



THE EMPLOYMENT TRIBUNALS

Claimant
Mr Alan Young

Respondent
L. Kelaty Ltd

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Held at Middlesbrough
EMPLOYMENT JUDGE GARNON (sitting alone)

ON 3rd April 2018

REMEDY JUDGMENT FOLLOWING A JUDGMENT ON LIABILITY ONLY **(made under Rule 21 of the Employment Tribunal Rules of Procedure 2013)**

The Judgment of the Tribunal is:

1. The claimant is entitled to a redundancy payment payable by the respondent in the sum of £ £ 3351.70
2. On the claim of unlawful deduction of wages, the respondent is ordered to repay the sum of £1890.72

REASONS

1THE ISSUES

1.1.The claimant presented a claim on 1 February 2018. A judgment by Employment Judge Buchanan on 7 March held the claimant was entitled to a redundancy payment and unlawful deductions of wages had been made The claim form did not include a claim of breach of contract or compensation for untaken annual leave

1.2. The task for me today is to quantify the claimant's remedy under each claim. A substantial part of his pay consisted of commission and without input from the respondent the best he can do is estimate the amount he would have earned in January 2018. Where there is doubt , I will order payment based on the least sum I can be satisfied on balance of probability would have been payable. Also, for the purpose of calculating a "week's pay" employer pension contributions, if quantifiable, should be included (see University of Sunderland-v-Drossou)

2 THE RELEVANT LAW

2.1 The law relating to redundancy payments can be found in Part XI of the Employment Rights Act 1996 (the Act) and that relating to unlawful deduction of wages in Part 2 . In the former, a claimant is entitled to a payment of 1.5 weeks pay for every complete year of continuous employment, ending with the "relevant date"

during the whole of which he was over 41. For calculation purposes the relevant date is extended by the minimum amount of statutory notice under s 86. Notice to terminate is only effective when received see Mc Master-v- Manchester Airport.

2.2. Section 13 , as far as relevant, says

(1) An employer shall not make a deduction from wages of a worker employed by him unless—

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

2.3. Section 27 includes

(1) In this Part "wages", in relation to a worker, means any sums payable to the worker in connection with his employment, including—

(a) any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise,

2.4. Section 221 includes

(1) This section and sections 222 and 223 apply where there are normal working hours for the employee when employed under the contract of employment in force on the calculation date.

(2) Subject to section 222, if the employee's remuneration for employment in normal working hours (whether by the hour or week or other period) does not vary with the amount of work done in the period, the amount of a week's pay is the amount which is payable by the employer under the contract of employment in force on the calculation date if the employee works throughout his normal working hours in a week.

(3) Subject to section 222, if the employee's remuneration for employment in normal working hours (whether by the hour or week or other period) does vary with the amount of work done in the period, the amount of a week's pay is the amount of remuneration for the number of normal working hours in a week calculated at the average hourly rate of remuneration payable by the employer to the employee in respect of the period of twelve weeks ending—

(a) where the calculation date is the last day of a week, with that week, and

(b) otherwise, with the last complete week before the calculation date.

(4) In this section references to remuneration varying with the amount of work done includes remuneration which may include any commission or similar payment which varies in amount.

3 FINDINGS OF FACT AND CONCLUSIONS

3.1. The claimant was continuously employed from 1 February 2011 until he was dismissed as redundant. At a consultation meeting on 16th November 2017, he was not told his employment would definitely end or when. A letter dated 17th November saying it would end on 10 January 2018 was not received by him until 5th January so the relevant end date for calculating his years of continuous employment becomes 16th February 2018. He was born on 20 March 1953 .Therefore he has seven years of continuous employment all over the age of 41 and is entitled to 10.5 weeks pay

3.2. His gross pay was variable depending on commission His basic pay for normal working hours of 37.5 per week was £16000 pa gross which is £307.70 per week..He produced a small bundle of documents which supplemented by his evidence enables me to calculate the least weekly average figure for commission over the last twelve weeks of employment was £9.43 . A payslip showing employer pension contributions for the first 9 tax months of the year produces an average employer contribution of £2.08 per week . His weeks pay is therefore $£307.70 + £9.43 + £2.08 = £319.21$. His redundancy payment is 10.5 times that = £ 3351.70

3.3. The last payment of wages made to him was on 7th December 2017 but it did not include commission for October or November shown on the payslip as £89.06 . He kept a record of his commission for December which was £45 and for January would not have been less than £10 . His basic pay for December was £1333.33 and for the first 10 days of January 2018 £413.33. The total of these sums is £1890.72.

T M Garnon EMPLOYMENT JUDGE

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON 3rd APRIL 2018