



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr A Cardoso

AND

Left Shift It Limited

HELD AT: London Central

ON: 25 June 2020

BEFORE: Employment Judge Brown (Sitting alone)

Representation:

For Claimant: In Person

For Respondent: Did not appear and was not represented

REMEDY JUDGMENT

The Judgment of the Tribunal is that the Respondent shall pay the Claimant £ 12,517.95 in compensation for unfair dismissal.

REASONS

1. By a claim form presented on 21 July 2019, Mr Cardoso, the Claimant, 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 the Claimant against the Respondent in his unfair dismissal claim. This hearing was listed to determine remedy.
4. Mr Cardoso's claim had been joined with the claims of Mr Aistrup (case number 2202747/2019), Mr A Chassy (case number 2202763/2019), Mr P Macinanti (case number 2202772/2019) and Mr E Sousa (2202778/2019)

against the same Respondent. The remedy claims were therefore heard together.

5. Mr Cardoso, the Claimant, gave evidence.

6. 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, unpaid pension contributions during employment, expenses and loans. This judgment clearly does not relate to any claim for breach of contract or unpaid wages during employment.

Findings of Fact

7. I accepted the Claimant's evidence as follows:

8. The Claimant started employment with the Respondent on 20 July 2015. His Effective Date of Termination (EDT) was 26 April 2019. He therefore had 3 complete years' service at the EDT.

9. The Claimant's annual gross salary was £48,000. His monthly pay was £4,000 gross or £2,855 net and his weekly pay was £923 gross, or £657 net. Employer pension contributions were 5% of gross pay.

10. The Claimant's date of birth was 8 November 1970. He was 41 years old on 8 November 2011. He was therefore aged 41 or more throughout his employment.

11. After the Claimant'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.

12. The Claimant commenced alternative employment on 18 May 2019 at an annual salary of £40,000. He had ongoing losses of £154 per week.

Relevant Law

13. 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.

14. 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

15. I decided that the Claimant had made reasonable efforts to mitigate his loss.
16. The Claimant is entitled to the following sums in compensation for unfair dismissal.
17. A Basic Award calculated: $4.5 \text{ weeks} \times \text{£}525 = \text{£}2,362.50$.
18. A Compensatory award including loss of earnings, loss of statutory rights and loss of employer pension contributions after dismissal.
19. Loss of earnings: $3 \text{ weeks} @ \text{£}657 \text{ (net) per week} = \text{£}1,971$.
20. The Claimant claimed a further 49 weeks ongoing loss at £154 net per week. I considered that he had mitigated his loss by accepting alternative work and that he should be awarded this sum. $49 \times \text{£}154 = \text{£}7,546$.
21. The Claimant claimed £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 the Claimant will have to work for two years to regain protection unfair dismissal.
22. I awarded the Claimant 3 weeks' loss of employer pension contributions from the EDT until he obtained alternative work. $5\% \times \text{£}923 \times 3 = \text{£}138.45$.
23. The total award for unfair dismissal was therefore $\text{£}2,362.50 + \text{£}1,971 + \text{£}7,546 + \text{£}500 + \text{£}138.45 = \text{£}12,517.95$.
24. The Respondent shall pay the Claimant £12,517.95 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