

d



EMPLOYMENT TRIBUNALS

Claimant: Mr P. Bednarski

Respondents: (1) Adpol London Ltd
(2) Mr A. Daskowski
(3) Ms D. M. Daszkowska

Heard at: Watford

On: 17 July 2020

Before: Employment Judge McNeill QC

Appearances

For the Claimant: In person (assisted by Interpreter, Ms I. Szamfeber)

For the Respondents: No attendance

JUDGMENT

1. The Respondents having failed to file any response to the Claimant's claim:
 - a. the Claimant's claim for disability discrimination is upheld against all three Respondents;
 - b. the Claimant's claims for unfair dismissal, notice pay and a payment in lieu of annual leave not taken during the holiday year commencing on 6 April 2019 are upheld against the First Respondent..
2. The Respondents are ordered to pay compensation to the Claimant as follows:
 - a. In respect of his disability discrimination claim, £12,500 for injury to feelings and £1,055.10 in respect of the Claimant's financial losses. The three Respondents are jointly and severally liable for this total sum of £13,555.10;

- b. In respect of the Claimant's claim for unfair dismissal, against the First Respondent only, the Claimant is awarded a basic award in the sum of £384. No separate compensatory award is made as the Claimant's financial losses overlap with the compensation awarded in respect of his disability discrimination claim;
- c. No separate award is made in respect of notice pay as notice pay has been included in the figure of £1,055.10 awarded in respect of the Claimant's claim for financial losses in his disability discrimination claim;
- d. The First Respondent is liable to pay to the Claimant the sum of £527.55 in respect of its failure to make a payment to the Claimant in lieu of annual leave on termination of his employment;
- e. In summary, the First, Second and Third Respondents are liable to pay to the Claimant a total sum of **£13,555.10**. The First Respondent is liable to pay to the Claimant in addition to that sum, the sum of **£911.55**.

REASONS

1. The Claimant has brought claims against the three Respondents for disability discrimination, unfair dismissal, notice pay and a payment in lieu of annual leave.
2. The Claimant was employed by the First Respondent as Branch Director from 2 May 2017 to 30 October 2019, when he was dismissed following a period of sick leave. The First Respondent is a window manufacturing company and the Claimant worked in the showroom. Although there was reference in the email dismissing the Claimant to his statutory notice, he was not paid any notice pay. He was entitled to two weeks' notice.
3. The Claimant has a permanent and serious disability, affecting his mobility, as a result of a bone cancer sustained when he was a child.
4. The Claimant presented his claim to the Tribunal on 11 November 2019. None of the Respondents filed a response and none attended today's hearing. By a letter from the Tribunal dated 28 January 2020, the Respondents were informed that because a response had not been entered, judgment might now be issued. In the absence of any response from any of the three Respondents, I concluded on the material available to me that the Claimant was entitled to a judgment on liability in respect of all his claims pursuant to rule 21 of the Employment Tribunals Rules of Procedure.
5. In relation to the Claimant's claims for unfair dismissal, notice pay and payment in lieu of annual leave, it was clear from the evidence that the First Respondent was the Claimant's employer. Those claims therefore only lie against the First Respondent, although the failure to pay

notice pay was a potential head of loss also under the disability discrimination claim.

6. In relation to the Claimant's claim for disability discrimination, the claim lies against all three Respondents. The Second and Third Respondents are a director and owner of the First Respondent business and are the individuals who dismissed the Claimant.
7. Although liability was not in issue before me, as the Respondents had failed to file a response, the Claimant's claim was plainly one which fell under s15 of the Equality Act 2010. The Claimant was dismissed in consequence of his disability-related absence from work.
8. In short, the Claimant sustained an injury to his foot in an accident at work on 10 July 2019. Because of his pre-existing condition, the injury left him completely immobile. His doctor certified him unfit for work until 5 January 2020.
9. The Claimant carried out work from home for the Respondents, while he was signed-off as sick, including dealing with calls, letters and emails. The Claimant continued to be paid.
10. On 18 October 2019 and without following any process at all, the Respondents informed the Claimant that he was dismissed. He was paid no notice pay. At that time, he had just over 14 days' holiday due to him from the beginning of the holiday year on 6 April 2019. No payment was made to him in respect of untaken holidays.
11. The Claimant is a lone parent with a 13 year old son. The impact of the dismissal on him was very significant. He had an emotional breakdown and is still attending for psychological therapy. He had to move house because he could not pay his rent. Because of his mobility issues, he has found very little work since his dismissal. The work which he has found has been short-term.
12. The First Respondent dismissed the Claimant without following a fair procedure. I concluded that if a fair procedure had been followed, with proper consultation with the Claimant and medical advice to the First Respondent, the Claimant would have been dismissed within 4 weeks of 18 October 2019 given that there was no realistic prospect of his returning to work in the immediate future as he was signed off sick until 5 January 2020. He would have been dismissed with 2 weeks' notice.
13. On the basis that the Claimant's net weekly pay was £175.85, his financial losses therefore amounted to £1,055.10 (6 x £175.85). On the basis that his dismissal involved disability discrimination, I awarded that sum as compensation for disability discrimination.

14. Taking into account the impact of the dismissal on the Claimant, I considered that the appropriate award for injury to feelings fell within the Vento middle band. I considered that the appropriate figure was £12,500.
15. In relation to unfair dismissal, the Claimant is entitled to a basic award in the sum of £384. The sum to which he is entitled in respect of the failure to make a payment in lieu of annual leave is £527.55.

Employment Judge McNeill QC

Date: 17 July 2020

Sent to the parties on: **7/9/2020**

.....
For the Tribunal