



EMPLOYMENT TRIBUNALS

Claimant: Mr T Thevalingam
Respondent: Heathrow Bakery Limited
Heard at: Reading **On: 11 October 2018**
Before: Employment Judge Gumbiti-Zimuto

Appearances
For the Claimant: Mr M Falade (Consultant)
For the Respondent: Not attending and not represented

JUDGMENT

1. The claimant was unfairly dismissed.
2. The respondent is ordered to pay to the claimant the sum of £5711.03 in compensation for unfair dismissal.

REASONS

1. In a claim form presented on 11 January 2018 the claimant made a complaint of unfair dismissal. The respondent defended the claim. The respondent failed to attend at the hearing or be represented.
2. The claimant asked that I continue with the hearing. The claimant relied on the fact that the respondent had been served a copy of the trial bundle by signed for post on 5 October 2018 and there has been no explanation for the respondent's failure to attend the hearing.
3. The employment tribunals rules of procedure provide that: "If a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence."

4. I considered the contents of the claim form and the response and claimants witness statement. I have regard to the provisions contained in Part X of the Employment Rights Act 1996.
5. In the absence of any evidence from the respondent and having regard to the claimant's evidence I am not satisfied that the claimant was dismissed for potentially fair reason or that the dismissal of the claimant was fair regard to the provisions of section 98 of the Employment Rights Act 1996. The claimant was unfairly dismissed.
6. I went on to consider the question of remedy.
7. The claimant has been able to find alternative employment working as self-employed mini cab driver. He has produce accounts which show his earnings as declared in his tax returns. The claimant commenced working as a mini cab driver a few months after his employment with the respondent came to an end.
8. The claimant suffers from a condition which makes it difficult for him to stand for long periods. He is due to have surgery to address the issue. The claimant was limited in the number of hours he was able to work in the period leading up to his dismissal.
9. The claimant's normal working hours, as stated in his contract of employment, is 45 hours per week. The claimant's hourly rate of pay is £7.70. Although the claimant's representative put forward figure of £341.67 as the claimant's basic weekly wage. It appears to me that this is not the correct figure. The claimant's basic weekly wage appears to me to be £346.50. I come to this figure by considering the claimant's normal working hours (as stated in the contract) and multiplying by the hourly rate of pay. The award in this judgment is therefore different to the amount announced at the hearing for this reason.
10. I have had regard to section 119 of the Employment Rights Act 1996. The claimant was aged 41 years at the date of dismissal. The claimant was employed for ten complete years. The basic award in the claimant's case is therefore £3465.
11. The claimant's pay slips show that in the last twelve weeks of the claimant's employment he worked restricted number of hours. This was because of his ill health. The claimant's average weekly net pay in this period was £134.31. Had the claimant's employment continued he would have continued to receive earnings of about this amount for the next three months.
12. I am of the view that the claimant should receive an award of compensation for a period of three months from the date of his dismissal. In coming to that decision, I take into account that it was after about three months that the claimant was working as a mini cab driver and receiving

an income which was more or less equivalent to his earnings with the respondent.

13. I therefore make an award of compensation of £1746.03¹ in respect of loss of earnings.

14. The claimant is entitled to recover in respect of the loss of his statutory rights and I make an award of £500 in respect of that loss.

15. The respondent is ordered to pay to the claimant the sum of £5711.03 comprising of:

- a. Basic award - £3465
- b. Compensatory award:
 - i. Loss of earning - £1746.03
 - ii. Loss of statutory rights - £500.

Employment Judge Gumbiti-Zimuto

Date: 11 October 2018

2 November 2018

Sent to the parties on:

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For the Tribunals Office

¹ £134.31 x 52 ÷ 12 x 3 = £1746.03