



EMPLOYMENT TRIBUNALS

Claimants: (1) Mr R Jeduss
(2) Ms A Kudrjavceva

Respondent: Mr T Hussain (trading as “Mighty Cod Pontypridd”)

Heard at: Cardiff **On:** 19th February 2018

Before: Employment Judge M Whitcombe

Judgment dated 19th February 2018 having been sent to the parties on 21st March 2018, written reasons having subsequently been requested by the Respondent in accordance with rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the Employment Judge having raised with the parties on his own initiative the possibility of a reconsideration of one aspect of that judgment, and no comments or submissions having been received from any party, the Tribunal has reconsidered its decision as follows.

RECONSIDERATION

The awards of compensation for the Respondent’s failures to provide a written statement of terms and conditions of employment are varied, so as to substitute an award to each Claimant of £1,916.00.

REASONS

1. Oral reasons for our judgment on liability and remedy were given at the hearing. Written reasons were subsequently provided in response to a request by the Respondent Mr Hussain, who did not attend the hearing.
2. At paragraphs 77-79 of those reasons we said this (emphasis added):

Failure to provide a statement of particulars of employment

77. This claim is established on the evidence, as is the fact that the First Claimant chased the issue on behalf of both Claimants and was promised that statements would be issued. We find a blameworthy failure to issue the statement required by section 1 of the Employment Rights Act 1996, aggravated by the Respondent's failure to respond to the First Claimant's specific request. In our judgment the appropriate award under section 38(3) of the Employment Act 2002 is therefore the "higher amount" of 4 weeks' pay to each Claimant, rather than the alternative of 2 weeks' pay (the "minimum amount"). That amounts to £1,956.00 for each Claimant, based on the capped weekly rate of £489 per week.
 78. If anyone reading these reasons wonders how employees who claim at minimum wage rates can also be subject to the capped maximum rate for a week's pay, the answer is the very long hours worked by the Claimants each week. We accept the calculations in the Claimants' Schedules of Loss, supported by their witness evidence. Each Claimant's hours were such that the "week's pay" calculated in accordance with Chapter 2 of Part 14 of the Employment Rights Act 1996 reached the statutory cap.
 79. **Since giving oral reasons, and in the course of preparing these written reasons, the Employment Judge has noticed that the capped rate used in the Schedules of Loss and also in the Tribunal's own calculations, may well have been wrong. Compensation was claimed and awarded at a capped weekly rate of £489, whereas it now appears to the Judge that it should have been £479 having regard to the effective date of termination. Separate correspondence will be sent to the parties regarding a possible reconsideration of this point, and the substitution of awards of £1,916 for each Claimant.**
3. A letter was therefore sent to the parties on 14th April 2018 asking for their comments on the proposed reconsideration identified in paragraph 79 of

- the reasons within 14 days. No comments were received from any party within that period.
4. In those circumstances, the Employment Judge has decided that the reconsideration can properly proceed without a hearing, in accordance with rules 72(2) and 73 of the Employment Tribunals Rules of Procedure 2013.
 5. The Tribunal's judgment in relation to the awards for failure to provide a written statement of particulars of employment is varied so as to award £1,916.00 to each Claimant rather than the original figure of £1,956.00 to each Claimant. The reasons for that variation have already been set out in the written reasons sent to the parties and quoted above.
 6. No other aspect of the Tribunal's judgment is affected, and all other awards stand.

Employment Judge M Whitcombe

REASONS SENT TO THE PARTIES ON

.....30 April 2018.....

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS