



EMPLOYMENT TRIBUNALS

Claimant: Mr M Kemp

Respondent: XS Fitness Limited

HELD AT: Leeds

ON: 25 June 2019

BEFORE: Employment Judge Wedderspoon

REPRESENTATION:

Claimant: In person

Respondent: Mr S Scanlon and Mr S Keech (Owner)

JUDGMENT

1. The Claimant's claims for holiday pay and notice pay are dismissed upon withdrawal.
2. The Claimant was unfairly dismissed.
3. The Employment Protection (Recoupment of Benefits) Regulations 1996 apply:
 - 3.1. The total monetary award payable to the claimant for his unfair dismissal claim is £5,129.
 - 3.2. The prescribed element is £3,745.
 - 3.3. The period of the prescribed element is from 07/01/2019 to 25/06/2019.
 - 3.4. The difference between (1) and (2) is £1,384.
 - 3.5. The total monetary award payable to the Claimant for his unfair dismissal claim is therefore £5,129 (i.e. £4654 plus £475). The Employment Protection (Recoupment of Benefits) Regulations 1996 apply. The effect of those Regulations is that the Secretary of State may recoup the benefits paid to the Claimant (or the prescribed element if less) by serving a notice on the Respondent within 21 days from when the Tribunal's decision is sent to the parties or as soon as practicable

thereafter. The effect of the notice is that the Respondent must pay the recoupable amount to the Secretary of State and the balance of the prescribed element to the Claimant. Accordingly, the Respondent is not obliged to pay the prescribed element of compensation to the Claimant until either the Secretary of State has served a recoupment notice on it, or the Secretary of State has notified it in writing that it does not intend to do so. The prescribed element is any amount ordered to be paid and calculated under section 123 Employment Rights Act 1996 in respect of compensation for loss of wages before the conclusion of the Tribunal proceedings, i.e. £3,745.

Employment Judge Wedderspoon

Date: 24th July 2019