



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Daniel Hilbert

**Respondent:** Red Admiral Vintage Ltd

## FINAL HEARING

**Heard at:** Leeds (by video link)      **On:** Friday 25 September 2020

**Before:** Employment Judge S Shore

### Appearances

For the claimant: In person

For the respondent: No appearance

## JUDGMENT

1. The claimant's claim of unfair dismissal succeeds. The claimant was unfairly dismissed. No deduction shall be made from any award to the claimant for contributory conduct or under the principle in the case of **Polkey v AE Dayton Services Ltd** [1998] ICR 142.
2. The respondent, Red Admiral Vintage Ltd, a company registered under company number 08628810, whose registered address is 42-46 Hagley Road, Birmingham, B16 8PE, shall pay compensation calculated as follows:
  - 2.1. A Basic Award calculated as two weeks' pay (at £410.56 gross per week), being a total of **£821.12**.
  - 2.2. A Compensatory Award for losses to the date of this hearing, which is calculated on the basis of average net weekly pay of £348.98 from the effective date of termination (23 January 2020) to the date of this hearing (25 September 2020).
  - 2.3. The calculation is for 100% of the claimant's usual net weekly wage between 24 January 2020 and 16 March 2020, when lockdown began in England – 7 weeks at £348.98 per week = **£2,442.86**.
  - 2.4. The period of lockdown is calculated at 80% of the claimant's average weekly net wage (£279.18) for 17 weeks from 17 March 2020 to 3 July 2020, when hotels were permitted to reopen in England – 17 weeks at £279.18 = **£4,746.06**.

- 2.5. The period from 4 July 2020 to 25 September 2020 is calculated at 100% of the claimant's average weekly wage. That is 11 weeks at £348.98 per week = **£3,838.78**.
  - 2.6. A Compensatory Award for future loss for a period of 26 weeks at £348.98 per week = **£9,073.48**.
  - 2.7. Loss of statutory rights - **£250.00**.
3. The total award is **£21,172.30**.
  4. The Employment Protection (Recoupment of Benefits) Regulations 1996 apply:
    - 4.1. The total monetary award payable to the claimant for his unfair dismissal claim is £21,172.30.
    - 4.2. The prescribed element is £11,027.70.
    - 4.3. The prescribed period is from 24/01/2020 to 25/09/2020.
    - 4.4. The difference between the total monetary award and the prescribed element is £10,144.60.
  5. The effect of Employment Protection (Recoupment of Benefits) Regulations 1996 is that the Secretary of State may recoup the benefits paid to the Claimant (or the prescribed element if less) by serving a notice on the Respondent within 21 days from when the Tribunal's decision is sent to the parties or as soon as practicable thereafter. The effect of the notice is that the Respondent must pay the recoupable amount to the Secretary of State and the balance of the prescribed element to the Claimant. Accordingly, the Respondent is not obliged to pay the prescribed element of compensation to the Claimant until either the Secretary of State has served a recoupment notice on it, or the Secretary of State has notified it in writing that it does not intend to do so. The prescribed element is any amount ordered to be paid and calculated under section 123 Employment Rights Act 1996 in respect of compensation for loss of wages before the conclusion of the Tribunal proceedings, i.e. £11,027.70.

Employment Judge Shore  
25 September 2020