



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH

BEFORE: EMPLOYMENT JUDGE C HYDE (sitting alone)

BETWEEN:

Claimant

MR A YASOTHARARAJAH

AND

Respondent

TESCO STORES LIMITED

ON: 28 and 29 October 2019

APPEARANCES:

For the Claimant: Mr M Sprack, Counsel

For the Respondent: Miss E Wheeler, Counsel

JUDGMENT

The Judgment of the Tribunal is that: -

1. The Claimant was wrongfully dismissed and the Claimant is entitled to damages equivalent to payment for his notice period.
2. The Claimant was unfairly dismissed under section 98(4) of the Employment Rights Act 1996.
3. In respect of the unfair dismissal remedy,
 - a. No deductions from the Claimant's award are to be made under the principles in the *Polkey* case.

- b. Under section 207A(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 it was just and equitable to increase the award to the Claimant by 15%.
- c. The Claimant had contributed to the termination of his employment by his admitted conduct of taking unauthorised absence between 23 June and 7 July 2018 to the extent of 20%.

Interim Judgment

4. The parties agreed that a payment in the sum of **£3,137.40** net was to be paid to the Claimant on account of the final award by the Tribunal in relation to either damages for wrongful dismissal and/or compensation for the unfair dismissal and/or if a re-employment order is made, arrears of pay, as soon as possible but in any event by **26 November 2019** into the Claimant's Santander account.

Remedy Hearing

5. The Tribunal will reconvene on **3 March 2020** to determine remedy, including compensation and damages as appropriate, with a time allocation of 1 day, before E J Hyde at the London South (Croydon) Employment Tribunal, commencing at 10am or as soon as possible thereafter.
6. The Claimant having confirmed that he wishes to be re-employed, the following directions were made to prepare for the remedy hearing:
- i) The parties are to provide mutual disclosure of relevant documents by **10 December 2019**, including a schedule of loss from the Claimant;
 - ii) By **20 December 2019**, the Claimant is to send a draft index for the bundle to the Respondent;
 - iii) The Respondent is to send a copy of the consolidated paginated bundle with index to the Claimant by **10 January 2020**; and
 - iv) Witness statements are to be exchanged by **24 January 2020**.
7. A Tamil (Sri Lanka) interpreter is to be arranged to attend on 3 March 2020 by the Tribunal Service.

CONSEQUENCES OF NON-COMPLIANCE

1. Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.
2. If any of the above orders is not complied with, the Tribunal may take such action as it considers just which may include: (a) waiving or varying the requirement; (b) making a further order (an "unless order") providing that unless it is complied with, the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration; (c) striking out the claim or the response, in whole or in part, in accordance with rule 37; (d) barring or restricting a party's participation

in the proceedings; and/or (e) awarding costs in accordance with rule 74-84.

- 3. An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative.**

Employment Judge Hyde

Dated: 28 November 2019

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to Employment Tribunal Judgments

All 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.