



THE EMPLOYMENT TRIBUNALS

Claimant
Ms H Garrett

Respondent
SSD Industries Limited

EMPLOYMENT JUDGE GARNON
MADE AT NORTH SHIELDS

ON 8 August 2019

JUDGMENT (Liability and Remedy) Employment Tribunals Rules of Procedure 2013 –Rule 21

1. The name of the respondent is amended to that shown above without the need for re-service.
2. The claims of unfair dismissal , breach of contract (wrongful dismissal), failure to pay compensation for untaken annual leave and unlawful deduction of wages are well founded. I make the following awards

(a) damages for breach of contract	£ 403.85
(b) compensation for unfair dismissal	£ 1175.58
(c) compensation for untaken annual leave	£ 363.46
(d) an order for repayment of unlawful deduction of wages	£ 806 .85
- 3 I increase the above awards under s 38 of the Employment Act 2002 (the 2002 Act) by four weeks pay being **£1615.40** which the respondent must pay to the claimant
4. The total payable is **£ 4365.14**. **The Hearing listed for 25 October 2019 is cancelled.**

REASONS

1. The claimant was employed from 22 November 2018 to 29 March 2019. She commenced Early Conciliation (EC) on 26 April against SSD Industries Limited. An EC certificate was issued by ACAS on 28 May. She presented her claim on 30 June naming as respondent "SSD". A company may be sued in its trading name. The claim was accepted and served on 5 July, by post to the registered office of the respondent as confirmed by a company search. A minor amendment to the respondent's name without the need for re-service in my view does no injustice . A response was due by 2 August 2019 but none was received.

2. An Employment Judge is required by rule 21 of the Employment Tribunals Rules of Procedure 2013 to decide on the available material whether a determination can be made and, if so, obliged to issue a judgment which may determine liability only or liability and remedy. I have in the claim form, and what the claimant has supplied in accordance with standard directions sent to both parties, sufficient information to enable me to find the claims proved on a balance of probability and to determine the sums to be awarded. With the exceptions noted below the calculations of loss submitted by the claimant are accurate.

3. The claimants' gross weekly pay was £403.85 and net was £342.61. The common law provides a contract of employment may be brought to an end by reasonable notice. Dismissal without such notice is termed "wrongful". Damages for wrongful dismissal are the amount of pay due to the employee during the notice period (see Addis v The Gramophone Company) which under s 86-88 of the Employment Rights Act 1996 (the Act) is 1 week. Since recent changes to taxation practice I award the sum gross of tax.

4. The law of unfair dismissal is in Part X of the Act. The right not to be unfairly dismissed is set out at section 94. Section 108 provides an employee with less than 2 years service ending with the effective date of termination does not have the right but subsection (3) sets out a number of exceptions. On the face of the claim form the one which applies is dismissal for assertion of a statutory right. The notice period awarded in the wrongful dismissal claim is set against the loss period for unfair dismissal, so 3 weeks net pay remain to be awarded (£1027.83) and the expenses in finding new work (£147.75) Neither of these claims enable an award to be made for "emotional distress".

5. The law of unlawful deduction of wages is in Part 2 of the Act and the claimant's calculations are accurate and supported by copy payslips.

6. The Working Time Regulations 1998 say where a worker's employment is terminated during the course of his leave year, and on the date on which the termination takes effect the proportion he has taken of the leave to which he is entitled in the leave year differs from the proportion of the leave year which has expired. his employer shall make him a payment in lieu of untaken leave. The claimant's calculations appear accurate. This is awarded gross of tax

7. Her claim form states she never had a written statement of terms and conditions of employment as required by section 1 of the Act . In such circumstances s 38 of the 2002 Act obliges me to increase the award by 2 or 4 weeks pay . I chose the higher amount because the default is unexplained and lasted throughout her employment .

TM Garnon Employment Judge

Date signed 8 August 2019 .

