGNED BY EMPLOYMENT  
JUDGE ON**

**5 June 2017**

**JUDGMENT SENT TO THE PARTIES ON**

**8 June 2017**

**AND ENTERED IN THE REGISTER**

**G Palmer**

**FOR THE TRIBUNAL**