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## EMPLOYMENT TRIBUNALS

*Claimant*

*Respondent*

Mr J Zhang

AND

Wind Financial Information UK Limited

HELD AT:

London Central

ON:

12 June 2019

BEFORE:

Employment Judge Brown (Sitting alone)

*Representation:*

For Claimant: Ns E Sole, of Counsel

For Respondent: Mr J Jupp, of Counsel

## REMEDY JUDGMENT

The Judgment of the Tribunal is that the Respondent shall pay the Claimant £35,377 in compensation for unfair dismissal.

## REASONS

1. The parties agreed the basic figures on which compensation for unfair dismissal should be calculated. The parties agreed that the Claimant's net monthly loss was £5,615, which included salary, commission and pension.
2. The Claimant received a redundancy payment so no basic award was payable.
3. The Respondent paid the Claimant £13,821 net notice pay, which needed to be deducted from the Claimant's loss.
4. The Claimant claimed £750 for loss of statutory rights; the Respondent suggested a figure of about £400.
5. The Respondent contended that the Claimant had failed to mitigate his loss and that the Tribunal should conclude that, had the Claimant made reasonable efforts to find alternative work, he would have obtained work at the same salary within about 6 months.

6. I heard evidence from the Claimant. The Claimant submitted a mitigation bundle of some 250 pages.

#### Relevant Law

7. When calculating the compensatory award, the calculation should be based on the assumption that the employee has taken all reasonable steps to reduce his or her loss. If the employer establishes that the employee has failed to take such steps, then the compensatory award should be reduced so as to cover only those losses which would have been incurred even if the employee had taken appropriate steps.

8. Sir John Donaldson in *Archibald Feightage Limited v Wilson* [1974] IRLR 10, NIRC said that the dismissed employee's duty to mitigate his or her loss will be fulfilled if he or she can be said to have acted as a reasonable person would do if he or she had no hope of seeking compensation from his or her employer.

9. In *Savage v Saxena* 1998 ICR the EAT commented that a three-stage approach should be taken to determining whether an employee has failed to mitigate his or her loss. The Tribunal should identify what steps should have been taken by the Claimant to mitigate his or her loss. It should find the date upon which such steps would have produced an alternative income and, thereafter, the Tribunal should reduce the amount of compensation by the amount of income which would have been earned.

#### Findings of Fact

10. The Claimant was dismissed on 8 June 2018. He had been a senior employee of the Respondent, earning a gross annual salary, excluding pension, of £86,400. His background was in the financial information industry. He had been in charge of the Finance Channel of Yahoo! in China in Beijing in the early 2000s. After moving to London in 2003, he worked for large media organisations such as the BBC and the Financial Times. In 2015 he moved to Singapore to work for e.FinancialCareers.com as its APAC editor.

11. The Claimant speaks English and Mandarin fluently. He has not had actively to look for work for many years, because he has obtained more recent jobs through his contacts.

12. The Claimant considered that, because of his seniority, he would need to be prudent and purposeful in his approach to his job search. He searched the jobs section in LinkedIn and applied for suitable jobs, or contacted the person who had posted the job in LinkedIn directly. He did this in respect of about 30-40 jobs. The Claimant also applied through previous contacts for jobs, but received no positive response. He contacted head hunters, including head hunters in Japan.

13. The Claimant judged that his particular competitive advantage is that he speaks English and Chinese fluently and that he would therefore be best applying for jobs which required both these languages. He concentrated on Singapore, because, in the business world there, both Chinese and English are required. He did not consider that China would be a likely source of work because, from the Claimant's knowledge of Beijing and Shanghai, they were not as international in outlook as, for example Singapore and Hong Kong, and English is not as widely spoken as it is in those countries.

14. The Claimant applied for about 12 jobs in London. He concentrated his search on large well-known companies because that was where his previous employment had been concentrated.

15. He did not apply for every job which was advertised and for which he might have been suitable, page 409.

16. He did not focus his search on London partly because he felt gloomy about his future in London after Brexit.

17. One of the head hunters in Japan which he approached did propose the Claimant for a job in China. The Claimant has undertaken three rounds of interviews and is confident about being offered a job there with a likely start date in September 2019, earning about £60,000 gross salary.

18. In evidence to the Tribunal, the Claimant accepted that living expenses in China, Shanghai, relative to London, were cheaper and, in particular, that travel and housing would be cheaper in Shanghai. The Claimant also continues to look for other work.

19. The Claimant has earned about £400 in mitigation from freelance work since his dismissal.

### Discussion and Decision

20. The Respondent contended that the Claimant had failed to mitigate his loss because he unreasonably concentrated on large companies, did not apply for jobs in London and China where he was particularly experienced, and undertook a lifestyle choice to apply globally for work.

21. I concluded that the Claimant did take reasonable steps to mitigate his loss. He applied for many jobs. I considered that it was reasonable for the Claimant to focus his search on Singapore and for jobs which required fluency in English and Chinese. The Claimant was a senior employee and reasonably sought similar senior and skilled jobs using his unique selling point; that is, his fluency in English and Chinese. I decided that he was best placed to judge where to seek work and what work to seek and it would not have been reasonable for him simply to focus on London jobs or Chinese jobs. I accepted that the Claimant's approach was reasonably and appropriately nuanced when he was seeking to find a job at a similar level and with similar remuneration.

22. Likewise, I accepted the Claimant's evidence that it was reasonable for him to seek to mitigate his loss by looking for jobs in companies which complimented his existing experience, that is, in large global companies. It was reasonable for him not to wish devalue his previous experience by seeking jobs in unknown, small scale organisations.

23. I considered that it was reasonable for the Claimant to adopt a global, rather than local, job search. I do not find that he would have obtained other work earlier had he taken other steps to mitigate his loss.

24. The Claimant's efforts have, in fact, borne fruit. I accepted the Claimant's evidence that he was likely to be offered work with an organisation in China from September 2019, paying him about £60,000 per year.

25. I decided that, because of the difference in housing and travel costs, the Claimant will save money in China in terms of housing and travel costs. In the London area, those are very significant drains on the resources of employees. I considered, therefore, that the savings that the Claimant will secure in travel and housing in China will offset any continuing loss in salary between the new job and his previous job with the Respondent.

26. I therefore awarded the Claimant full loss of earnings from 8 June 2018 to 8 September 2019 - 15 months' loss. His loss will not continue thereafter.  $15 \times £5,615 = £84,225$ .

27. I awarded the Claimant £750 for loss of statutory rights. That award was, in fact, less than two weeks' earnings. Given that it takes employees two years to acquire statutory rights in a new job, the appropriate award for loss of statutory rights is around two weeks' gross pay.

28. The Claimant, however, earned £400 in mitigation so only £350 needed to be added the calculation of loss.

29. His total loss would be £84,575. From that needed to be deducted £13,821 notice pay.  $£84,575 - £13,821 = \text{net loss } £70,754$ .

30. Applying a 50% Polkey deduction gives a compensatory award of £35,377.

31. The Respondent shall pay the Claimant £35,377 in compensation for unfair dismissal.

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Employment Judge Brown  
Dated: .....1 July 2019.....  
Judgment and Reasons sent to the parties on:  
.....4 July 2019.....  
For the Tribunal Office