



# THE EMPLOYMENT TRIBUNAL

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**SITTING AT:** LONDON SOUTH

**BEFORE:** EMPLOYMENT JUDGE MORTON

**BETWEEN:**

**Mr K Meredith**

**Claimant**

AND

**Mr P Merrett T/a MPD Transport**

**Respondent**

**ON:** 20 February 2020

**Appearances:**

**For the Claimant:** In person

**For the Respondent:** No appearance

## **JUDGMENT**

1. The Claimant was unfairly and wrongfully dismissed by the Respondent (s98 Employment Rights Act 1996 (“ERA”) and Employment Tribunals (Extension of Jurisdiction) Order 1994;
2. The Respondent made unlawful deductions from the Claimant’s pay (ss13 and 23 ERA);
3. The Respondent failed to observe the provisions of the ACAS Code on Discipline and Grievances and the Claimant is eligible for an uplift in the award made to him by this Tribunal (s207A(2) Trade Union and Labour Relations (Consolidation) Act 1992 (“TULRCA”);
4. The Claimant’s is entitled to total compensation of £4266.79 calculated as set out in the paragraphs 8-11 of the Reasons attached to this judgment.
5. The Respondent must pay the sum of **£4266.79** to the Claimant forthwith.

## Reasons

1. The Claimant was employed by the Respondent from 1 May 2015 as a removals porter and his employment was summarily terminated by the Respondent on 15 May 2019 after a period of ill health due to kidney stones. He remains unwell and unable to work. The correspondence from the Respondent indicates that the correct identity of the Respondent is Mr P Merrett trading as MPD Transport.
2. He submitted a claim for unfair dismissal on 13 September 2019 having commenced ACAS early conciliation on 17 July 2019 and having received the EC certificate on 17 August 2019. The claim was therefore presented in time. The claim was served on the Respondent on 2 October 2019 together with a notice of hearing and a response was received on 29 October 2019.
3. There was no appearance by the Respondent at the hearing and the Claimant said that the Respondent had not dealt with any of his correspondence about preparation. A phone call was made to the Respondent at approximately 10.10am to ascertain whether he intended to attend the hearing. Mr Merrett answered the phone but said that he could not hear and ended the call. An attempt was made to call him back but he did not respond.
4. I therefore continued with the hearing in the Respondent's absence as it seemed clear that he did not intend to appear.
5. Under s98 ERA the burden of proof is on the Respondent to show that it had a potentially fair reason to dismiss the Claimant, but having failed to participate in the proceedings the Respondent had failed to prove the reason for the dismissal. The Respondent has also failed to establish grounds for dismissing the Claimant without notice or payment in lieu of notice.
6. Nevertheless I considered the evidence presented by the Claimant and satisfied myself that on the facts as he presented them his dismissal had been unfair. I also satisfied myself that he had not done the misconduct of which he was accused and it would not therefore have been appropriate to reduce any compensatory award to reflect contributory conduct on his part.
7. I asked the Claimant what he sought by way of remedy. He said that he would ideally like his job back, but accepted that that was not likely to be practicable in the circumstances and he therefore sought compensation.
8. I discussed the amount the Claimant was seeking.
  - a. His weekly pay was £120.
  - b. Between 23 December 2018 and his dismissal on 15 May 2019 he was underpaid SSP. He was paid £37 per week whilst his statutory entitlement was £92.05 per week from 23 December 2018 to 6 April 2019 and £94.25 per week from 13 April 2019 to the date of dismissal,

a total of £1808.18. SSP was received at £37 per week for 19 weeks, a total of £703. The amount underpaid and recoverable as a deduction from wages is therefore **£1105.18**.

- c. After his employment was terminated he was not fit to work and has remained unfit. His loss of earnings from the date of dismissal is therefore limited to a further nine weeks of SSP at £94.25 per week: **£848.25**.

9. He is also entitled to:

- a. An unfair dismissal basic award of four weeks' pay: **£480**;  
b. Pay for four weeks of notice at his normal weekly rate (ss86 and 88 ERA): **£480**;  
c. A payment in respect of loss of statutory rights of **£500**.

10. The total award is therefore  $£1105.18 + £848.25 + £480 + £480 + £500 =$  **£3413.43**

11. The Claimant is also entitled to an uplift in his award as a result of the Respondent's failure to comply with any of the provisions of the ACAS Code in the procedure adopted before dismissing the Claimant. There is no evidence that any of even the most basic requirements of a fair investigation and procedure were adopted. I consider it just and equitable on the facts of this case to uplift the award made under paragraph 7 by 25 per cent, that is by **£853.36**.

12. The overall total award is therefore **£4266.79**.

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Employment Judge Morton  
Date: 20 February 2020

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