



EMPLOYMENT TRIBUNALS

Claimant: Mr P Demellweek

Respondent: HH Valves Ltd

Heard at: Liverpool

On: 14 January 2020

Before: Employment Judge Dunlop

REPRESENTATION:

Claimant: Mr L Bronze

Respondent: No attendance

JUDGMENT

1. By a judgment dated 17 December 2019 and sent to the parties on 20 December 2019 the claimant was successful in his claim of unfair dismissal. The sum of £56,225.00 is awarded to the claimant in respect of this claim, made up as follows:

Basic Award: £8,400.00

Compensatory Award:

Net Immediate losses: £21,476.56

Net Future losses: £2,955.44

Loss of statutory rights: £500.00

Sub-total: £24,952.00

S.207(A) TULR(C)A 1992 Uplift 15%

Total inclusive of uplift: £28,695.00

Grossing up amount: £19,130.00

Total compensatory award: £47,825.00

Grand total £56,225.00

2. The Employment Protection (Recoupment of Benefits) Regulations 1996 apply:

Prescribed period: 11 April 2019 to 14 January 2020
Prescribed amount: £21,476.56
Total monetary award: £56,225.00
Amount by which total award exceeds prescribed amount: £34,748.44

REASONS

Today's Hearing

1. This is a claim of unfair dismissal under s98 Employment Rights Act 1996 ("ERA"). As the respondent entered no response to the claim, a liability judgment in favour of the claimant was made under rule 21 of the Employment Tribunals Rules of Procedure and sent to the parties on 17 December 2019. The judgment provided that the hearing which was scheduled to take place today as a final hearing on liability and remedy would be converted to a remedy hearing.

2. A small bundle of documents, including a Schedule of Loss, and a short witness statement were handed up and read in advance of the hearing.

3. At the outset of the hearing, Mr Bronze for the claimant very properly raised an issue about the service of the claim form. It transpires that in completing the ET1 claim form the claimant's representatives gave an incorrect postcode for the respondent. In fact they repeated the claimant's postcode – WN3 6HA. The correct post code would have been WN5 8EG, the two addresses both being within the Wigan postal area and approximately two miles apart.

4. Documents served by the tribunal have therefore been incorrectly addressed. However, none have been returned as undelivered. Correspondence sent directly by the claimant's solicitors have been sent to the correct address, including two letters which appear in the bundle dated 22nd October 2019 and 6th November 2019, both of which contained the case number as a reference and, from the content of which, it could reasonably be perceived that litigation was on-going. The claimant gave evidence that the respondent's premises are part of a large and locally well-known well-known industrial estate. He speculates that the local postal services would have little difficulty in realising that an error had been made in postcode and identifying the correct location to deliver to from the remainder of the address.

5. In the circumstances I decided it was appropriate to proceed with the remedy hearing as listed. In reaching this decision I had regard to the decision in **Genevieve Restaurants Limited v Koura, unreported, 13 December 1984**, which was brought to my attention by Mr Bronze in support of the proposition that a minor error in an address will not render service ineffective. Although the error in this case was more significant than the error in **Koura**, I nonetheless find that, in broad terms, the claim form was correctly addressed, having regard to the fact that the address (as opposed to the postcode) is correct and clear and that the incorrect postcode would not have misdirected the correspondence outside the correct locality to an area where that

address might not be known. The presumption of effective service is therefore engaged and that there is currently no evidence to rebut that presumption. I will direct that the address held on the Employment Tribunal file is amended to show the correct post code and that the claim is re-served to the correct address, along with the liability judgment and this judgment. It is, of course, open to the respondent to make any application it may consider appropriate in due course.

Remedy

6. The claimant is entitled to a basic award of £8,400.00 based on his age at dismissal and length of service of fifteen years, and applying the weekly cap of £525.00. There are no adjustments to be made to the basic award.

7. The claimant was dismissed with immediate effect on 11th April 2019. He gave evidence in relation to the steps he took to mitigate his loss, which resulted in him obtaining a new role at a lower salary starting from 5th August 2019. I accepted that the claimant had taken reasonable steps to mitigate his loss, both before and after his acceptance of that role. I therefore accepted the figures set out in the claimant's schedule of loss identifying a net loss in the period from 11 April 2019 to today's hearing of £21,476.56.

8. The claimant had initially reduced that figure to take account of two Universal Credit payments received by him on 5th July 2019 (£729.00) and 6th August 2019 (£800.00). However, the Employment Protection (Recoupment of Benefits) Regulations 1996 will apply, and so the award has been made without reducing by these amounts.

9. The claimant claims an on-going net loss of £228.88 per week, for a period of 13 weeks taking him to the first anniversary of his dismissal. Again, I accept that those losses are properly recoverable, and this results in a net sum for future loss of £2,975.44.

10. The claimant claimed £1,442.34 to reflect the loss of his statutory rights. Mr Bronze acknowledged that this was a larger sum than would usually be awarded, but submitted that an amount equal to one weeks' gross pay was appropriate. This is a matter on which the Tribunal has a broad discretion. I take into account the fact that the claimant has now accrued almost six months service in his new role, and so has made some progress towards regaining his statutory rights. Taking all the circumstances into account, I award £500.00 for loss of statutory rights.

11. Combining the figures for immediate loss, future loss and loss of statutory rights gives a sub-total for the compensatory award of £24,952.00.

12. The claimant submitted that the respondent had failed to follow the ACAS Code of Practice on Disciplinary and Grievance Procedures and that an uplift should therefore be made to the compensatory award. Although a procedure was purportedly followed, I accept the claimant's evidence that a decision had been predetermined. This is based on the content of emails to the claimant, as set out in the particulars of claim, and, in particular, the conduct of the appeal process. The claimant gave evidence (and I accordingly find as a fact) that the external HR consultant who was instructed to act as the appeal officer, intimated to him that she accepted his explanations for the various concerns raised against him and would make

recommendations accordingly. Subsequently he was not provided with a report or outcome letter from that consultant, but rather from Mr Chen, the owner of the business. I find that Mr Chen usurped the role of the appeal officer and that this was in breach of paragraph 27 of the ACAS Code and the principles of the code more broadly.

13. Given that there was a degree of formal compliance with the provisions of the Code, Mr Bronze did not seek the maximum 25% uplift but instead sought 15%. I considered that to be a pragmatic submission and awarded 15%.

14. Applying the 15% uplift to the compensatory award figure set out above gives a total sum of £28,695.00.

15. The claimant did not work, and received no payment, for his notice period. He informs me that the contractual notice period which applied was one year and the amount which would have been payable either as notice pay or PILON is therefore £75,000.00. In those circumstances, the entire compensation amount is therefore taxable as post-employment notice pay under ITEPA 2003 ss402A-E.

16. The claimant expects his current taxable income in the present tax year to be £51,000 which places the whole of the compensatory award into the 40% income tax band. Grossing up to reflect this leads to an increase the compensatory award by £19,130.00 to a total of £56,225.00.

Employment Judge Dunlop

Date: 15.01.20

JUDGMENT AND REASONS SENT TO THE PARTIES ON
27 January 2020

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: **2411305/2019**

Name of case: **Mr P Demellweek** v **HH Valves Limited**

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: 27 January 2020

"the calculation day" is: 28 January 2020

"the stipulated rate of interest" is: **8%**

MR S ARTINGSTALL
For the Employment Tribunal Office

INTEREST ON TRIBUNAL AWARDS

GUIDANCE NOTE

1. This guidance note should be read in conjunction with the booklet, 'The Judgment' which can be found on our website at www.gov.uk/government/publications/employment-tribunal-hearings-judgment-guide-t426

If you do not have access to the internet, paper copies can be obtained by telephoning the tribunal office dealing with the claim.

2. The Employment Tribunals (Interest) Order 1990 provides for interest to be paid on employment tribunal awards (excluding sums representing costs or expenses) if they remain wholly or partly unpaid more than 14 days after the date on which the Tribunal's judgment is recorded as having been sent to the parties, which is known as "the relevant decision day".

3. The date from which interest starts to accrue is the day immediately following the relevant decision day and is called "the calculation day". The dates of both the relevant decision day and the calculation day that apply in your case are recorded on the Notice attached to the judgment. If you have received a judgment and subsequently request reasons (see 'The Judgment' booklet) the date of the relevant judgment day will remain unchanged.

4. "Interest" means simple interest accruing from day to day on such part of the sum of money awarded by the tribunal for the time being remaining unpaid. Interest does not accrue on deductions such as Tax and/or National Insurance Contributions that are to be paid to the appropriate authorities. Neither does interest accrue on any sums which the Secretary of State has claimed in a recoupment notice (see 'The Judgment' booklet).

5. Where the sum awarded is varied upon a review of the judgment by the Employment Tribunal or upon appeal to the Employment Appeal Tribunal or a higher appellate court, then interest will accrue in the same way (from "the calculation day"), but on the award as varied by the higher court and not on the sum originally awarded by the Tribunal.

6. 'The Judgment' booklet explains how employment tribunal awards are enforced. The interest element of an award is enforced in the same way.

Claimant **Mr P Demellweek**

Respondent **HH Valves Limited**

**ANNEX TO THE JUDGMENT
(MONETARY AWARDS)**

Recoupment of Benefits

The following particulars are given pursuant to the Employment Protection (Recoupment of Benefits) Regulations 1996, SI 1996 No 2349.

The Tribunal has awarded compensation to the claimant, but not all of it should be paid immediately. This is because the Secretary of State has the right to recover (recoup) any jobseeker's allowance, income-related employment and support allowance, universal credit or income support paid to the claimant after dismissal. This will be done by way of a Recoupment Notice, which will be sent to the respondent usually within 21 days after the Tribunal's judgment was sent to the parties.

The Tribunal's judgment states: (a) the total monetary award made to the claimant; (b) an amount called the prescribed element, if any; (c) the dates of the period to which the prescribed element is attributable; and (d) the amount, if any, by which the monetary award exceeds the prescribed element. Only the prescribed element is affected by the Recoupment Notice and that part of the Tribunal's award should not be paid until the Recoupment Notice has been received.

The difference between the monetary award and the prescribed element is payable by the respondent to the claimant immediately.

When the Secretary of State sends the Recoupment Notice, the respondent must pay the amount specified in the Recoupment Notice to the Secretary of State. This amount can never be more than the prescribed element of any monetary award. If the amount is less than the prescribed element, the respondent must pay the balance to the claimant. If the Secretary of State informs the respondent that it is not intended to issue a Recoupment Notice, the respondent must immediately pay the whole of the prescribed element to the claimant.

The claimant will receive a copy of the Recoupment Notice from the Secretary of State. If the claimant disputes the amount in the Recoupment Notice, the claimant must inform the Secretary of State in writing within 21 days. The Tribunal has no power to resolve such disputes, which must be resolved directly between the claimant and the Secretary of State.