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# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Muhammad Asghar Khan

**Respondent:** Tesco Stores Limited

**Heard at:** East London Hearing Centre

**On:** 3 August 2018

**Before:** Employment Judge Brown

## Representation

**Claimant:** In person

**Respondent:** Mr T Gillie (Counsel)

# REMEDY JUDGMENT

The judgment of the Tribunal is that:-

1. The Respondent is ordered to pay the Claimant a grand total of £8,807.62 in compensation for unfair dismissal comprised as follows:
  - i) A basic award of £1,320.30; and
  - ii) A compensatory award of £7,487.32.

# REASONS

1 The parties agreed that the Claimant was paid £1,987.85 net monthly, or £458.74 net weekly, when he was employed by the Respondent. It was agreed that the Claimant was dismissed on 11 September 2017. The date of the remedy hearing was 3 August 2018. There were 46.6 weeks between the date of dismissal and the remedy hearing.

2 The Claimant was employed for 3 complete years at the Respondent and was aged under 41 at all times. The parties agreed that the basic award therefore was 3 x

£489 (the maximum amount of the weekly wage at the relevant time) = £1,467, subject to a 10% deduction for contributory fault. This meant that the basic award was agreed at £1,320.30.

3 The parties also agreed that the Claimant's loss of earnings, from the date of his dismissal to the remedy hearing, was:  $46.6 \times £458.74 = £21,377.28$ .

4 The Respondent contended that the Claimant had failed to mitigate his losses and that the Claimant had received more money in payment for work that he had done since his dismissal than he had told the Tribunal. The Respondent also contended that it would not be appropriate, in the circumstances the Claimant had failed to mitigate his loss, for the Tribunal to award any future loss of earnings.

5 A question arose about pension payments, but on research by the Employment Judge, it appeared that employees can opt out of "auto enrolment," as the Claimant had done. Pension payments were therefore no longer an issue in the case.

6 I heard evidence from the Claimant, who was cross-examined by Mr Gillie for the Respondent. I made the following findings of fact.

### **Findings of fact**

7 The Claimant told me, and I accepted, that he gave his CV to local shops in his area in the weeks following his dismissal. However, he was asked why he had left Tesco and found himself unable to answer that question. I also accepted his evidence that he commenced an application to Sainsbury's Stores, but he did not proceed with it when he was asked whether he had previously been dismissed.

8 The Claimant had a valid door supervisor's licence. I accepted his evidence that he enrolled with the "Indeed" job application site on his telephone and applied through it for several jobs working in security in November and December 2017. He told me that he applied for about 10 – 15 jobs each month.

9 The Claimant produced a print out from Indeed. He explained that his Indeed profile only contained a certain number of the most recent jobs and applications. He explained that the site automatically deletes stale applications after a period of time, or when the Claimant's profile becomes full. I accept that evidence. It accorded with my experience of other similar sites which do not keep archives of all job adverts or applications made on them indefinitely.

10 The Claimant told me, and I accepted, that he did attend an interview for a security job in October and he was given a uniform, but despite the Claimant chasing for rotas and work, he never received any. He also told me, and I accepted, that he signed on with a local security agency Delta5, but was told by the owner that work was slow and unfortunately the Claimant has never received any work through them. The Indeed job site, from which the Claimant produced a print out, showed that the Claimant had made about 8 job applications in the last two to three months. I considered that the Claimant's evidence about his applications for security jobs and about the workings of the Indeed app were accurate. I considered he had been applying for security jobs on a regular basis in

October to December 2017 and from April to July 2018, but unfortunately has had no success. I considered that it was reasonable for him to look for such work because he does have the relevant door supervisor's licence and therefore such jobs are more likely to pay the wages that were comparable to wages at Tesco's, rather than looking for completely unskilled jobs, or ones for which no licence or qualifications were required.

11 The Claimant also told me, and I accepted, that the Claimant obtain some work through Uber EATS, making deliveries by bicycle, and received £422.73 for that work. However, he told me that there was not much work available in his own area and he was unfamiliar with busier areas such as Canning Town. He did not want to risk cycling there. I considered that that was a reasonable approach, given the very large number of busy and dangerous roads in the Canning Town and Docklands areas and the comparative vulnerability of cyclists. I considered that it was reasonable for the Claimant not to extend his work into those areas when he needed to cycle in order to do so.

12 The Claimant told me that he obtained some work as a builder's labourer, or carpenter's labourer, from friends. He did not keep any records of the dates or the times worked, or the payments made in those jobs. He told me that he had received about £1,000 from his friend Abdul, £220 from a friend Arshad, and about £600 from a friend Mr Raza. However, on his bank accounts, there were also additional payments from Mr Raza totalling £5,611 from November 2017 to June 2018. The Respondent pointed out that a number of these payments were for very precise figures, for example £1,002 on 30 May and £388 on 23 March 2018. Mr Raza gave an unsigned statement to the Tribunal – he did not attend the Tribunal to give evidence to support it. In the statement he said that the Claimant worked for him once or twice a week, for £100 a day. He also said that he had lent the Claimant £6,500.

13 The Claimant told me in evidence that the other payments which appeared in his bank account were the loan payments to which Mr Raza was referring to in his statement and that they were precise amounts that the Claimant had calculated needed to be sent by the Claimant to his family in Pakistan.

14 However, I considered that Mr Raza's statement suggested that he had given the Claimant more than 6 days' work totalling £600. I considered that it was likely that some other payments to the Claimant's bank account represented payment for work done, rather than loans. Given the lack of the Claimant's record of work done and payments, it was difficult for me to assess the likely amount Mr Raza had paid the Claimant for working.

15 On balance, I considered that Mr Raza suggested that he had been employing the Claimant for some time, paying him £100 - £200 per week. Doing the best that I could, I assessed that the Claimant had worked for about 18 weeks with Mr Raza at £200 a week and, therefore, that Mr Raza had paid him a total of £3,600 for the work that he had done.

16 I considered that the Claimant had either been looking for work, or engaged in work, through out the period of time from his dismissal until the remedy hearing. He worked as building labourer and for Uber EATs. He continues to work for Mr Raza as a building labourer.

17 The Claimant also told me that he applied for a minicab licence in about May. He

said that there was a waiting period of 28 days following the application, but he has now had a response has an aptitude test booked for 10 August 2018. The Claimant told me that he will have to wait for another few weeks after completing the test, after which he should be able to obtain a minicab licence. He intends to obtain finance for a car and to work through Uber. I considered that it is reasonable for the Claimant seek work through Uber as a minicab driver, as he has had no success with security work and the building he has been undertaking is varies in availability.

18 I considered it is likely that the Claimant will make a success of his Uber work. He has worked for Uber in another capacity and he clearly worked hard at Tesco. I considered that, if he works diligently, as he did at Tesco, working for extra and antisocial hours in the way that he did at Tesco, he will earn well through Uber minicab work. I think that it is likely that, within about two months of starting to work for Uber, the Claimant will be able to earn what he did at Tesco. That will be in about three months from today.

19 In summary, I considered that the Claimant had made reasonable efforts to find alternative work since his dismissal. I took into account that, realistically, he will have been substantially disadvantaged on the labour market by the fact that he was dismissed for an offence of dishonesty. I considered that it was ultimately sensible for him to look for work as an Uber minicab driver. His dismissal is likely to be less relevant to that occupation than to other work he has previously been pursuing.

20 Accordingly, I awarded him his loss to date, but reduced as follows:

Loss to date - £21,377.28

Less £422.73 from Uber Eats

Less £3,600 from Mr Raza

Less £1,000 from Abdul and £220 from Arshad

The total of those deductions is £5,242.73

The total loss from the date of dismissal until the remedy hearing is £21,377.28 -£5,242.73 = £16,134.55.

21 I award future loss for 3 months.  $3 \times £1,987.85 = £5,963.55$ . However, I am going to assume that he will earn £600 a month in building labouring work for those 3 months, so I will take away £1,800 from that sum, giving a total for future loss of  $£5,963.55 - £1,800 = £4,163.55$ .

22 The total losses I award are: £16,134.55 past loss; £4,163.55 future loss. I also award the Claimant £500 loss of statutory rights

23 The total compensatory award would be £20,798.10. From that needs to be taken 60% for *Polkey*.  $40\% \text{ of } £20,798.10 = £8,319.24$ . From that needs to be taken a further 10% contributory fault.  $90\% \text{ of } £8,319.24 = £7,487.32$ .

24 I award £7,487.32 by way of compensatory award. I award a basic award of £1320.30, as agreed between the parties. The total the Respondent shall pay to the Claimant for unfair dismissal is £8,807.62

Employment Judge Brown

14 September 2018