



EMPLOYMENT TRIBUNALS

Claimant: Mr C Davies

Respondent: DL Insurance Services Limited

Heard at: Liverpool

On: 18 December 2018

Before: Employment Judge Robinson
Mr R Cunningham
Dr L Roberts

REPRESENTATION:

Claimant: In person

Respondent: Miss Wedderspoon of Counsel

JUDGMENT having been sent to the parties previously and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. At this remedy hearing Mr Davies was looking at either re-instatement or re-engagement. In every successful claim of unfair dismissal, the Tribunal must first consider those two remedies and only if they are not appropriate go on to consider compensation.
2. We decided that those two remedies were not appropriate. There is now, not four, but only one Area Manager in place, Mr Lake. We have heard a lot about Mr Lake over both the liability and remedy hearing. The other two Area Managers that were left, after the redundancy process which saw Mr Davies lose his job, took voluntary redundancy in the last round of redundancies and two years have now past since the claimant worked for the respondent. The effective date of termination was in December 2016.
3. Things have changed at the respondent since Mr Davies lost his job. Furthermore, although Mr Davies believes he could work with Mr Chiapino, we feel that these proceedings have highlighted the tension in the relationship between the two men. In those circumstances, re-instatement would not work. If we put Mr Davies

back in the office with Mr Chiapino we are pessimistic as to whether that arrangement would be successful, not only for Mr Davies but also for Mr Chiapino as well.

4. With regard to re-engagement, we do not feel that we have been given enough information in order to identify a particular job in the respondent's organisation that the claimant could do. The jobs that the claimant has applied for were not suitable for him. We accepted the rationale given to us by the respondents as to why the claimant was not taken on for any of those roles. We needed to identify a role which gave the claimant, so far as reasonably practicable, terms as favourable as the ones which would have been given to him if he had been re-instated in his old role. We were not able to identify those terms or that role for Mr Davies.

5. That is not to say that, at some time in the future, a role with the respondents would not be found for the claimant. Mr Davies does still have a good relationship with the HR Department at DL Insurance Services and Mr Davies still receives information about roles that he may be interested in. Our decision is not to order the claimant to be reinstated or reengaged.

6. Therefore, we turned our attention to an order for compensation. We heard little evidence from the respondent witness challenging some of the monetary claims. In coming to our conclusion, we considered both Mr Davies' schedule of loss and the counter schedule of loss.

7. Doing the best we can, and bearing in mind the respondent accepted the claimant has mitigated his loss, we came to the following conclusions.

8. We do not agree with the respondents that a loss of statutory rights should be so low as £300. We think it should be one week's wage. The net weekly wage for Mr Davies was £757.35. We award the claimant £757 as the loss of statutory rights figure. We order the respondent to pay to the claimant compensation for the period from 31 December 2016 to 31 December 2018 calculated at £78,764.40. A total initially Compensatory Award of £79,521.40. However, we have to reduce that by the earnings of the claimant as set out in his Schedule of Loss over the last two years. We have taken that as £25,089, so that reduces the Compensatory Award to £54,432.40. We have added in loss of pension, incentive bonus and life insurance contributions. A total of £11,439.48, giving a figure of £65,871.88. We have added on top of that six months future loss based on 26 week's pay at £757.35 net per week. Hopefully, his business will take off in that time. We do not feel we can go past six months as either the claimant will start making money through his own enterprise or he will obtain another job similar to that which he had with the respondent. The claimant, we find, has a lot of energy and enthusiasm and many skills to offer in the job market. That figure is £19,691.10, making a total award of £85,562.98.

9. However, based on the figures provided by Mr Davies from his own business as an Investigator and receipts to date, we estimated his business may earn in the next six months £12,544.50 and that must be deducted from the figure in paragraph 8 above reducing the compensatory award to £73,018.48.

10. At the liability hearing we noted that during the redundancy process there were two candidates for one job, namely Mr Lake and the claimant. We cannot know who would have been the successful candidate if a proper process had been gone through.

Consequently, we considered the percentage chance of Mr Davies retaining his job or, put another way, Mr Lake retaining his job and Mr Davies being made redundant. Once Ms Hutchin and Mr Leach were taken out of the pool at risk, Mr Chiapino had to choose between Mr Davies and Mr Lake. We cannot say who would have been successful and it is not our role to make that choice. It would be wrong of us to involve ourselves in that process.

11. There must have been a 50% chance of Mr Davies being made redundant at that point and the compensation must reflect that percentage chance and therefore we have to reduce the £73,018.48 by half, giving a figure of £36,509.24. We then have to deduct from that sum £25,293. That is the balance of the monies over and above his redundancy pay - the claimant's enhanced redundancy pay. The final compensation figure that the respondent must pay, forthwith, to the claimant is £11,216.24.

Employment Judge Robinson

6.2.19

REASONS SENT TO THE PARTIES ON

12 February 2019

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FOR THE TRIBUNAL OFFICE