

RM



EMPLOYMENT TRIBUNALS

Claimant: Mr C Annor-Agyei
Respondent: Express Reail Solutions UK Limited
(in creditors voluntary liquidation)
Heard at: East London Hearing Centre
On: 1 February 2018
Before: Employment Judge Foxwell

Representation

Claimant: In person
Respondent: No attendance

JUDGMENT

1. The Respondent shall pay the Claimant a basic award for unfair dismissal of £10,788.46.
2. The Respondent shall pay to the Claimant a compensatory award for unfair dismissal of £4,963.
3. The Respondent shall pay to the Claimant two weeks' pay pursuant to section 38 of the Employment Act 2002.
4. The Respondent shall pay the Claimant two weeks' pay pursuant to section 93 Employment Rights Act 1996.
5. The Respondent shall pay an additional award to the Claimant of £1,663.83 pursuant to section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992.
6. The total of the above awards is £19,107.61.
7. This judgment is additional to that sent to the parties on 15 December 2017
8. The recoupment provisions do not apply.

REASONS

1. On 13 December 2017 I entered judgment in the Claimant's favour for one aspect of his claim for unpaid wages and for his claims for notice and holiday pay. That judgment was sent to the parties on 15 December 2017. This hearing is to decide what further remedy the Claimant is entitled to receive. I heard evidence from the Claimant, Mr Annor-Agyei, to decide this which I accept is accurate.

2. The background to the claim is as follows. The Claimant was born on 5 May 1956 and is presently aged 61. On 1 March 2000 he began working for a company known as "Express Shop Fittings London Limited" which was owned and operated by Mr Imtiaz Abubaker. This company went into liquidation in October 2009 and its assets transferred to the Respondent, another company established by Mr Abubaker. The Claimant began working for the Respondent and he told me that the transition was seamless. I am satisfied that this was a transfer of an undertaking under the TUPE Regulations 2006. I find therefore that the Claimant had continuity of employment from 1 March 2000.

3. The Claimant's employment ended on 30 June 2017 when he was dismissed. The Respondent continued to trade although it is now in voluntary liquidation. The Respondent has failed to demonstrate a fair reason for dismissal and I am therefore satisfied that it was unfair.

4. The Claimant told me, and I accept, that he was not issued with written particulars of employment by the Respondent. I have therefore made an award of two weeks' pay under section 38 of the Employment Act 2002. The Claimant also told me that he requested written reasons for dismissal but was not provided with these. I have therefore made a further award of two weeks' pay under section 93 Employment Rights Act 1996. I declined to make an award under section 10 of the Employment Relations Act 1999 because of an alleged denial of the right to be accompanied at a disciplinary or grievance hearing. There is no evidence that the Claimant was required to attend a disciplinary or grievance hearing. Based on the Claimant's account, however, there was a failure to follow any recognisable fair dismissal process. I am satisfied that this is contrary to the ACAS Code of Practice and that it is therefore appropriate to award an uplift to compensation under section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992. I assessed this at 25%.

5. I made no award in respect of the Claimant's further claim for unpaid wages based on the non-payment of the National Minimum Wage. The Claimant told me that in the last four or five years of his employment he worked an ordinary 40-hour week. He was paid £22,000 per annum. I am satisfied therefore, that he received more than the National Minimum Wage in the period for which this Tribunal would have jurisdiction to consider a claim for unpaid wages.

6. The Claimant was dismissed on 30 June 2017. He found alternative part time work on 22 August 2017. He told me that he continues to look for full-time employment but without success so far. He had an interview two weeks ago but he is yet to hear. His earnings in his present part-time work are less than those from his employment with the Respondent. I note that his claim for future loss is based on an assumption that this will continue for a further six months. In the hearing I accepted that that was a reasonable estimation but on reflection this does not take account of the fact that the Respondent has now gone into liquidation. I do not think that it is appropriate to make an award for future

loss in these circumstances. For the same reason I must reduce the award I announced for loss of employment rights from £500 to £200.

7. I make the following further findings of fact:
 - a. At the date of his dismissal the Claimant was aged 61 and had 17 full years' service.
 - b. The Claimant's gross annual salary with the Respondent was £22,000 pa, or £423.08 per week.
 - c. The Claimant's net weekly pay with the Respondent was £350.
 - d. The Claimant's net weekly pay with his current employer is £255, so that he is now £95 a week worse off.

Calculations

8. The basic award for unfair dismissal is:

$$17 \times 1.5 \times £423.08 = £10,788.46$$

9. Loss of earnings to the date of this hearing is:

$$\begin{array}{l} 1/7/17 \text{ to } 21/8/17 - 7 \text{ weeks @ } £350 = £2,450 \\ 21/8/17 \text{ to } 1/2/18 - 23 \text{ weeks @ } £95 = £2,185 \end{array}$$

10. Loss of employer's pension contribution @ 1% for 7 months = £128

11. Loss of employment rights = £200

12. Failure to provide written particulars of employment:

$$2 \times £423.08 = £846.16$$

13. Failure to provide written reasons for dismissal:

$$2 \times £423.08 = £846.16$$

14. The total of these awards excluding the basic award is £6,655.32, somewhat lower than what I announced in the hearing. I have applied an uplift of 25% to this under section 207A of the 1992 Act to produce an additional award of £1,663.83.

15. The grand total of my awards is £19,107.61. I apologise for the fact that this is different from the figure announced in the hearing.

16. The recoupment provisions do not apply.

Employment Judge Foxwell

1 February 2018