



# THE EMPLOYMENT TRIBUNALS

## Claimant

Mr Korhan Moluluo

## Respondent

Star Meats Limited ( in administration)

## REMEDY JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Made at Newcastle

On 2 September 2020

EMPLOYMENT JUDGE GARNON (sitting alone)

### **REMEDY JUDGMENT FOLLOWING A JUDGMENT ON LIABILITY ONLY** **(made under Rule 21 of the Employment Tribunal Rules of Procedure 2013)**

On the claim of unfair dismissal, I order the respondent to pay to the claimant compensation, being a compensatory award only of £17673.20 The Recoupment Regulations do not apply.

### **REASONS**

1. A judgment by Employment Judge Johnson on 7 July 2020 upheld claims of wrongful dismissal, failure to pay holiday pay on termination and a redundancy payment for all of which he decided remedy too. He found the claim of unfair dismissal well founded but could not assess remedy without further information which he ordered be provided.

2. The law relating to unfair dismissal is in Part 10 of the Employment Rights Act 1996. The claimant was dismissed on 30 August 2019 for no given reason but subsequently accepts the reason was redundancy. At that time the business continued to trade. The claim was served on 5 February 2020, a response was due by 4 March but none was received. Employment Judge Aspden did not have sufficient information to give judgment under Rule 21 on 6 March so left the hearing listed at service for 26 May in place. Due to the Covid 19 pandemic that was converted to a preliminary hearing by telephone which she conducted.

**3 On 3 April the respondent went into administration.** No action may continue against a company in administration without the consent of the administrators or the leave of the court. They gave consent on 22 May so on 26 May, Employment Judge Aspden made various orders for the case to progress. The claimant complied which enabled Employment Judge Johnson on 7 July 2020 to deal with everything but remedy for unfair dismissal

4. There is no basic award because the claimant has been awarded a redundancy payment and the first five weeks of his loss are covered by the damages for wrongful dismissal. His losses therefore start on 4 October 2019. His net weekly pay before dismissal was £893.20 He claims 38 weeks immediate loss from the end of his notice as compensation for loss of employment which would take him to the end of June.  $38 \text{ weeks} \times £893.20 = £33,941.60$  during which period he does not appear to have claimed recoupable benefits but started his own business from which he earned £11,000.00 in the 38 weeks The claimed loss to then is £22,941.60. Adding Loss of Statutory Rights £450.00 = £23,391.16

5. On 7 July Employment Judge Johnson raised a possible Polkey reduction as the claimant may have been dismissed anyway during the notice period. The claimant's representative wrote disputing that. I agreed on 28 July but the letter I directed could have been phrased better. The compensatory award is explained in s 123 which as far as relevant says:

*(1), the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal **in so far as that loss is attributable to action taken by the employer.***

6. Scope-v-Thornett held though speculation is involved, a Tribunal should try to predict what may have happened. Paragraph 54 of the Employment Appeal Tribunal Judgment in Software 2000 Limited-v-Andrews 2007 ICR 825, is still an excellent summary of the basic principles though it must be amended to take into account changes in the law to read as follows

*1. The evidence from the employer may be so unreliable the exercise of seeking to reconstruct what might have been is too uncertain to make any prediction, though the mere fact that an element of speculation is involved is not a reason for refusing to have regard to the evidence.*

*2.The employer may show that if fair procedures had been complied with, the dismissal would have occurred when it did in any event.*

*3.The Tribunal may decide that there was a chance of dismissal ... in which case compensation should be reduced.*

***4.The Tribunal may decide that the employment would have been continued but only for a limited period.***

*5.The Tribunal may decide the employment would have continued indefinitely because the evidence that it might have terminated earlier is so scant that it can effectively be ignored.*

7.Available on the Companies House website is a thorough report by the administrators. Although not all administrations end in dissolution, it appears this will and there is little or no hope of non preferential unsecured creditors getting even a divided in the pound . Moreover, it is likely the entire workforce would have been dismissed on cessation of trading at or shortly after the start of administration. The loss then ceases to be attributable to action taken by the employer and is not just and equitable to award loss to the end of June, thereby inflating the amount of unsecured creditors and diluting any dividend which may be payable. To early April would be 26 weeks loss = £23223.20. The £11000 earned from his own business was probably earned mainly at the end of the 38 week period and a likely sum in the first 26 weeks would be £6000 . Adding £450 for Loss of statutory rights then gives a total of £17673.20

**EMPLOYMENT JUDGE T M GARNON**  
**JUDGMENT AUTHORISED BY EMPLOYMENT JUDGE ON 2 SEPTEMBER 2020**