



EMPLOYMENT TRIBUNALS

Claimant: Mr T Yasin

Respondent: Cap HPI Limited

HELD AT: Leeds

ON: 25 February 2019

BEFORE: Employment Judge D N Jones

REPRESENTATION:

Claimant: Mr I Rehman, union representative

Respondents: Not in attendance, written submission contained in the response

JUDGMENT

The respondent shall pay to the claimant compensation of £618, being two weeks' pay in respect of its breach of section 10 of the Employment Relations Act 1999.

REASONS

1. By section 11(3) of the Employment Relations Act 1999, when a tribunal finds a complaint that the employer has breached the right to be accompanied contained within section 10 of the Act, it shall order the employer to pay compensation to the worker of an amount not exceeding two weeks' pay.
2. In *Toal v G B Oils Ltd [2013] IRLR 696* the Employment Appeal Tribunal held that the compensation was for a loss or detriment suffered; if there was no detriment or it was of little consequence a nominal sum must be ordered.
3. I am satisfied that Mr Yeltsin suffered a significant detriment. His employment was terminated in a probation review meeting at which he had the right to be accompanied. There were a number of points he could have advanced to persuade his employers to allow his employment to continue, with the assistance of such accompaniment. This included giving further explanation as to his absences through ill-health. At this hearing he has produced a letter from his GP. His union representative informed me, and I accept, that he would have been able to secure a further reference to assist Mr Yeltsin to

comply with the screening policy. These points address some of the issues raised by the respondent, in its response.

4. I do not accept the written submission of the respondent that this is a case where there was no detriment or loss. That is not measured solely by reference to the question of whether representation would have made a difference. For the reasons set out in the previous paragraph, I consider there was at the very least an opportunity lost, for the claimant to persuade the respondent to retain him, because of the disadvantage the violation of his right gave rise to. In addition I have regard to the fact that to lose his employment in this manner, after having requested representation, was a considerable blow. The situation is entirely different to the case of **Toal**, in which the employees had representation but not that of their first choice.
5. I reject the submission of the respondent that a nominal sum of £100 should be awarded for the above reasons.
6. The claimant's weekly earnings were £309. I am satisfied he is entitled to the maximum award of two weeks.
7. Mr Rehman invited me to order a further sum of 25% to reflect an unreasonable failure to comply with the ACAS Code of Practice on Discipline and Grievance Procedures. I do not have jurisdiction to make such an award because this is a complaint which is not included in schedule A2 of the Trade Union and Labour Relations (Consolidation) Act 1992. Nor do I have jurisdiction to make any order requiring the respondent to provide a reference, as also requested.

Employment Judge D N Jones
Date 25 February 2019