EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4103235/2015

Hearing Held at Dundee on 20 February 2019

Employment Judge: I McFatridge
Members: WS Gray
J Priestley

Mr Donald Nutt — **Claimant**
Represented by:
Mr Hardman
Advocate

Scottish & Southern Energy plc — **Respondents**
Represented by:
Mr Reade
Counsel

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous Judgment of the Tribunal is that

(1) Having reconsidered the original Remedies Judgment in this case dated 9 January 2018 as reconsidered on 9 January and 18 January 2018 that judgement is altered as follows:

> The net amount payable to the claimant in terms of Section 115(2)(d) of the Employment Rights Act 1996 is increased from £140,696.14 to £218,696.14. This sum will require to be grossed up to account for tax

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(2) The respondents having failed to comply with the order for re-engagement made in this case the Tribunal makes an award of compensation in terms of Section 117(3)(a) of the Employment Rights Act 1996 in the sum of such gross amount as equates to a net payment to the Claimant in the sum of £226,354.14 under deduction from the said gross sum of the sum of £26,416.

(3) The Tribunal makes an award of 52 weeks' pay in terms of Section 117(3)(b) of the said Act in the net sum of £26,416.

(4) The total award made in terms of Section 117 of the Employment Rights Act 1996 is £226,352.14 together with such amount as is required to be added to this sum so as to ensure that the claimant receives this net sum after deduction of Tax.

(5) The parties shall revert to the Tribunal within 14 days with their calculation as to the grossed up sum which will require to be paid to the claimant in order that he obtains the net benefit of the sum of £226,352.14 after deduction of Tax.

REASONS

1. This case has a lengthy history and reference is made to the previous judgments which have been issued. The claimant's claim of unfair dismissal was successful and the Tribunal awarded re-engagement. The original remedy judgment was issued without reasons on 30 November 2017. It ordered the respondents to re-engage the claimant no later than 16 January 2018. The respondents requested a reconsideration of this so as to extend the date for compliance to 20 February 2018 and this application was granted following a reconsideration hearing held on 21 December 2017. The parties had identified that there was an issue regarding grossing up and that any award under Section 115 of the Employment Rights Act 1996 would require to be grossed up. The judgments were therefore issued in provisional terms giving the net amount due under Section 115. This amount was varied upwards following the extension of the date for re-engagement and, after allowing the parties a short time to consider the position regarding grossing up, the final

remedies judgment ordering re-engagement and ordering the respondents to pay a gross sum of £253,246.87 was issued on 22 January 2018. This grossed up sum was based on the net sum due to the claimant being £140,696.14. The respondents marked an appeal to the EAT against the award of re-engagement in the remedies judgment. The appeal did not pass the sift and the respondents requested a Rule 3:10 hearing. The Rule 3:10 hearing took place on 17 October 2018 and the EAT issued its judgment on 18 December 2018 directing that no further action be taken on the appeal. Thereafter the claimant sought (1) a reconsideration of the original remedies judgment so as to extend the date for compliance and therefore extend the period of time for which the claimant was entitled to payment for loss of benefits in terms of Section 115. (2) A reconsideration of the calculation of benefits due under Section 115. (3) a hearing to determine whether the Tribunal should make an award of compensation in terms of Section 117.

2. The hearing was fixed and in advance of this the respondents intimated to the claimant that they would not be seeking to argue that it was not practicable to comply with the order for re-engagement. The hearing took place on 20 February 2019. Both parties made full and comprehensive submissions. These submissions were submitted in writing and expanded upon orally. The outline of these submissions is summarised below however it is stressed that this is simply a summary and that the Tribunal did take into account the whole of the submissions whether or not they are mentioned below.

Claimant's Position

3. The claimant's representative set out the history of the matter. The respondents had been ordered to re-engage the claimant by no later than 20 February. The claimant's representatives made various efforts to engage with the respondents in this regard however the respondents did not engage with them. On 20 February which was the date for compliance the respondents lodged an appeal. It was observed that this was the final day for lodging an appeal.

4. The respondents had asked the Employment Appeal Tribunal, if the appeal were successful, to remit the case to the same Employment Tribunal for it to reconsider the question of contributory conduct and its relevance to the question of any impact on its order that the respondents re-engage the claimant. This would have involved setting aside the decision of the Tribunal. The claimant's position was that pending the outcome of this appeal the claimant was not in a position to pursue re-engagement or payment for his losses to date. The claimant's representative suggested that in effect the issue of payment and re-engagement were sisted pending the outcome of the appeal.

5. The claimant's representative set out the progress of the appeal and noted that the appeal was finally dismissed at the Rule 3:10 Hearing on 26 October 2018. The claimant's representative indicated that immediately thereafter the claimant's representative once again commenced making vigorous representations towards the respondents with a view to having them comply with the orders. On 15 November the claimant made their application to extend the date for compliance with the Tribunal's remedy order and the amount of compensation until a date some weeks after such application had been heard (page 335). In the course of objecting to that order the respondents' representative indicated that the respondents would not be re-engaging the claimant and sought assessment by the Tribunal of the appropriate level of compensation in accordance with the Act. On 21 November the Tribunal had fixed the present hearing which was to deal with the issue of (1) the claimant's application to reconsider the judgment and (2) whether or not to make any award in terms of Section 117 of the Act. The claimant's representative indicated that it was not until 23 January 2019 that the respondents' solicitor indicated for the first time that the respondents did not intend to argue impracticability at the hearing.

6. With regard to the two issues before the hearing the claimant's position was as follows.

1. Reconsideration

7. The claimant's representative accepted that the application had been made outwith the period of 14 days mentioned in Rule 71. It was their position however that this rule ought to be waived by the Tribunal using its discretion in terms of Rule 5. It is their position that the Tribunal should do so and indeed should grant the order in line with the requirements of the overriding objective. They referred to the cases of ***Adams v BT plc [2017] ICR 382*** and ***Bazeley v South Lanarkshire Council [2017] ICR 365***. They pointed out that an early application for reconsideration would have been inappropriate before the date for re-engagement had been reached. Immediately following this the claim was subject to appeal. It would not have been appropriate for the claimant to make application whilst the appeal was ongoing, an earlier application for reconsideration would have been of no practicable value. It was the claimant's position that once the appeal had been determined there was no undue delay in making the application.

8. With regard to the balance of prejudice this favoured the claimant as the respondent relies on the extra cost to them but this would be incurred through delay caused by the respondents presenting an unsuccessful appeal against the Tribunal's decision which did not pass the sift. On the other hand there is considerable prejudice to the claimant. The claimant referred to the case of ***McBride v Scottish Police Authority [2016] UKSC 27*** as authority for the proposition that in certain cases the Tribunal may well reconsider a judgment many years after the event. Circumstances in this case were to some extent similar to those in ***McBride*** albeit the appeal process had not gone on for so long in this case.

9. With regard to whether the reconsideration should be granted the claimant again referred to the case of ***McBride***. There were two strands to the application for reconsideration. The first of these was that the date by which compliance with the re-engagement order and thus the amount to be awarded

under Section 115(2) and (3) of the Act should be altered to date of today's hearing to take account of the year which had passed since the date by which re-engagement and payment under the remedies order was required. They pointed out that the year's delay was caused entirely by the respondents and that the claimant was a year further on and had lost a further year's income while he awaited the possibility of re-engagement with the respondents. The claimant considered that it was necessary in the interests of justice in terms of Rule 70 to make this alteration. Secondly their position was that the terms of the original order should be altered to include a monetary conclusion in respect of pension loss in place of the order in the original judgment (page 270) to reinstate the claimant to the respondents' pension scheme on the same basis as if the claimant had never been dismissed and had no gap in service. They pointed to the Tribunal's reasoning in that judgment where it was made abundantly clear that if it were not possible to reinstate the claimant to the pension scheme for any reason then the judgment would require to be reconsidered so as to substitute a monetary sum for this. The parties were in agreement that the sum in respect of pension loss would be £78,000 (net) in the event that the re-engagement date remained the same at 20 February 2018. If the date were extended to 20 February 2019 as contended for by the claimant then the sum in respect of pension loss would be £101,680. It was their position that calculating pension loss on the career long basis which they considered to be appropriate would amount to £481,560.00. The point was not pressed because of the issue arising out of the statutory cap contained in Section 117.

10. With regard to the statutory cap in Section 117 the claimant's position was that he was seeking payment of the full amount which the claimant had been awarded in terms of Section 115 including the additional year's loss of benefits and the monetisation of the pension award which he was seeking. It was also his position that the claimant was due a payment of an additional award of £26,416 as being 52 weeks at the then applicable statutory maximum for a week's pay. It was the claimant's position that the scheme of the Act was that the additional amount payment in terms of Section 117(3)(b) was by way of a

penalty. It was intended to be a deterrent against employers refusing to comply with orders of the Tribunal for re-engagement. The matter will be considered in detail below and I will not set out the claimant's position in further detail at this stage. When asked to comment at the end of the hearing the claimant's Counsel confirmed that he accepted that the literal interpretation of Section 124 did not assist him but that the Tribunal should adopt a purposive approach based on his analysis of the general scheme of the legislation.

Respondents' Submissions

11. The respondents' position was that the power of reconsideration under Rule 70 is a wide one but is not completely open. They referred to the case of ***Ministry of Justice v Burton and another [2016] ICR 1128*** which confirmed that a discretion to act in the interests of justice is not open ended and that it should be exercised in a principled way and that the earlier case law could not be ignored. They noted that in that case the Court of Appeal had approved the reasoning of Underhill J in the case of ***Newcastle upon Tyne City Council v Marsden [2010] ICR 743***. In this case the court recognised that the previous rules should not be seen as putting a gloss on the present statutory wording but that "it is important not to throw the baby out with the bath water." It was the respondents' position that applying the normal rules one should assume finality in the judgment made on 8 January 2018. They pointed out that nothing in the appeal process changed the position and although the claimant may have treated the claim as being in some way sisted whilst the appeal process was ongoing this was not in fact legally the case. The respondents' representative also pointed out that it would have been open to the claimant's representative to lodge their application for reconsideration within the 14 day period and to have this sisted until the outcome of the appeal. He made the point that the claimant had been legally represented at all times. He also made the point that the claimant is not in any way seeking to challenge the original judgment. The respondents' representative sought to distinguish the present case from the ***McBride*** case. In the ***McBride*** case there was a seven year period between the order for reinstatement and the eventual referral back to

the ET. In the intervening period the order for reinstatement had been overturned by the EAT and the Inner House eventually being restored by the Supreme Court. He pointed out that the ET reconsidered the period for re-engagement because this was part of the terms of the remit back from the Supreme Court. It is also clear from the Supreme Court judgment that the respondents in the ***McBride*** case had accepted that this could happen it was Mr Reade's position that although by the time of the Employment Tribunal hearing dealing with the remittal back the respondents had changed their position the ET proceeded on the basis that given the concessions at the Supreme Court the claimant had a legitimate expectation that she would either be reinstated or would be compensated for the period between 2009 and 2017. It was the respondents' position that this was not the case here.

12. The respondents' representative did concede that the present Tribunal should reconsider the judgment in one respect namely that of the pension benefit. He accepted that the Tribunal has specifically reserved this right in its original remedies judgment where the Tribunal had made it clear that if for any reason it was not practicable to reinstate the claimant to the respondents' pension scheme then the claimant was entitled to a monetisation of this benefit. It was his position that this figure should be the net figure of £78,000 on the basis that the date of re-engagement remained at 20 February 2018. He rejected the suggestion that pension loss should be calculated as at 20 February 2019.

13. With regard to the statutory cap the respondents' representative referred to the legislation. He accepted that the respondents had not re-engaged the claimant and that the respondents were not arguing that it was not practicable to do so. He accepted that in those circumstances the Tribunal must determine compensation in terms of Section 117. This provides that the Tribunal shall make an award of compensation for unfair dismissal (calculated in accordance with Sections 118-126) and (b) an additional award of compensation for an amount not less than 26 and not more than 52 weeks' pay. The respondents' position was that they were relaxed about whether the Tribunal awarded the maximum of 52 weeks' pay in this case because it was the respondents'

position that whatever additional award was made the maximum amount to which the claimant was entitled in terms of Section 124 was the amount which had been awarded in terms of Section 115(2)(d). What this meant was that in practice the additional award paid in terms of Section 117(3)(b) required to be deducted from the award made for payment of compensation for unfair dismissal in terms of Section 117(3)(a). This was because in this case the statutory cap was the amount which had been awarded in terms of Section 115.

14. The respondents referred to the scheme of the legislation which is discussed below. They also referred to the judgment of the Court of Appeal in ***Parry v National Westminster Bank [2005] ICR 396*** where the Court of Appeal had specifically endorsed his view of the legislation and approved earlier decisions of the Employment Appeal Tribunal which endorsed his reasoning.

Discussion and Decision

1. Reconsideration Application

15. Rule 71 states

> "Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary."

16. Rule 5 states

> "The Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in these Rules or in any decision, whether or not (in the case of an extension) it has expired."

17. In this case the Tribunal accepted that the application for reconsideration had been made outwith the period of 14 days. We did however feel that there was considerable force in the claimant's representations that the Tribunal should extend time in terms of Rule 5. We rejected the respondents' assertion that the claimant ought to have submitted an application to reconsider which would then be sisted until after the appeal process was concluded.

18. The first point is that during the initial period to 20 February the claimant would have every reason to expect that the respondents would comply with the Tribunal's judgment and re-engage him. It would have been premature and creative of needless expense for the claimant to lodge an application for reconsideration 14 days after the date of the judgment on the off-chance that the respondents might not comply with the Tribunal's orders.

19. Subsequent to 20 February the case was subject to appeal. Whilst we agree with the respondents' representative that this does not have the legal effect of sisting the process or preventing enforcement of the Tribunal's judgment the Tribunal considered that the position adopted by the claimant was an entirely reasonable one. The Tribunal considered that the claimant had submitted his application for reconsideration within a reasonable timeframe after the outcome of the appeal was known and after it became clear to him that the respondents were not going to comply with the Tribunal's judgment despite the fact that it had been upheld by the EAT. The Tribunal therefore believed that it should reconsider the judgment which it went on to do.

Monetisation of Pension Award

20. The Tribunal noted that this aspect of the application for reconsideration was not opposed by the respondents. In any event, the Tribunal had anticipated this or an analogous situation in its original judgment. We were required to make an order in terms of Section 115 in respect of any benefits which the complainant might reasonably expected to have had but for the dismissal for

the period between the date of termination of employment and the date of re-engagement, together with an order in respect of Section 115E dealing with any rights and privileges (including seniority ad pension rights) which must be restored to the employee. The Tribunal at that time had considered that the appropriate way to deal with pension loss was to make an award under Section 115(2)(e) but specifically retain to itself the power to make an award under Section 115(2)(d) in respect of pension rights should it prove impracticable to comply with the award under Section 115(2)(e). In those circumstances the Tribunal considered that it was appropriate to increase the amount awarded under Section 115(2)(d) by the value of the pension rights which the claimant had lost.

21. The Tribunal also had to consider the claimant's application to extend the date for re-engagement to 20 February 2019. We agreed with the respondents' representative that the situation in this case was not analogous to the situation in ***McBride***. The position here was simply that the respondents had submitted an appeal, as was their right, and had requested a Rule 3:10 hearing, as was their right. In every case where re-engagement or reinstatement is ordered there is likely to be a period of time which will elapse between date fixed for reinstatement/re-engagement and any hearing to deal with the consequences of that in terms of section 117. If Parliament had wished the Tribunal to decide in every case that the amount awarded under Section 115 should be increased to take account of the elapsed time then Parliament could easily have done so. They did not. The Tribunal's view on this and other aspects of the claim was that the provisions contained in Section 115, Section 117 and Sections 118-124 of the Employment Rights Act are a careful compromise between the rights of the employer and the rights of the employee which have been decided by Parliament and which the Tribunal should comply with except in the most exceptional circumstances. We are aware of the terms of the ***McBride*** case and considered that these were truly exceptional circumstances not least of which was the fact that the Tribunal was directed to reconsider the issue by the Supreme Court. There is no such direction in this case.

22. It appeared to the Tribunal that if the claimant was granted his reconsideration in this case so as to extend the date for awarding re-engagement and thus granting him additional compensation then the Tribunal would be required to do this in practically every case where an order for re-engagement or reinstatement has not been complied with. Even if the Tribunal were to say that the reason in this case was the appeal then the Tribunal would be required to do so in virtually every case where there has been an appeal. The view of the Tribunal was that this was not an appropriate exercise of our discretion in terms of Rule 70. We accepted the respondents' characterisation of the scope of reconsideration as being wide but not amounting to throwing the baby out with the bath water. The claimant raised a claim of unfair dismissal. It took a substantial period of time to be resolved. There was then a further substantial period of time following the Tribunal's judgment but those matters in themselves do not mean that it was in the interests of justice for the Tribunal to reconsider the date fixed for re-engagement. The interests of justice include the need for finality in judgments and the Tribunal considered that in this case the appropriate course was not to exercise our discretion and not to change the date fixed for re-engagement.

23. It follows from the above that we refused the claimant's request for reconsideration save that we granted reconsideration in respect of the monetisation of the pension award by increasing the sum due under Section 115 by the sum of £78,000 net.

24. As noted above the original amount award under Section 115 was £253,268.87. This amount was obtained by grossing up the net figure of £140,696.14 which in turn had been calculated by adding to the original net figure of £136,895.04 the additional amount of £3801.10 in respect of the five weeks between 16 January 2018 and 20 February 2018. To this net figure of £140,696.14 requires to be added the net pension loss figure to 20 February 2018 of £78,000. Accordingly this gives a figure of £218,696.14 which is the net amount of the claimant's lost benefits between the date of dismissal and 20 February 2018. As before the claimant is entitled to have this figure grossed

up. As before, rather than attempt the calculation ourselves without knowledge of the claimant's tax circumstances we would ask the parties to revert to Tribunal within 14 days with their agreed calculation of the grossed up figure so that this can be contained in a final judgment which will hopefully be the Tribunal's last word on the subject of compensation under Section 115(2)(d). Since however the respondents have failed to re-engagement the claimant the claimant is not entitled to receive the payment under Section 115 although as noted below the amount which the claimant was due to receive in terms of Section 115 is highly relevant to the calculation of what the claimant actually receives as compensation under Section 117.

Compensation under Section 117

25. Section 117 of the Employment Rights Act 1996 states

> "(1) An employment tribunal shall make an award of compensation to be paid by the employer to the employee, if –
>
> (a) an order under section 113 is made and the complainant is reinstated or re-engaged, but
>
> (b) the terms of the order are not fully complied with.
>
> (2) Subject to section 124, the amount of the compensation shall be such as the tribunal thinks fit having regard to the loss sustained by the complainant in consequence of the failure to comply fully with the terms of the order.
>
> …….
>
> (3) Subject to subsections (1) and (2), if an order under section 113 is made but the complainant is not reinstated or re-engaged in accordance with the order, the tribunal shall make -
>
> (a) an award of compensation for unfair dismissal (calculated in accordance with sections 118 to 126, and
>
> (b) except where this paragraph does not apply, an additional award of compensation of an amount not less than twenty-six nor more than fifty-two weeks' pay

to be paid by the employer to the employee."

26. Section 124 states

"(1) The amount of –

(a) any compensation awarded to a person under section 117(1) and (2), or

(b) a compensatory award to a person calculated in accordance with section 123,

shall not exceed the amount specified in subsection 1ZA

…..

(3) In the case of compensation awarded to a person under section 117(1) and (2), the limit imposed by this section may be exceeded to the extent necessary to enable the award fully to reflect the amount specified as payable under section 114(2)(a) or section 115(2)(d).

(4) Where –

(a) a compensatory award is an award under paragraph (a) of subsection (3) of section 117, and

(b) an additional award falls to be made under paragraph (b) of that subsection,

the limit imposed by this section on the compensatory award may be exceeded to the extent necessary to enable the aggregate of the compensatory and additional awards fully to reflect the amount specified as payable under section 114(2)(a) or section 115(2)(d). …"

27. In this case it was clear that the claimant was entitled to a basic award of £7656 and a compensatory award. It was clear that any compensatory award calculated in accordance with Section 123 would exceed the statutory cap specified in subsection 1ZA. It was also abundantly clear to the Tribunal that the compensatory award would exceed the amount which had previously been fixed as compensation in respect of Section 115(2)(d) together with the amount added following reconsideration in respect of pension loss. The key issue for the Tribunal therefore was the amount of the statutory cap.

28. Discussion of the situation in monetary terms is complicated by the fact that as requested by the parties the Tribunal is dealing with net amounts whereas both parties were agreed that these net sums will require to be grossed up. Basically the claimant's contention was that the claimant should receive the full amount awarded in terms of Section 115(2)(d) as compensation in terms of Section 117(3)(a) and in addition receive an additional award of compensation of £26,416 in terms of Section 117(3)(b). The respondents' position was that there was an overall limit of the compensation which the claimant could obtain which is equivalent to the amount the claimant had been awarded under Section 115(2)(a). If the claimant received any additional award in terms of Section 117(3)(b) then any amount awarded under Section 117(3)(a) would have to be adjusted so that the aggregate of the award of compensation for unfair dismissal in terms of 117(3)(a) and the additional award in terms of 117(3)(b) amounted to no more than the total sum awarded in terms of Section 115(2)(d). Having considered matters carefully the Tribunal preferred the respondents' position. The first reason is that this is based on the literal interpretation of what the legislation says. As noted above, the calculation of compensation for unfair dismissal and the extent to which an unfairly dismissed employee should be compensated for his loss is a matter which is strictly governed by statute. The statute, by providing for a cap specifically envisages a situation where an employee will not be compensated in full for his loss. Whilst the Tribunal could see some force in the claimant's arguments about the purpose of the additional award being there as a deterrent to employers we did not think that this amounted to sufficient reason to ignore the literal terms of the statute.

29. The second reason we prefer the respondents' argument is that it is a matter where the Tribunal is bound by the prior judgments of the EAT in this area. As we are a Scottish Tribunal we are not necessarily bound by the decision of the Court of Appeal in ***Parry v National Westminster Bank plc*** but the Tribunal is bound by the decision in the EAT cases which are referred to in that judgment and in particular the case of ***Selfridges Limited v Malek [1998] ICR***

268. That judgment at page 273 helpfully sets out the circumstances which surrounded the introduction of Section 124(4) and its predecessors. It is probably as well to quote it.

> "Mr Simblet points out that Section 124(4) was originally introduced by the insertion of Section 74(8) of the Employment Protection (Consolidation) Act 1978 effected by Section 30(3)(b) of the Trade Union Reform and Employment Rights Act 1993. That amendment was made to deal with a particular problem identified by Lord Donaldson of Lymington MR in O'Laoire v Jackel International Limited [1990] ICR 197. In that case the Court of Appeal held that where the employer failed to comply with an order for reinstatement the employee's remedy lay in claiming a compensatory award, an additional award and a basic award. He could not in addition recover payment of the arrears of pay and benefits assessed under what is now Section 114. Under the Act of 1978 prior to the 1993 amendment the compensatory award made for an order for reinstatement was not complied with was subject to the ordinary maximum, now £11,300 under Section 124(1) of the Employment Rights Act 1996. Thus in some cases it was cheaper for an employer to refuse to reinstate the unfairly dismissed employee and pay the maximum compensatory award plus an additional award and a basic award than to reinstate the employee and pay what we have called the Section 114 loss. …"

It is clear to the Tribunal from this case that the EAT has specifically mandated us to follow the construction proposed by the respondents in this case. It is clear to us what whilst Parliament in passing Section 124(4) and its predecessors intended to avoid a situation where it was cheaper for an employer to refuse to reinstate an unfairly dismissed employee that Parliament did not decide that, in circumstances where the statutory cap applied the employer would require to pay the amount of the additional award on top of this. The claimant may consider this to be anomalous. It means that in a situation such as this where the statutory cap is exceeded by the Section

115(2)(d) award an additional award does not impose any penalty where an employer decides not to reinstate/re-engage. In enacting Section 124(4) Parliament has decided that the employer will not be better off by refusing to reinstate/re-engage but they were prepared to countenance the situation where, as here, the immediate financial consequences of the employer are the same whether he re-engages or refuses to re-engage.

30. In this case we agreed with the respondents that it is irrelevant to the final outcome whether an additional award is made or not. Given that the claimant has asked for an additional award of £26,416 (52 weeks x £508) we shall make an additional award of this amount. The amount awarded in terms of Section 117(3)(a) is therefore (1) basic award of £7656, (2) a compensatory award the gross amount of which will give the claimant £218,696.14 net after deduction of Income Tax less £26,416 being the amount of the additional award. i.e. the amount of the award under Section 117(3)(a) is (226,352.14 grossed up) minus £26,416. The amount of the award under Section 117(3)(b) is £26,416. The total award payable to the claimant in terms of Section 117 is therefore £226,352.14 grossed up. As above the parties are directed to advise the Tribunal of their calculation of the grossed up sum within the next 14 days.

Employment Judge: **Ian McFatridge**
Date of Judgment: **21 March 2019**
Entered in register: **21 March 2019**
and copied to parties