



EMPLOYMENT TRIBUNALS

Claimant

Respondent

**Ms Matilda Bena
As the representative of
Mr D Aistrup**

AND

Left Shift It Limited

HELD AT: London Central

ON: 25 June 2020

BEFORE: Employment Judge Brown (Sitting alone)

Representation:

For Claimant: Mr M Chassy (on behalf of Mr Aistrup's widow, Ms Matilda Bena)

For Respondent: Did not appear and was not represented

REMEDY JUDGMENT

The Judgment of the Tribunal is that the Respondent shall pay the Claimant £10,290 in compensation for unfair dismissal.

REASONS

1. By a claim form presented on 21 July 2019 Mr Aistrup brought a complaint of unfair dismissal against the Respondent, his former employer.
2. The Respondent did not defend the claim.
3. On 22 May 2020 judgment in default was entered for Mr Aistrup against the Respondent in his unfair dismissal claim. This hearing was listed to determine remedy.
4. Sadly Mr Aistrup had died in April 2020. There being no Personal Representative, the Tribunal appointed Matilda Bena of 108 Fernleigh Drive, Brinsworth, South Yorkshire, S60 5PJ, the Claimant's widow, to continue these

proceedings for the benefit of Mr Aistrup's estate, under s206(4) *Employment Rights Act 1996*.

5. Mr Aistrup's claim had been joined with the claims of Mr M Chassy (case number 2202763/2019), Mr A Cardoso (case number 2202753/2019), Mr P Macinanti (case number 2202772/2019) and Mr E Sousa (2202778/2019) against the same Respondent. The remedy claims were therefore heard together.

6. Mr M Chassy gave evidence on behalf of Mr Aistrup's estate.

7. He told me, and I accepted, that he had been coordinating all the joined claims and, with Mr Aistrup's permission, Mr Chassy had seen Mr Aistrup's relevant documents, so was able to give evidence about Mr Aistrup's income and losses arising out of dismissal.

8. The Claimant has not brought a claim for breach of contract in the Employment Tribunal because of the cap on breach of contract claims in the Employment Tribunal. County Court proceedings will be brought for the breach of contract claims, such as unpaid wages, expenses and loans. This judgment clearly does not relate to any claim for breach of contract or unpaid wages during employment.

Findings of Fact

9. I accepted Mr Chassy's evidence, on behalf of Mr Aistrup's estate, as follows:

10. Mr Aistrup, started employment with the Respondent on 1 August 2010. Mr Aistrup's Effective Date of Termination (EDT) was 26 April 2019. Mr Aistrup therefore had 8 complete years' service at the EDT.

11. Mr Aistrup's annual gross salary was £57,000. His monthly pay was £4,750 gross or £3,390 net and his weekly pay was £1,096 gross, or £782 net. Employer pension contributions were 5% of gross pay.

12. Mr Aistrup's date of birth was 7 February 1964. He was 41 years old on 7 February 2005. He was therefore aged 41 or more throughout his employment.

13. After Mr Aistrup's dismissal he quickly found employment by contacting recruiters, networking and approaching contacts in the industry. He made applications both online and offline for roles.

14. Mr Aistrup commenced alternative employment on 20 May 2019 at salary of annual of £55,000. He therefore sustained ongoing losses of £20 net per week.

Relevant Law

15. When calculating the compensatory award, the calculation should be based on the assumption that the employee has taken all reasonable steps to reduce his or her loss. If the employer establishes that the employee has failed to take such steps, then the compensatory award should be reduced so as to cover only those losses which would have been incurred even if the employee had taken appropriate steps.

16. Sir John Donaldson in *Archibald Feightage Limited v Wilson* [1974] IRLR 10, NIRC said that the dismissed employee's duty to mitigate his or her loss will be fulfilled if he or she can be said to have acted as a reasonable person would do if he or she had no hope of seeking compensation from his or her employer.

Decision

17. I decided that Mr Aistrup had made reasonable efforts to mitigate his loss.

18. Mr Aistrup's representative, on behalf of his estate, is entitled to the following sums in compensation for Mr Aistrup's unfair dismissal.

19. A Basic Award calculated: 12 weeks x £525 = £6,300.

20. A Compensatory award including loss of earnings, loss of statutory rights and loss of employer pension contributions after dismissal. Loss of earnings: 3 weeks @ £782 (net) per week = £2,346. Thereafter, 49 weeks' continuing loss at £20 per week: 49 x £20 = £980.

21. Mr Aistrup's representative claims £500 for loss of statutory rights. I awarded £500 for loss of statutory rights. I considered that that was a very reasonable sum given that he would have to have worked for two years to regain protection unfair dismissal.

22. I awarded Mr Aistrup's representative 3 weeks' loss of employer pension contributions from the EDT until he obtained alternative work. 5% x £1,096 x 3 = £164.

23. The total award for unfair dismissal was therefore £6,300 + £2,346 + £980 + £500 + £164 = £10,290.

24. The Respondent shall pay Mr Aistrup's representative £10,290 in compensation for unfair dismissal.

Employment Judge Brown
Dated: ...25 June 2020.....

Judgment and Reasons sent to the parties on:
23 July 2020
For the Tribunal Office