



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr K Roberts  
**Respondent:** AKARI CARE LTD  
**Heard at:** Leeds through CVP      **On:** 7 September 2020  
**Before:** Employment Judge O'Neill  
**Representation**  
Claimant: Mr Nuttman, Solicitor  
Respondent: Ms T Barsam of Counsel

## JUDGMENT- REMEDY

1. The Claimant is awarded compensation of **£85206.00** as set out below.

Basic Award	£1,524.00
Compensatory Award	£83,682.00
<b>Total Award</b>	<b>£85206.00</b>

## REASONS

2. **Law :**

S119 and S123 of the Employment Rights Act 1996.

SI 2018/194. Employment Rights (Increase in Limits Order)

Rules 75-76 Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013

The Claimant referred me to the following cases

*Garage etc UKEAT 0582/94*

*Dench etc 1998 IRLR 653*

Witham Weld etc UKEAT 176/95

**3. Contribution**

I made no finding of contribution as set out in the Reserved Judgement already promulgated.

**4. Evidence**

3.1 There was an agreed Bundle of Documents and an email setting out additional information.

3.2 The Claimant produced two statements which were taken as read and signed before the Tribunal and an updated schedule of loss. He was cross examined. There were no other witnesses.

**5. Facts relating to Calculations**

5.3 The following key figures were agreed by the parties: Basic Award £1524; Health Insurance Premium £1837.20/ £35.30; weekly net pay £2676; Car Benefit £82:

5.4 The Claimant has never received pension contributions notwithstanding the clause in his contract of employment which expressly conferred on him his entitlement to the statutory minimum stakeholder pension which he says comprises employer contributions of 2%.

5.5 I accept the core facts as given in evidence by the Claimant and set out in the Schedule below.

5.6 The figure, the claimant gives for expenses in seeking other work has not been challenged.

5.7 The Respondent disputed the following matters : failure to mitigate (the claimant should have accepted the position offered in February 2020 as Acquisitions Manager and his losses should be confined to 4 weeks from 1 February 2020) ;having never had employer pension contributions this cannot constitute a loss and further that the Claimant had exceeded his lifetime contributions limit in any event;

**6. Pension Loss.**

6.1 The Claimant has made no claim under Part 1 Employment Rights Act 1996 in respect of failure to pay pension contributions, nor as a separate contract claim. He has only pleaded it as a loss arising after 1 February 2020 from his dismissal. The figure he has given in his statement and Schedule of loss has not been challenged by the Respondent.

6.2 In submissions the Respondent has asserted that the Claimant had exceeded his lifetime contribution allowance but no evidence was produced to that effect. Given that there is a statutory requirement to make pension arrangements for employees under the Pensions Act I allow that element of claim for pension contributions as set out below, the figures having not been challenged.

## 7 Mitigation

7.1 The claimant was in the position of Chief Executive Officer with the respondent on a substantial salary and was seeking a comparable role with a similar benefits package and range of responsibilities. I accept the claimant's evidence that such jobs are in relatively short supply and in order to secure one a person is obliged to cultivate head-hunters, directors and other senior managers in the field. In the circumstances I think it not unreasonable that for the first 12 months after his dismissal he was unable to secure a position.

7.2 In February 2020, he was offered a position of Chief Commercial and Acquisition Officer reporting to the executive chairman of a Company, on a salary of £250,000 a year and a benefits package which were comparable to that he enjoyed with the respondent.

7.3 The claimant rejected this job offer he says because it was not the managing director position (for which he had applied) but two positions below it, it was likely to involve his family in a move to the London area (Potters bar) and required him to make a substantial investment of £250,000 in the business. I accept his evidence that these were his reasons for refusing and, in the circumstances, given that he was conscious of the adverse impact a drop in status would have on his efforts to secure a CEO position, he had a young family still in school and although he would have moved them for a Managing Director / CEO role he was not inclined to do so for this lesser role, he had not yet recovered his investment in the respondent's business and did not have £250,000 to risk, particularly as he had been living off his savings for the last 12 months. I find that that his rejection of the offer was not an unreasonable decision at the time.

7.4 . However, the potential employer was clearly impressed by the claimant and entered into a temporary fixed term consultancy arrangement with him at a daily rate of £1500 capped at 10 days a month to undertake a specific project. These earnings have been taken into account in calculating the ongoing loss. I also infer from these arrangements and from the fact of the job offer that the claimant will not continue out of work for very much longer and future loss will be limited.

The Respondent has argued that this consultancy arrangement was a ruse designed to inflate the claimant's continuing losses which would have come to an end had he accepted the offer of permanent employment as the Acquisitions Manager. I do not find any evidence of such bad faith. This was a convenient short term arrangement which allowed the claimant to work from home but provided him with a substantial temporary income to mitigate his loss.

7.5 . The claimant also has an interest in a private equity firm called Soligen of which he became a partner in or about February 2020 and a director in or about April 2020. The claimant has produced an email from the senior director, Paul Betts, to the effect that the claimant is not employed by the holding company or the investment fund. The claimant is a 20% shareholder in the company and he and his wife are pre-existing investors in the fund. He has told the tribunal that for a number of years, including a period before he joined Akari, he has undertaken unpaid advice, consultancy and mentoring work for Soligen. He says he does so to improve the position on his CV and to protect his investment interests. I have given consideration as to whether the work he was

undertaking for Soligen (whether or not he was immediately paid for it) was to be financially rewarded and whether it diverted him from his job search. On the balance of probability, given the long lists of contacts he has produced and the additional difficulties arising from the Covid crisis I find that it did not divert or hinder his job search and further that he had no foreseeable financial return other than as an investor which cannot be quantified and is not an emolument to be offset against his losses.

7.6 in the circumstances I find that the claimant acted reasonably in mitigating his loss.

## 8 Future Loss

Given my findings above at 7.4 above. I would not expect the claimant to continue out of employment for much longer and would limit future loss to another 16 weeks, i.e. to the end of the year.

## 9 Matters excluded from the Claim

It is agreed that the following matters have been excluded from the claim because the Claimant expressly reserves the right to bring in the High Court a claim in respect of

- notice pay (including contractual benefits)
- shareholding claims.

Therefore, the Claimant is not claiming losses for the twelve months immediately after his dismissal and his losses are calculated from 1 February 2020. .

## 11. Schedule setting out the Core facts and Calculations

### 11.1. Core Details

Date of birth of claimant	06/01/1969
Date started employment	03/08/2016
Effective Date of Termination	31/01/2019
Period of continuous service (years)	2
Age at Effective Date of Termination	50
Remedy hearing date	07/09/2020
Date by which employer should no longer be liable	07/09/2020
Statutory notice period (weeks)	2
Net weekly pay at EDT	2,676.00
Gross weekly pay at EDT	4,807.00
Gross annual pay at EDT	250,000.00

### 11.2. Basic award

Basic Award (1.5x 2 x 508) 1,524.00

**11.3 Compensatory Award**

Loss of wages to Remedy Hearing (31x 2676) 83266.00  
 Loss of Statutory Rights 300.00

Plus Company Car (31x£82) £2,542.00  
 Plus Medical insurance (31x £35.33) £1,095.23  
 Plus Pension contributions (31x £96.15) £2,980.65  
 Plus Expenses in seeking work £3,429.55  
 Less Net Income from Consultancy (£50,839.00)

**Total Immediate Loss 42774.43**

**6.4 Future Loss**

16 weeks x 2676 **42816.00**

**6.5 Summary Totals**

Basic Award 1,524  
 Compensatory 85,590.43  
**Total 87114.23**

**6.6 Grossing up**

Tax free allowance (£30,000 - no redundancy pay) 30,000.00  
 Basic Award 1,524.00  
 Balance of tax free allowance 28,476.00  
 Compensatory award 87,114.43  
 Figure to be grossed up 58,638.00

**6.7 Compensatory Award Cap**

It is agreed that the cap is that contained in the 2018 Order SI 2018 / 194 namely £83,682.

**6.8 Conclusion**

It is agreed that if the calculation for the Compensatory Award exceeds the statutory cap as I have the Total Award shall be Basic Award £1524 plus capped Compensatory Award £83682 = £85206.00

**Total            £85206.00**

Employment Judge O'Neil

Date 7 September 2020

