



EMPLOYMENT TRIBUNALS

Claimant

Mr M Thompson

Respondent

GPH Flooring Ltd

REASONS OF THE EMPLOYMENT TRIBUNAL

HELD AT NORTH SHIELDS

ON: 12 October 2017

EMPLOYMENT JUDGE A.M.S. Green

Appearances

For Claimant: In person

For Respondent: not present or represented

JUDGMENT ON REMEDY

1. The Claimant is entitled to a redundancy payment of £4,884.00 (14 weeks' pay) pursuant to Employment Rights Act 1996, section 135.
2. The Respondent shall pay the Claimant £400 as compensation for loss of statutory protection arising from his unfair dismissal under Employment Rights Act 1996, section 118. The Basic Award is £0 and the Compensatory Award is £0 as there is no loss flowing from the unfair dismissal.
3. The Respondent shall pay the Claimant £272.14 for breach of contract for failing to pay the Claimant's contractual notice on termination of employment.
4. The Respondent shall pay the Claimant £1,293.00 for unlawful deduction of wages pursuant to Employment Rights Act 1996, section 13.

REASONS

Introduction

1. In his claim form, the claimant states that he worked for the respondent for 12 years until they closed the store where he was working. His employment started on 1 May 2005 and ended on 30 June 2017. The respondent did not

pay him one month's pay for June 2017 but did pay him 12 weeks' notice as he had worked for them for 12 years. He has not received his redundancy payment. When he was dismissed, he had completed 12 years' service and was 45 years old.

2. He claims the following:

- a. Notice pay (1 month) £1,293.00
- b. 3 months' payment in lieu of notice £3,879.00
- c. 12 years' redundancy payment £4,844.00
- d. Compensation for unfair dismissal – to be quantified.

3. The claimant gave evidence of his losses. He affirmed his evidence. He told me the following. He started working for the respondent on 1 May 2005. It was a legacy employer. He had written terms and conditions from his legacy employer. His contractual notice period was less than the statutory minimum period. His employment transferred under the Transfer of Undertakings (Protection of Employment) Regulations 2006. His last day at work was 29 June 2017. He was normally paid on the last day of the month. He received a payslip dated 30 June 2017 which he produced to me in court. His net pay was £1,293.00. He got another job with Flooring Republic which started on 1 July 2017. He worked there until 24 August 2017. He received the same salary that he enjoyed from the respondent. His total net pay was £1,986.40. He moved to another employer, Floors-4-U and started working there on 26 August 2017. He is still working for that employer and it is a permanent position. He produced his latest payslip and I noted that his total pay for the year to date was £1,638.46. He has not received any state benefits. He did not receive a pension from the respondent.

Unfair dismissal

4. The claimant is entitled to ask for the following remedies for his unfair dismissal: re-instatement, re-engagement or compensation. He has requested compensation. The Employment Rights Act 1996, sections 118(1)(a) and (b) ("ERA") provides that compensation falls under two heads: the basic award and the compensatory award.
5. The basic award is designed to compensate the claimant for loss of his job security caused by his unfair dismissal by awarding him a sum almost exactly equivalent to the statutory redundancy payment.
6. The compensatory award is intended to reflect the actual losses that the claimant has suffered and will continue to suffer because of being unfairly dismissed. There is no formula for calculating the compensatory award other than what the Tribunal considers "just and equitable". The compensatory award is subject to a current maximum of £80,541 or one year's pay, whichever is the lower. When assessing what the claimant has lost because of being unfairly dismissed, the Tribunal looks at the net remuneration the claimant would have continued to have received if he had not been dismissed. The amount of the compensation for the compensatory award is calculated net

of tax and the claimant is awarded an amount based on his take-home pay. The following heads of compensation have been applied to calculate the compensatory award:

- a. Immediate loss of earnings (i.e. between the dismissal and the hearing).
 - b. Future loss of earnings (i.e. estimated loss after the hearing).
 - c. Loss of statutory employment rights – this covers, for example, the fact that the unfair dismissal means that the claimant will be unable to bring another unfair dismissal claim until he has had two years' continuous employment in a new job.
7. When calculating compensation, the Tribunal must take account of what steps the claimant has taken to mitigate his loss (ERA section 123(4)). If he has failed to take reasonable steps to mitigate his loss, his compensation may be reduced. The Tribunal must also consider whether the unfairly dismissed employee could have been dismissed fairly at a later date if a proper procedure had been followed (ERA section 123(1)). The compensatory award has been calculated from the date when the claimant's period of notice expired (i.e. 30 September 2017). I am satisfied that the claimant has mitigated his loss because he has found other work. There was no evidence to suggest that if a procedure had been followed, he would have been fairly dismissed.

Redundancy

8. An employer must pay a redundancy payment to an employee who has been dismissed by reason of redundancy (ERA section 135). The claimant was dismissed because of redundancy. The amount of the statutory redundancy pay the claimant is entitled to depends on his age, length of service and pay.
9. He is entitled to:
- a. One and a half weeks' pay for each complete year of service after reaching the age of 41;
 - b. One week's pay for each complete year of service between the ages of 22 and 40 inclusive; and
 - c. Half a week's pay for each complete year of service below the age of 22.
10. The total amount of a week's pay that can be counted for calculating the statutory redundancy payment is £489.
11. The claimant was 45 years old when he was dismissed. He had 12 complete years of service and his gross weekly take home pay was £346. He is entitled to a statutory redundancy payment of **£4844.00**

Breach of contract – failure to pay the claimant 3 months in lieu of notice

12. This head of claim is contractual. The payment is based on the net amount that the claimant would have received during his notice period. It is subject to the claimant's duty to mitigate his loss and takes account of any income or benefits that he has received during his notice period. The total amount of loss is **£3897.00**. I must factor in his mitigation of loss and set off his post dismissal earnings against the total loss. The total earnings in his subsequent employment are **£3624.86**. This leaves a net loss of **£272.14**

Non-payment of wages for June 2017

13. ERA section 13 provides that an employer shall not make deductions from wages of a worker employed by him unless it was authorised by a statutory provision or relevant written contractual provision or agreed to in writing by the claimant before the event giving rise to the deduction. The claimant did not authorise the non-payment of his wages for June 2017 and there is no statutory or contractual basis to justify the deduction. He has suffered financial loss attributable to the non-payment.

14. The Claimant is entitled to **£1293**

Financial Award

Unfair dismissal – Assessment of Compensation

Basic Award (s119)	£0
Less:	
Conduct before dismissal % reduction under s122(2) & (3)	£ Nil
Net Basic Award	£0
Compensatory Award (s124)	
Prescribed element (loss of wages to date of assessment and future loss)	
The claimant has been continuously employed since his dismissal. He is on a permanent contract	£0
Benefits other than Job Seekers Allowance and Income Support	£0

“Polkey” reduction (0%)	£0
Non- prescribed element Loss of statutory protection	£400
Grand total	£400
Recoupment	£0

A.M.S. GREEN EMPLOYMENT JUDGE
JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON
16 October 2017
SENT TO THE PARTIES ON
2 November 2017
P Trewick
FOR THE TRIBUNAL OFFICE