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# THE EMPLOYMENT TRIBUNAL

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BETWEEN

Claimant

and

Respondent

Mr D C Quye

Ms N Campbell-Crabb and  
Mr P Graham t/a Red Lion, Brede

Held at LONDON SOUTH (CROYDON)

On 4 May 2020

BEFORE: Employment Judge Siddall (Sitting Alone)

## Representation

For the Claimant: Mr M Forster

For the Respondent: Mr P Graham (No response having been entered)

## JUDGMENT ON REMEDY

Following the issue of a default judgment dated 12 March 2020, the decision of the tribunal is that the claimant shall be awarded the following sums by way of compensation for unfair dismissal:

1. A basic award of £3937.50
2. A compensatory award of £5612.83
3. The total sum awarded to the claimant is £9550.33

## REASONS

1. This is a claim for constructive unfair dismissal brought by the Claimant. He lodged his claim on 20 November 2019. No response was entered by the respondents, and on 11 February 2020 Judge Andrews issued a default

judgment and ordered that the hearing due to take place today be converted to a remedy hearing.

2. This has been a remote hearing on the papers which was not objected to by the parties. The form of remote hearing was A – an audio hearing conducted by telephone. A face to face hearing was not held because it was not practicable and no-one requested the same and all issues could be determined in a remote hearing. The documents that I was referred to are set out below. The order made is described at the end of these reasons.
3. Ms Campbell-Crabb sent an email to the tribunal dated 30 April 2020 suggesting that she would like to seek an adjournment, providing some background information and stating that she was not able to respond in detail due to issues around self-isolation and the shutdown of the pub. Mr Graham attended the hearing by telephone today.
4. At no point have the respondents applied for an extension of time to lodge a Response, and no draft response was provided today. Mr Graham confirmed that the pub continued to trade from November 2019 until shut down by government order on 20 March 2020. For personal reasons he and Ms Campbell-Crabb had not been opening their post. Ms Campbell-Crabb had returned to the pub around the 20 April and they had received the tribunal's letter dated 30 April advising them of the telephone hearing today.
5. I explained to Mr Graham the effect of rule 21(3) which made it clear that unless and until an extension of time had been granted, the respondent was entitled to notice of hearing and decisions, but could only participate in any hearing to the extent permitted by the judge. I was prepared to hear from him on the question of what remedy should be awarded to the claimant but I advised him to seek immediate advice on what steps he could take to submit a late response and apply for any judgment to be reviewed. In all the circumstances I did not consider that it would be in the interests of justice to adjourn the hearing in light of what Mr Graham told me about the reasons for not presenting a response in the prescribed form.
6. I then proceeded to consider the question of what compensation should be awarded to the claimant.

7. The claimant provided a schedule of loss and a witness statement for the purposes of the remedy hearing. He left his employment in September 2019 and obtained new employment a few days later. He had worked through the Blue Arrow Agency until the 3 April 2020 and therefore had only suffered a small net loss up to the date of hearing, but he lost his job following the widespread shutdown of the catering and hospitality industry. He was now earning approximately half his salary delivering for a GP practice. He had applied for a job with Sainsburys.
8. Mr Graham said that following the closure of the pub he had placed his kitchen staff on furlough. He was hoping to re-open in due course but the business had no income at present and he felt that the prospects for the pub were poor in the short term as people would not have a lot of money to spend. The pub made a loss last year. Mr Graham suggested that when he took over the pub he was unfamiliar with the operation of PAYE and had made errors.
9. The claimant's basic award was calculated as £3937.50. Mr Forster sought the claimant's pay for his five weeks' notice period amounting to £3375 net. Giving full credit for this amount, Mr Forster said that the claimant's net losses up to the date of hearing (and allowing for earnings from his new job) amounted to £1837.83. He asked for £400 in respect of loss of statutory rights.
10. Mr Forster asked for an award for future loss. He accepted that the claimant's loss of his new job due to the pandemic could not have been foreseen. He pointed out that if the claimant had stayed in his employment with the respondent, he could have been furloughed and so received 80% of his salary.
11. I decided to award the claimant his basic award, notice pay, loss of statutory rights and losses to the date of hearing. In all the circumstances I decided that it was not appropriate to make an award for future loss. Having heard from Mr Graham I did not consider it appropriate that he should have to bear any losses that the claimant has suffered due to the coronavirus pandemic as this is unprecedented. Nor could Mr Graham recoup any of that money under the furlough scheme. By awarding the claimant his losses up to today's date, he receives a small amount in respect of the month since he lost his job. I recognise that this pub, like many businesses, is now in a very precarious position. It is a small business and I accept that the respondent has struggled

with issues around management and staff pay. I must make an award that is just and equitable in all the circumstances and I take into account the size of the respondent's business, the resources available to it and the current financial situation.

12. In conclusion the basic award is £3937.50 and the total compensatory award is £5612.83. The total award is therefore £9550.33

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Employment Judge Siddall  
Dated: 4 May 2020.