



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr O Downswell

v

Wilson James Ltd

Heard at: Bury St Edmunds

On: 21 August 2019

Before: Employment Judge R Cassel
Mrs M Prettyman
Mr B Smith

Appearances

For the Claimant: In person

For the Respondent: Mr Chadwick, Consultant

DECISION ON REMEDY

1. The respondent is to pay to the claimant a compensatory award of £18,994.88 and a basic award of £5,623.50, making a total of £24,618.38. The amount in compensation is a net amount after the payment of tax and National Insurance and the respondent is to account to the claimant and to HMRC for any tax and National Insurance which is deducted.
2. The recoupment provisions apply to the compensation award save in the sum of £350.00 which is the amount we have awarded for loss of statutory industrial rights.

REASONS

1. Our judgment on liability was promulgated to the parties on 12 July 2019 following the hearing which took place on 20, 21 and 22 February 2019, and following a request for written reasons. On the final day of the liability hearing, when our decision on liability was announced, we were not able to deal with remedy as the claimant, who was unrepresented, had been unable to assemble relevant documentation to enable us to consider the matters that he wished to raise.
2. Orders were made by the tribunal and the matter again came before us today. Although a bundle of documents was made available to us,

regrettably there was still little by way of documentary evidence to demonstrate what the claimant told us in evidence were his efforts to find alternative employment.

The Hearing

3. We heard evidence from the claimant who produced some documentation within the agreed bundle and who was cross-examined by Mr Chadwick. We heard evidence called by the respondent, namely Mrs Alison Fraser, who confirmed the truth of her statement and was cross-examined.

Submissions

4. We heard submissions from Mr Chadwick who invited us to make a reduction in any award on the basis of what is said to be contributory fault on the part of the claimant and a further submission that in line with "Polkey" there should be a further reduction. We also heard submissions on what was said to be the appropriate period of loss.

Our Decision

5. Basic award

- 5.1 We accept the submissions made by Mr Chadwick that the basic award is subject to the statutory maximum of £489.00 and not based in the figures provided by the claimant. Therefore, bearing in mind his age and length of service at the date of dismissal, the appropriate multiplier is 11.5 and the maximum amount of £489.00 which produces a sum of £5,623.80.

Contribution

- 5.2 We listened carefully to the submissions made by Mr Chadwick but in our judgment a simple reading of our findings of fact is enough to demonstrate, given all the circumstances, that the claimant did not contribute to his dismissal. There was no culpable or blameworthy behaviour on his part

Polkey

- 5.3 Having considered the submissions that were made, and bearing in mind our findings of fact, in our judgment the whole process was so beset with unfairness it is not possible to assess what the outcome would have been had a fair procedure been followed and that in all the circumstances a fair outcome was highly unlikely. Again, it is apparent from our findings of fact that any argument as to a reduction under this head is not sustainable.

Period of loss

5.4 In our assessment, particularly in view of the industrial expertise of the two lay members, given the evidence that we have heard today a period of loss of nine months is the correct period for the compensatory award. The claimant was receiving £1,780.00 per month net and there was a pension loss, namely the pension contribution of the employer of £365.32. This period of loss for the nine-month period that we consider is appropriate in this case less the earnings of £663.00 that he received gives a total of £18644.88. In addition, we award £350.00 for loss of statutory industrial rights.

Recoupment provisions

5.5 The recoupment provisions apply and the monetary award is £18,644.88. The prescribed element is £18,644.88 and the dates of the period to which the prescribed element is attributable are 9 November 2017 until 8 August 2018.

Employment Judge R Cassel

Date: 18 September 2019

Sent to the parties on:25.10.19.....

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For the Tribunal Office