

Reserved judgment



EMPLOYMENT TRIBUNALS

Between:

Claimant: Mr B Khan

Respondent: Roadrunners (GB) Limited

Heard at London South Employment Tribunal on 5 March 2019

Before Employment Judge Baron

Lay Members: Ms N A Christofi & Ms C L Oldfield

Representation:

Claimant: Rudi Capek - Consultant

Respondent: The Respondent was not represented

JUDGMENT

It is the judgment of the Tribunal as follows:

- 1 That the Respondent do pay to the Claimant the sum of £888 in respect of the Claimant's complaint under section 23 Employment Rights Act 1996;
- 2 That the Respondent do pay to the Claimant the sum of £11,481.56 in respect of the Claimant's complaint under section 111 of the Employment Rights Act 1996 and the further sum of £1,435.20 by way of uplift in accordance with section 207A of the Trade Union & Labour Relations (Consolidation) Act 1992;
- 3 That the Respondent do pay to the Claimant the sum of £5,000 as compensation for the Respondent's breach of the Equality Act 2010 together with interest thereon in the sum of £686.03;
- 4 That the Respondent do pay to the Claimant the sum of £768 in respect of the Claimant's complaint under section 93 of the Employment Rights Act 1996;
- 5 That the Respondent do pay to the Claimant the further sum of £1,536 in accordance with section 38 of the Employment Act 2002.

REASONS

- 1 This was a hearing to consider remedies for the Claimant following findings made by the Tribunal at a hearing held on 11 September 2018.
- 2 The first element is in respect of an underpayment of wages or breach of contract. We found that the Respondent did not provide the Claimant with the number of shifts to which he was entitled. That shortfall was of 111 hours. The rate of pay was £8 per hour, and we order the Respondent to pay the sum of £888 to the Claimant. That sum will be subject to the making of statutory deductions by the Respondent.
- 3 The next head is that of unfair dismissal. The basic award is £5,184. We award net loss of earnings to 11 December 2017 (on which date the Claimant left for Pakistan) amounting to £5,797.56 together with the sum of £500 to represent the loss of the right not to be unfairly dismissed. That makes a total of £11,481.56. The Employment Protection (Recoupment of Benefits) Regulations 1996 do not apply to this award as the Claimant did not claim any relevant benefits.
- 4 Mr Capek sought an uplift pursuant to section 207A of the Trade Union & Labour Relations (Consolidation) Act 1992 on the basis that the Respondent had failed to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures. It was the evidence of Mr Foster, which we accepted, that there had been some complaints from drivers about the Claimant. That was apparently a disciplinary matter, and the ACAS Code therefore became relevant. It is not necessary to repeat our findings as to what happened, but there was no investigation, followed if appropriate by a formal meeting. For those reasons we consider that it is appropriate to apply an uplift of 12.5% to the unfair dismissal compensation. That is the sum of £1,435.20.
- 5 We found that the Claimant had been discriminated against because of his age. Under this heading we make an award for injury to feelings. There was very little evidence from the Claimant. He said that he had become depressed but had not had to seek medical treatment. There is no one figure which is the correct figure in any particular circumstances. What the Tribunal must seek to do is put into money terms the hurt felt by a claimant as a result of the discrimination in question.
- 6 We have had regard to the *Vento* bands as in force on the date of the presentation of the claim. It is our view that this matter falls within the lower band as being a one-off occurrence, and not of a very serious nature. However, the Claimant did lose his employment with inevitably some adverse consequences. In our judgement an appropriate figure is £5,000 to which interest at 8% is to be added. We calculate that to be £686.03.
- 7 We also found that The Respondent had failed in its duty under section 92 of the Employment Rights Act 1996 to provide written reasons for the dismissal following a request in that respect. An award of two weeks' pay is therefore due in the sum of £768.
- 8 Finally the Claimant was not provided with the statement(s) of terms of his employment required by sections 1 and 4 of the 1996 Act. We award four

weeks' pay under section 38 of the Employment Act 2002 amounting to £1,536.

- 9 Mr Capek pointed out to us that we had failed to make a finding at the original hearing in respect of the Claimant's claim for notice pay. That is correct, for which we apologise. We do not propose to go through the procedural steps of reconsidering the judgment as the damages payable in that respect are covered by the period in respect of which we have made a compensatory award for unfair dismissal.

**Employment Judge Baron
Dated 07 March 2019**