



EMPLOYMENT TRIBUNALS

Claimant: Mr F Waweru

Respondent: Mobile Content Management Solutions Limited

REASONS

(requested by the Respondent on 4.3.20)

1. By a claim form presented on 26 July 2019, the claimant complained of unfair dismissal, breach of contract (Notice Pay) and unlawful deduction of wages (Holiday Pay). The respondent was required to file a response to the claim by 13 September 2019 but failed to do so.
2. On 18 September 2019, after expiry of the time limit, the respondent wrote to the tribunal requesting an extension of time for filing the ET3.
3. On 26 November 2019, acting Regional Employment Judge Davies granted the respondent an extension of time until 2 December 2019 to file their response. The respondent did not file a response by the extended deadline.
4. The full merits hearing was listed for the 9 December 2019. This was converted to a telephone Case Management Discussion at which Employment Judge Fowell made directions for a to deal with a default judgment and remedy.
5. The default judgment and remedy hearing took place on 5 February 2020. The respondent was only permitted to participate in respect of remedy. I heard evidence from the claimant on loss and mitigation. The respondent did not call any evidence on remedy. However, its representative cross examined the claimant and made closing submissions.
6. In the absence of an ET3 response, the claimant was awarded judgment in default. My decision on remedy is set out below:

Notice Pay

7. The claimant was dismissed without notice. He had a contractual notice period of 3 months and net monthly pay of £2095. In the absence of evidence entitling the

respondent to dismiss without notice, I award the claimant **£6285** in respect of notice pay.

Unfair Dismissal claim

8. The claimant was employed by the respondent from 16.8.16 - 15.4.19. The claimant is entitled to a Basic Award of 2 weeks' pay @ £525 per week = **£1050**.

Compensatory Award

9. The claimant is under a duty to mitigate his loss by searching for alternative employment. As his Tier 2 visa expired on 19.6.19, his ability to search for alternative work in the UK was limited. However, he is a Kenyan national and had been recruited by the respondent in Kenya and initially worked there for the respondent before coming to the UK. Had he not been dismissed, he would have resumed working for the respondent back in Kenya, had his Tier 2 visa not been renewed. His job search has therefore been focused in Kenya.
10. The claimant gave brief evidence as to his job search. He applied for a number of jobs in Kenya but to date has only had 2 positive responses but no actual offers. In the absence of evidence from the respondent to the contrary, I am satisfied that the claimant has taken reasonable steps to mitigate his loss.

Immediate loss of earnings

11. 15.8.19 to 5.2.20 = 144 days @ 68.88 per day = 9918.72

Future loss of earnings

12. Based on the claimant's evidence on mitigation, I believe the claimant will secure comparable alternative employment within 18 weeks. Future loss has therefore been limited to this period and is calculated as follows:

483.46 per week x 18 = 8702.28

Loss of Statutory Rights

13. I award £300 for loss of statutory rights
14. Compensatory Award (9918.72 + 8702.28 + 300) = 18,921

ACAS Uplift

15. I am satisfied that the ACAS code on disciplinary and grievance procedures were breached in that the claimant was not informed of the allegations against him and there was no opportunity for him to state his case at a disciplinary hearing. Although there was an appeal hearing, it did not cure these defects.
16. In light of these breaches, and pursuant to section 207A Trade Union and Labour Relations (Consolidation) Act 1992, I consider it just and equitable to apply a 10% uplift to the compensatory award of **£1892.10**.

17. Total compensatory award = $18921 + 1892.10 = 20,813.10$

Total Unfair Dismissal award ($20813.10 + 1050$) = **£21,863.10**

Wrongful dismissal = **£6285**

Total Award

18. The claimant is awarded the total sum of **£28,148.10**

Employment Judge Balogun
Date: 20.4.20