



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr Paul Lee

v Smarter Data Management Limited

Heard at: Watford (by CVP)

On: 14 October 2020

Before: Employment Judge Allott (sitting alone)

Appearances

For the Claimant: Ms L Eaton (family friend)

For the Respondent: Mr Stephen Meeks (Group Chairman)

JUDGMENT

The judgment of the tribunal is that:

1. The claimant's claim for unfair dismissal is well founded and the respondent is ordered to pay him the total sum of £3,781.28 made up as follows:

1.1. Basic award:	£1,050.00
1.2. Compensation award:	£2,231.28
1.3. Loss of statutory rights:	£ 500.00

2. Recoupment

- 2.1. The claimant was not in receipt of any state benefits between 19 April and 24 June 2019 and, consequently, the recoupment provisions do not apply.

REASONS

1. The claimant was employed by the respondent on 20 March 2017 as an Electrician's mate. He was given notice on 19 March 2020 and put on gardening leave, not being required to work his notice. His last date of pay was 19 April 2019.
2. The claimant worked a 42 hour week being paid £2,800 gross/£2,148.64 net per month. The claimant's net weekly pay was therefore £495.84.

3. By a claim form dated 24 May 2019, the claimant presented a claim for unfair dismissal.
4. The response was due to be filed and served by 16 December 2019. The response was filed late on 24 December 2019 and was consequently rejected by Employment Judge Lewis. Notice of rejection was sent to the respondent on 17 February 2020 along with a frequently asked questions leaflet that made clear that if the respondent wished to participate it would have to submit an application for an extension of time. Mr Meeks told me that this was overlooked.
5. On 19 March 2020 notice was sent to the respondent indicating that judgment could now be issued and that the respondent would only be allowed to participate in this hearing to the extent that the Employment Judge hearing the case allowed.
6. Mr Meeks has appeared by CVP and I have allowed him to participate and put the respondent's point of view.
7. The claimant worked with an electrician called Alex Minns. Alex Minns lived in Hull and the claimant was based in Leeds. The respondent had work all over the country but principally in the south of England. Alex Minns would pick up the claimant on a Monday in his car/van and they would travel to their job, staying in a Travel Lodge during the week before returning home on a Friday.
8. It would appear that the arrangement whereby Alex Minns picked up the claimant was becoming untenable towards the end of 2018, probably because Alex Minns' wife was pregnant and he no longer wanted to go out of his way to pick up and drop off the claimant. Be that as it may, the claimant accepted that towards the end of 2018 it was suggested to him that he needed to get a full driving licence in order to allow him to travel to work.
9. The claimant went on holiday but on his return in January 2019, he applied for and received his provisional driving licence. Initially, it was suggested that the claimant took Mondays off in order to have his driving lessons but, due to the expense of dealing with a broken down boiler, the claimant was not in a financial position to begin driving lessons immediately. I find however that he was making efforts to obtain a driving licence.
10. In March 2019 it appears that the respondent decided that as there was no local work for the claimant and because he had yet to acquire a full driving license, so the respondent would terminate his employment.
11. The claimant obtained an alternative job on 24 June 2019 paying a comparable salary to that which he had earned with the respondent. The claimant was therefore unemployed for nine weeks. The claimant told me that he was not in receipt of any state benefits.
12. I find that the claimant was procedurally unfairly dismissed in that there was no consultation or warning prior to the dismissal.

13. Doing the best that I can to be fair to all the parties in the circumstances, I have come to the conclusion that had the respondent adopted a fair procedure there is a chance that the claimant would have lost his job either by reason of redundancy or by reason of not having a full driving licence. I have assessed that chance as 50 per cent. Consequently, I will award the claimant 4 ½ weeks of net pay for the 9 weeks during which he was unemployed.
14. Accordingly, I make the following awards:
15. Basic award
 - 15.1 The claimant was employed for 2 full years and is entitled to the statutory maximum weeks' pay of £525: basic award £1,050.
16. Compensatory award
 - 16.1 4.5 weeks x £495.84 = £2,231.28
17. Loss of statutory rights
 - 17.1 I award £500
18. Consequently, the judgment sum is £3,781.28.
19. I record here that I raised the issue of re-instatement/re-engagement with the claimant at the outset and he did not request these remedies.

Employment Judge Alliot

Date: 28th October 2020.....

Sent to the parties on: 6th Nov 2002
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For the Tribunal Office