



EMPLOYMENT TRIBUNALS

Claimant: Mr. P. Richards

Respondents: Cox and Kings Destinations Management Services Ltd

**London Central
Employment Judge Goodman**

11 May 2020

REMEDY JUDGMENT

The respondent is ordered to pay the claimant:

1. Unlawful deductions from wages £17,660.02
2. Damages in Breach of contract to give notice on termination: £25,000
3. Holiday Pay £6.007
4. Unfair Dismissal compensation £91,169. Included in this is the basic award of £4,725.

REASONS

1. Judgment for the claimant was entered under rule 21 by Employment Judge Emery on 24 January 2020. The respondent had not responded to the claim, nor has it responded to any further correspondence from the tribunal, including about a remedy hearing which was to have taken place today.
2. A search at Companies House today shows it is still active and not insolvent. A proposal for compulsory strike-off was suspended earlier this month.

Evidence

3. The claimant has provided the tribunal with a schedule of loss, a witness statement, and copies of his contracts of employment, pay slips, P45, and selections from his bank statement.
4. The claimant was employed from 7 January 2013. Initially he was

employed under a contract of employment with Holidaybreak Ltd. By TUPE transfer his employment transferred to the respondent, as shown by a contract of employment with the respondent of 2 October 2015, which records the 2013 start date, and provides the same terms of remuneration as before. These were a gross annual salary of £150,000, a monthly car allowance of £825, payment of life and medical expenses insurance, and a pension contribution of 15% wages by the employer and 4% by the employee.

5. The claimant was aged 56 at dismissal.

Unlawful deductions from Wages

6. The claimant was not paid wages for the month of July 2019, nor for 1-9 August, when employment terminated, the date shown on P45, the leaver's tax certificate. That is 6 weeks pay. The monthly gross pay was £12,875, and he also received a monthly car allowance of £825. Such an allowance is included in the definition of wages in section 27(1)(a) of the Employment Rights Act 1996. The award is £17,660.02 before tax (£3,150 if subject to the cap on weekly pay of £525).

Notice Pay

7. The claimant resigned because he had not been paid. The judgment of 24 January is on the basis that this is to be treated as dismissal by virtue of section 95(1)(c) of the 1996 Act.
8. By contract he was entitled to 12 months' notice. This is worth 12 x (12,875 + 825) but is subject to the £25,000 limit on the tribunal's jurisdiction under the Extension of Jurisdiction. The award is therefore £25,000.
9. By statute (section 86(1)) he is entitled to 6 weeks' notice in the alternative, which subject to the cap on a week's pay would be £31,150).

Holiday Pay

10. The claimant was entitled to 28 days leave per annum under the Working Times Regulations. The contract provides for 27 days. The claim is for 9.5 days at £632.31 per day (based on a 5 day week), The award is £6,007. (If subject to the cap of £525 on a week's pay, it would be £997.50).

Unfair Dismissal

11. **Basic Award.** The claimant is entitled by age at dismissal and length of service to 6 x 1.5 x £842.16, capped at £525 per week, so £4,725.
12. **Compensatory award.** The claimant has made consistent efforts to find work, by approaches to companies direct and through a recruitment consultant, but without success. By the about February 2020 recruitment opportunities are likely to have dried up in any event because of the effect on the market of Covid-19 travel restrictions. Had he continued in employment with the respondent he may well have been furloughed in

March, although it is also possible that staff may have been made redundant. The tribunal awards loss of earnings to today's date, to reflect the fact that the claimant may have either sustained loss in future if he remained employed, or may have left employment before now if not dismissed in August 2019. That makes 9 months at £13,700 per month (including the car allowance), and another 9 months of pension contributions (as a percentage of base salary), at £1,931.25 per month. That makes £140,679. There is no evidence that the claimant has sustained loss by no further payments being made for life insurance or medical expenses.

13. The award is subject to the statutory cap on compensatory awards of £86,444. For that reason, the expense incurred seeking to market himself has not been included.

Uplift/Reduction under section 207A Trade Union and Labour Relations (Consolidation) Act 1992

14. There is no evidence on which to base a finding that any award should be increased or reduced for failure to follow the ACAS Code on Discipline and Grievance. The claimant does not seem to have tried to lodge a grievance, but the respondent has not responded constructively to his complaint of late payment, and then failure to pay at all, whether before or after the resignation, so there is no indication that this would have made a difference.

Employment Judge

Date 11/5/2020 _____

JUDGMENT SENT TO THE PARTIES ON

12/5/2020.....

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FOR THE TRIBUNAL OFFICE .