



EMPLOYMENT TRIBUNALS

Claimant: Mr N. Elsanosi

Respondent: Vaultex Limited

Heard at: London Central

On: 27 September 2017

Before: Employment Judge Goodman

: **RESERVED**

REMEDY JUDGMENT

- 1 The respondent is ordered to pay the claimant compensation comprised a basic award of £2868.96, and compensatory award of 10,251 68.
- 2 The total award, £13,120.64, is subject to recoupment of benefit. The prescribed period is 13.2.2017 to 29.9.2017; the prescribed element is £8,757.69

REASONS

1. At the conclusion of the hearing at which it was found that the claimant had been unfairly dismissed, it was not possible to assess remedy because the claimant was in an occupational pension scheme, and no details of the scheme were available. These have now been supplied by the parties.

Basic award

2. the claimant began employment 20th of June 2008. He was dismissed on 13 February 2017, and was then 40 years old, having been born in October 1976. He has eight complete years of service. He was paid £358.62 per week (his schedule of loss claims £479 per week, but that is the statutory cap). The basic award calculated under section 122 of the Employment Rights Act 1996 is £2,868.96.

Compensatory award

3. by virtue of section 123 of the tribunal must award “such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal insofar as that loss is attributable to action taken by the employer”.
4. On the face of it, had the claimant not been dismissed he would have continued to be paid. The figure for take-home pay on the claim form is £1,250 per month, but examination of the last three months payslips in the bundle suggests that this understates his entitlement. Gross pay 1554 17 per month, he had deducted from £20 attachment, £55 for student loan, 1554 for occupational pension, apart from the statutory deductions of 160 789 national insurance and £230.80 in tax. When making an award of what is just and equitable, the tribunal will take the gross pay and deduct from it tax and National Insurance. Other deductions were to his benefit – whether to reduce loans, or to contribute to his pension. Gross pay less tax and national insurance only is £1,150 per month.
5. The employer contributed in addition £77.71 per month to the pension scheme. This is deferred remuneration from which the claimant can expect to benefit when he draws his pension.
6. The claimant has not succeeded in finding a job since dismissal. There are many documents in the bundle about jobs that he has registered for, or applied for. The respondent has also contributed material from their own search of vacancies.
7. It is not clear how thorough the claimant’s search has been. At least three of the documents in the bundle were messages from a health trust, a recruitment agency, and the MoD respectively stating that he had not completed the registration, or had not completed an online sift test which had to be done before his application could proceed further.
8. Some of the claimant’s applications were ambitious. For example, he applied to a college in Humberside for a post as a lecturer on the strength of his degree in electrical and electronic engineering from London South Bank University, which was completed before he started work for the respondent eight years ago, meaning has no recent experience, and had also applied for a range of technical jobs, such as tester and maintenance engineer for which he has no UK track record, although, as he explained, he had some experience at home in Sudan. The prospects of getting a technical job without further training or entry-level experience seem poor.
9. The claimant was paid at a rate close to the minimum wage, and it might be thought that a range of employment would be open to him. Many of the vacancies placed in the bundle by the respondent with the jobs as cashier’s cash operatives or cash handlers. As the claimant has pointed out, someone who was dismissed from their last job as a cash handler because of gross misconduct is not likely to make the shortlist. Although the written reasons for the unfair dismissal finding might reassure a prospective employer that the claimant was not guilty of dishonesty, it is unlikely that at this level applicants’ histories will be explored at that level of detail.

10. One way of getting round the slur of dismissal for gross misconduct would have been reinstatement or reengagement with the respondent. This would have restored the claimant's track record, and if he later found alternative employment could truthfully say that he had left because he had resigned. However, although raised both at the outset of the hearing and at the conclusion as an order tribunal was prepared to consider in this case, the claimant declined the opportunity. It has to be said that the respondent indicated that they would oppose an order for reinstatement because the reason for dismissal; all the same, they had included one of their own recent vacancies in the documents they placed in the bundle. The respondent's reluctance to re-engage the claimant because of the reason for dismissal suggests that the claimant's fears that certain work will be closed to him are justified.
11. Despite the unlikelihood that the claimant will be able to obtain working cash handling, there are likely to be many low-paid jobs which he could undertake. There are always driving vacancies. In the bundle work documents from an agency with which you have registered offering such vacancies, suggesting that he had some competence, even if he does not hold PSV or HGV licence. There were many vacancies for the post office, which has regular turnover of staff. Supermarkets are regularly recruiting. There is usually bar work cleaning work and security, though gross misconduct dismissal may have affect the last. There was no evidence that the claimant actually applied for jobs at this level. It is possible that the claimant has not made a wider search party because as he explained he has the care of his disabled brother, because he hopes to find more interesting work. Nevertheless, at this stage, seven to eight months after dismissal, he should be able to find work at a rate commensurate with the money he was paid by the respondent. In addition, given the spread of auto enrolment pension schemes, he is likely to find a job with a comparable pension scheme.
12. The burden is on the respondent to show that the claimant has failed mitigate his loss. Although the claimant may not have searched very thoroughly, he has made some search. The tribunal proposes that the just and equitable compensatory award is for the period 14 February 2017 to 14 October 2017, eight months at £1,227.71, (inclusive of employer's pension contribution).
13. There is a claim for loss of statutory rights. If the claimant finds another job he has to work for two years before he accrues unfair dismissal rights. An additional £350 is needed. There is a claim to £70 expenses, without a breakdown. It is suggested he has incurred £3 in travel each week to attend the job centre, and has also bought unspecified newspapers. The claim is not unreasonable and is allowed.
14. Adding these together, the compensatory award is £10,251 68.
15. The claimant is in receipt of universal credit. By the amendments introduced by the Universal Credit (Consequential, Supplementary, Incidental and Miscellaneous Provisions) Regulations 2013 to the 1996 Regulations about recoupment of benefit by the DWP from awards paid by employers, this award is subject to recoupment.

16. The prescribed period is from 13 February 2017 to 29 September 2017, 33 weeks at £265 39 week, so the prescribed element is £8,757 69.

EMPLOYMENT JUDGE GOODMAN
27 September 2017