



EMPLOYMENT TRIBUNALS

Claimant: Mr Paul Haworth
Respondent: Unilever UK Limited
Heard at: Bury St Edmunds ET **ON:** 27 November 2017
Before: Employment Judge Morron
Members: Mr R Allan; Ms R Kilner

REPRESENTATION

For the Claimant: In person, assisted by his wife Mrs S Haworth
For the Respondent: Mr A Ohringer, Counsel

JUDGMENT ON REMEDY

It is the unanimous decision of the Tribunal that:

1. There be no order for reinstatement or re-engagement; and
2. The Respondent is ordered to pay total compensation to the Claimant of £17,367.72 in accordance with the calculation set out in the Reasons which follow.

REASONS

1. This is a remedy hearing following the Tribunal's decision sent to the parties on 11 October 2017 that the Claimant had been unfairly dismissed.
2. The first remedy which the Claimant seeks is reinstatement or re-engagement.
3. We remind ourselves that this remains the primary remedy to which a successful claimant is entitled unless it is not reasonably practicable or just to so order. In the circumstances of this particular case we do not consider it appropriate to order reinstatement or re-engagement for the following reasons:

- (i) the mutual trust and confidence of each party with the other has, in our view, broken down irreparably. The Claimant today accused the Respondent of acting fraudulently in the construction of a paper trail of evidence against him; and the Respondent relies upon the fact that despite our clear and unanimous finding to the contrary the Claimant remains adamant that he did not shout at Ms Crawford. He does not, in the Respondent's view, which we find entirely justified, have the self awareness needed to prevent the risk of a similar incident occurring again in the future. The Respondent rightly considers that it has a duty to protect its staff and its in-house occupational health professionals from behaviour which makes them feel vulnerable. In the absence of any remorse or self-awareness by the Claimant of his actions and their effect on others, we accept that the Respondent has lost all trust and confidence in the Claimant. It would not be practical for him to return to the Respondent's employment in any capacity; and in view of his contributory conduct including his lack of contrition it would not be just to make such an order.
- (ii) we also bear in mind that there are no vacancies at the Norwich premises or, indeed, at the nearest alternative premises in Purfleet in Essex to which the Claimant would, in any event, struggle to attend as he does not drive.
4. For all the above reasons we do not order reinstatement or re-engagement.
5. Turning to the financial compensation, the basic award is agreed at £465.56 x 17.5 = £8,147.30 reduced by 50% in accordance with section 122(2) of the Employment Rights Act 1996 and our earlier decision. This produces a basic award of £4,073.65.
6. We turn next to the compensatory award. Mr Ohringer has drawn our attention to the decision of the Court of Session in Dignity Funerals Ltd v Bruce [2005] IRLR 189.
7. It might be helpful to quote the following paragraphs from the headnote.

"In deciding whether to make a compensatory award in accordance with s.123(1) of the Employment Rights Act, which provides that "the amount of the compensatory award shall be 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 in so far as that loss is attributable to action taken by the employer", a tribunal has to consider two main questions: whether the applicant's dismissal was one of the causes of his wage loss; and, if it was, what compensatory award would be just and equitable in all the circumstances. The former question is one of fact; the latter is one of discretion.

A compensatory award depends on proof of loss. Therefore, any application of the just and equitable principle must be underpinned by findings in fact establishing that the loss was caused to a material extent by the dismissal. If the dismissal was not a cause of the applicant's loss of wages, no award is due. If it was the sole cause, the full award will

normally be appropriate. Where dismissal is merely one of two or more concurrent causes of the employee's loss, or where the dismissal was a cause of his loss for only part of the period, a just and equitable award would in all likelihood be of less than the full amount of the wage loss.

Accordingly, where in the period after dismissal an applicant suffers loss because he is prevented from working due to ill-health, the employment tribunal must decide whether the illness was caused to any material extent by the dismissal itself; whether, if so, it had continued to be so caused for all or part of the period up to the hearing; and, if it was still so caused at the date of the hearing, for how long it would continue to be so caused. It is essential that the tribunal should make clear-cut findings on these questions before any question of a compensatory award can arise."

8. In addressing the question whether the Claimant's loss in this case was caused to a material extent by his dismissal we note that we have not had the benefit of medical evidence. That is despite our directing the Claimant to provide a witness statement setting out his health record since dismissal. We have, therefore, had to base our findings of fact on his oral evidence at today's hearing, which, fortunately has been sufficient to allow us to make the relevant findings.
9. Our essential findings of fact on this issue are as follows. The Claimant has suffered from both anxiety and depression for several years. He had what he describes as two breakdowns while still employed by the Respondent but this did not render him permanently unfit for work. Indeed, during his time with the Respondent he was more than once certified fit for work provided certain adjustments were made. In the last 18 months of his employment, however, he hardly attended for work and although he returned to work shortly before his dismissal the incident which led to his dismissal took place shortly thereafter.
10. When asked today whether his mental condition deteriorated after his dismissal he replied that it probably had. He described being on anti-depression medication until February 2017 and continuing to be prescribed anxiety medication. He hardly left the house after his dismissal because he was scared of meeting any former colleagues. Throughout this time he has been seeing a Counsellor every week and continues to do so. This has continued to be provided under the NHS. His Counsellor advised him not to seek to return to work until the outcome of his tribunal claim was known.
11. We find on these facts that although he had a pre-existing condition, the Claimant's dismissal materially caused him to be unfit for work after his dismissal; and continues to do so as at today's hearing. We say this because he had been certified fit to work shortly before his dismissal; but afterwards was unable to leave the house for fear of meeting former work colleagues; and because he continues to receive counselling (as well as medication) and that counselling advised him that until he knew the outcome of his tribunal application he would not be able to resume work. This evidences a significant link between his dismissal and his unfitness to work. This also appears to have been accepted by Mr Liu, his Job Centre work coach, who phoned him every month for a year after his dismissal, but did not put pressure on him to seek

work while his tribunal remained unresolved. He received ESA for the maximum 12 months – a sum of £4,125 for which he must give credit.

12. In October 2017, the Claimant received the Tribunal's decision. He immediately contacted Mr Liu and was referred to the Career Service and last Friday with their assistance compiled a c.v. He was told that he had a wide and varied skill set. When he asked how long it was likely to take to find a job the reply was non-committal – perhaps a week, perhaps not at all – but he was directed to the Jobs in Norwich web-site which showed 109 new jobs of various kinds. Most were unsuitable and on significantly less than his former salary. He was reconciled to having to accept a job on less pay; and had been advised that he should first do some voluntary work in order to reacclimatize himself to the workplace. On this basis we find that within three months from today's date the Claimant should be able to find alternative work but, on the basis of the limited information presented to us today and guided by our combined knowledge of the local market, we consider that the Claimant, particularly at his age and with his recent employment record, would be obliged to accept a role at £10,000 net less per annum than his previous salary – but that once back in work he should be able to his previous level of income within two further years.
13. With regard to the link between his dismissal and his illness, we have found that his dismissal continues – and will continue – to be a material cause of his loss. However, bearing in mind his previous medical history we consider that the extent to which it has caused that loss needs to be addressed, albeit that we have had no medical report to assist us. We find that initially the impact of the dismissal was at its greatest; it is now less so but will continue to be a factor while he suffers a loss in income. Adopting a broad brush approach, we find that, overall, it is just and equitable to apply a 50 per cent reduction to the compensatory award which we would otherwise have awarded in order to reflect the extent to which the Claimant's dismissal has caused – and will continue to cause – his financial loss.
14. We turn now to our calculation of the Claimant's compensatory award:

Loss to date of hearing:

8.3.2016 to 27.11.17 (90 weeks)

Net basic pay at £362.30 p.w. = 32,607.00

Loss of factory bonus at £2,471 p.a. = 2,223.90

Loss of pension contributions at 20 x £448.29 p.m. = £8,965.80

∴ loss to date of hearing = £43,796.70

Future loss

12 weeks at full pay = 12 x £362.30 + £24.71 = 4,644.12

+ 3 x £448.29 = 1,344.87

£5,988.99

2 years at £10,000 = £20,000.00

£69,785.69

+ £400 loss of statutory rights =	£70,185.69	
Less ESA at £4,125 =	£66,060.69	
Less 50% contribution =	£33,030.35	
Less 30% Polkey reduction =	£23,121.25	
Add 15% ACAS Code =	<u>£26,589.43</u>	
Deduct 50% just and equitable to reflect extent to which loss not caused by dismissal =	£13,294.72	
+ basic award =		<u>£17,367.72</u>

15. This is, therefore, the total compensation payable by the Respondent.

Employment Judge Morron, Bury St Edmunds
Date: 8 December 2017

JUDGMENT AND REASONS SENT TO THE PARTIES ON

8/12/2017

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FOR THE SECRETARY TO THE TRIBUNALS