



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: S/4107570/2017

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**Held in Glasgow on 5 December 2018 (Final Hearing);
12 and 17 December 2018 (Further Written Representations); and
8 January 2019 (Deliberation)**

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Employment Judge: Ian McPherson

Mr Michael Ventesei

**Claimant
Represented by:
Mr Mark Allison
Solicitor**

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**Platinum 24 Limited
(T/a The Green Group)**

**Respondents
Not Present and Not
Represented**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that: -

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(1) Further to the judgment dated 20 July 2018, entered in the register and copied to parties on 27 July 2018, finding that the claimant's complaints of (a) unfair dismissal by the respondents on 20 September 2017, and (b) unlawful harassment of the claimant by the respondents on the grounds of race, both succeeded, but the remedy to which the claimant was entitled for those successful parts of the claim would be determined by an Employment Judge at a Remedy Hearing, the Tribunal, having heard evidence led from the claimant at this Final Hearing, and considered closing submissions made by

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his solicitor, together with the revised Schedule of Loss intimated to the Tribunal, now makes the following remedy awards:

- 5 (a) In respect of the claimant's unfair dismissal by the respondents, contrary to **Sections 94 and 98 of the Employment Rights Act 1996**, and the respondents having unreasonably failed to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures, by their repeated failures to address the claimant's grievances, raised during the course of his employment with the respondents, and thereafter by his solicitor on his behalf, the Tribunal finds that it is just and equitable in all the 10 circumstances that the claimant's compensatory award for unfair dismissal be increased by **25%**, in accordance with the Tribunal's powers under **Section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992**.
- 15 (b) Accordingly, and having regard to the statutory limits applicable to the awards of compensation for unfair dismissal, in terms of **Sections 119 and 227, and Sections 123 and 124(1ZA), of the Employment Rights Act 1996**, the Tribunal orders the respondents to pay to the claimant a 20 capped monetary award in the total sum of **THIRTY-TWO THOUSAND, NINE HUNDRED AND THIRTY FOUR POUNDS (£32,934.00)** by way of compensation for unfair dismissal, as per the calculation schedule shown below at paragraph 2 of the undernoted Reasons, comprising basic award of **£2,934**, and capped compensatory award of **£30,000**.
- 25 (c) The claimant having been in receipt of State benefits, through Jobseekers Allowance, after his dismissal by the respondents, the **Employment Protection (Recoupment of Benefits) Regulations 1996** apply, and their effect is explained in the accompanying Recoupment Schedule.
- 30 (d) The prescribed element is **£18,119.65** and relates to the period from 20 September 2017 to 5 December 2018, and the monetary award exceeds the prescribed element by **£14,814.35**.

5 (e) In respect of the claimant's unlawful harassment by the respondents, on the grounds of race, contrary to **Section 26 of the Equality Act 2010**, the Tribunal orders that the respondents shall, in terms of **Sections 119 and 124 of the Equality Act 2010**, pay to the claimant compensation for injury to his feelings in the sum of **FIVE THOUSAND POUNDS (£5,000.00)**.

10 (f) In terms of the **Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996**, it is further ordered that the respondents shall pay to the claimant the additional sum of **FIVE HUNDRED AND TWENTY ONE POUNDS, SIXTY FOUR PENCE (£521.64)** representing interest upon the injury to feelings award of **£5,000** calculated at the appropriate interest rate of **8% p.a.** for the period between 20 September 2017, the effective date of termination of the claimant's employment with the respondents, and 8 January 2019, being
15 the date of this Judgment.

20 (2) In respect of the claimant's further complaints of (c) detriment for having made a protected disclosure, (d) failure to pay notice pay, and (e) failure to pay holiday pay, which could not be determined on the available material, when the Employment Judge issued the judgment dated 20 July 2018, entered in the register and copied to parties on 27 July 2018, and so those parts of the claim against the respondents were to proceed to a Final Hearing before an Employment Judge sitting alone to determine the liability of the respondents (if any), including remedy if appropriate, on the same date as the Remedy Hearing assigned to consider the two successful parts of his
25 claim, the Tribunal, having heard evidence led from the claimant at this Final Hearing, and considered closing submissions made by his solicitor, together with the revised Schedule of Loss intimated to the Tribunal, now finds the respondents liable in respect of the complaints of detriment for having made a protected disclosure, and failure to pay holiday pay.

30 (3) In particular, the Tribunal is satisfied that the claimant made a qualifying protected disclosure to the respondents, in terms of **Section 43B of the Employment Rights Act 1996**, and that he suffered detriment by the respondents in consequence of having made a protected disclosure, and that,

at the termination of his employment, he had 5 days accrued, but untaken annual leave entitlement. Accordingly, the Tribunal now makes the following further remedy awards:

5 (a) In respect of the claimant having suffered detriment for having made a protected disclosure, contrary to **Section 47B of the Employment Rights Act 1996**, the Tribunal orders the respondents to pay compensation to the claimant for injury to his feelings in the sum of **SIX THOUSAND POUNDS (£6,000.00)** for that detriment, as per the
10 calculation schedule shown below at paragraph 2 of the undernoted Reasons.

(b) Contrary to the claimant's revised Schedule of Loss, seeking interest at **8% p.a.** on that sum of **£6,000**, the Tribunal makes no such award, it not being within the powers of the Tribunal to do so, in terms of the
15 **Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996.**

(c) In respect of the respondents' failure to pay accrued holiday pay to the claimant, and that failure constituting an unlawful deduction from the claimant's wages, contrary to **Sections 13 and 23 of the Employment Rights Act 1996**, the Tribunal orders the respondents to pay to the claimant compensation in the sum of **FOUR HUNDRED AND FIFTY FIVE POUNDS, THIRTY ONE PENCE (£455.31)**, as per
20 the calculation schedule shown below at paragraph 2 of the undernoted Reasons.

(d) The Tribunal makes no additional award, by way of statutory uplift, under Section **207A of the Trade Union and Labour Relations (Consolidation) Act 1992**, on that sum of £455.31, in respect of
30 unpaid, accrued holiday pay, as the claimant's revised Schedule of Loss seeks no such award from the Tribunal.

- 5 (4) In respect of the claimant's complaint of failure to pay notice pay, as per his ET1 claim form, the Tribunal dismisses that part of the claim, in terms of **Rule 52 of the Employment Tribunals Rules of Procedure 2013**, following upon its withdrawal by the claimant, on the basis that note (6) to his revised Schedule of Loss states that the claimant does not insist upon his claim for notice pay on the basis that his claim for unfair dismissal succeeded, and therefore the basic award will compensate him in respect of what would have been his notice pay.
- 10 (5) The grand total compensation payable by the respondents to the claimant is therefore **£44, 913.95**.

REASONS

- 15 1. Written Reasons for this reserved Judgment of the Tribunal are reserved, and they will be issued in writing, at a later date, in terms of **Rule 62 of the Employment Tribunals Rules of Procedure 2013**.
- 20 2. Meantime, for the assistance of both parties, the amount of compensation payable to the claimant, and how it has been calculated by the Employment Judge, is set forth in the following Schedule. The calculations are based on the sums sought in the claimant's revised Schedule of Loss, intimated to the Tribunal on 12 December 2017, seeking a total estimated at £45,016.52, with supporting vouching documents on that date, and 17 December 2017, as
- 25 considered by the Judge, and revised, to take account of the relevant law, and revised financial calculations, as below:

Employment Details

Date of birth:	18/05/1962
30 Age at date of dismissal:	55
Date commenced:	19/04/2013
Date of dismissal:	20/09/2017

Complete years of service: 4
 Gross weekly pay: £576.92 (£489 as adjusted by statutory cap)
 Net weekly pay: £455.31 [note – based upon monthly figure of £1973, agreed in ET3 previously lodged].

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1. **BASIC AWARD: UNFAIR DISMISSAL**

= (4 x 1.5) x £489 = **£2,934.00**

2. **COMPENSATORY AWARD**

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(a) **Financial Loss (to 5 December 2018)**

Earnings but for dismissal

15 = 63 weeks from EDT (20/9/17) x £455.31pw = £28,684.53

Less Total Income from other Employment during Period = **(£10,564.88)**

20 Total Past Wage Loss (“Prescribed Element”) **£18,119.65**

(b) **Future Wage Loss**

25 Note – the Claimant claimed future loss for a period of 6 months based upon the difference between his income with the Respondent as against his average income in the six complete months he has worked for his new employer, Apple.

26 weeks @ £455.31pw = £11,838.06

Less Projected Earnings **(£5,804.81)**

Total Future Wage Loss **£6,033.25**

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(c) **Loss of Statutory Rights** **£400.00**
 Total (a), (b) and (c) = **£24,552.90**

(d) **ACAS uplift on Compensatory Award**

Note – 25% awarded, given complete absence of any grievance procedure at all

25% x £24,552.90 = £6,138.22

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TOTAL= £30,596.01

COMPENSATORY AWARD (after statutory cap): restricted to £30,000.00

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3. INJURY TO FEELINGS

a) In respect of detriment suffered due to protected disclosures =
£6,000

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b) In respect harassment claim = £5,000

TOTAL INJURY TO FEELINGS = £11,000.00

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4. INTEREST

a) In respect of financial loss

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N/A – interest would only attract to this if the financial loss was attributable to (and awarded in respect of) the discrimination head of claim. Financial loss here attributable to unfair dismissal so no pre-judgment interest sought.

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b) In respect of injury to feelings (awarded for harassment claim only)

Date of discriminatory conduct – 20 September 2017

Date of judgment – 8 January 2019

Calculation – $[0.08 / 365] \times 476 \text{ days} \times £5,000 = \underline{\underline{£521.64}}$

5. UNLAWFUL DEDUCTION FROM WAGES (accrued but untaken holiday pay)

Holiday entitlement per year – 28 days

5 Holidays accrued to date of dismissal = 20

Holidays taken = 15

Outstanding holiday entitlement = 5 days x £91.06 = **£455.31**

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Employment Judge: Ian McPherson
Date of Judgment: 08 January 2019
15 **Entered in register: 09 January 2019**
and copied to parties

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