



EMPLOYMENT TRIBUNALS

Claimant: Abdoul El Gorrou

Respondent: Tesco Stores Ltd

Heard at: East London Hearing Centre On: 3 & 8 December 2020

Before: Employment Judge S Knight

Representation

Claimant: In person, unrepresented

Respondent: Anna Greenley (Devereux Chambers)

JUDGMENT

1. The Respondent unfairly dismissed the Claimant.
2. The Respondent wrongfully dismissed the Claimant.

REMEDY JUDGMENT

3. The Respondent is ordered to pay the Claimant a total of £42,141.56 for unfair dismissal.
4. No separate award is made for wrongful dismissal.
5. For the purposes of the Employment Protection (Recoupment of Benefits) Regulations 1996:
 - (1) The total monetary award for unfair dismissal is £42,141.56.

- (2) The prescribed element is £14,410.52.
- (3) The prescribed element relates to 7 January 2020 to 8 December 2020.
- (4) The amount by which the total monetary award for unfair dismissal exceeds the prescribed element is £27,731.04.

RESERVED REASONS

Introduction

1. Judgment and Reasons on Liability were given orally at the hearing.
2. Judgment and Reasons on the underlying principles to be applied in determining Remedy were also given orally at the hearing.
3. However, due to the complexity of the calculations involved in determining Remedy, I reserved my Judgment and Reasons on the quantum of Remedy.

Principles

4. The Respondent raised the issue of whether the Claimant has mitigated his loss by attempting to find new work. I conclude that he has, by applying for multiple appropriate job opportunities. I conclude that the Claimant found temporary work, which it was appropriate for him to undertake. I conclude that his damages should not be reduced for a failure to mitigate his loss.
5. I have considered whether the Claimant could have been dismissed fairly, even though he was not on this occasion. In light of my findings that the Claimant did not commit an act of misconduct, and that there were not reasonable grounds to conclude he did, I conclude he could not have been fairly dismissed. As such, his compensation will not be reduced on a *Polkey* basis.
6. I have considered whether the Claimant caused or contributed to his own dismissal. I have concluded that he did not. He acted reasonably in a challenging situation, to prevent harm to himself and to others. As such, his compensation will not be reduced on this basis.
7. The parties have both raised the issue of whether the damages awarded should be increased or reduced for a failure to follow an appropriate ACAS Code of Conduct. I conclude that it would not be just and equitable to adjust an award on this basis.

Calculations

8. The Claimant has a right to recover a Basic Award, and a Compensatory Award. The detailed calculations are set out in the Schedule.

Basic Award

9. The Claimant was 60 years old at the Effective Date of Termination (“EDT”). Despite the matter having been fully considered at the hearing, after the hearing the parties communicated with the Tribunal regarding a dispute over the length of continuous service. As I found at the hearing, the Claimant had 19 complete years’ continuous service with the Respondent at the EDT. His gross weekly pay exceeded the statutory cap of £525 per week which applied at the EDT.
10. As such, the Basic Award is calculated by multiplying the Claimant’s capped weekly gross wages by 1.5 times the number of years’ continuous service he had at the EDT.
11. This is $£525 \times 1.5 \times 19 = \mathbf{£14,962.50}$.

Compensatory Award

12. The Compensatory Award compensates the Claimant for his losses arising out of his unfair dismissal.
13. The Claimant found temporary employment after 5 weeks and 2 days (5.2857 weeks). His **weekly net lost wages to the new job** were £592.91. This produces a loss of $£592.91 \times 5.2857 = \mathbf{£3,133.95}$.
14. From finding a new (temporary) job to the Tribunal hearing, the Claimant earned £14,133.86. The temporary job ended before the Tribunal hearing. The Claimant’s **net average lost wages from starting the new job to the Tribunal hearing** were **£11,276.57**.
15. This gives a total **prescribed element of £14,410.52**.
16. Given the efforts that the Claimant is taking to find work, and his previous good fortune in finding temporary work, combined with the prevailing economic conditions in the grocery retail sector, I conclude that the Claimant is likely to find further employment very soon. I conclude that this will be at a similar rate to his temporary employment that he secured after his dismissal by the Respondent. I conclude that he will regain a managerial role of an equivalent level to his job as Store Manager within 9 months (39 weeks). I therefore conclude that his future lost wages until restoration of his old wage level will continue at a loss of £263.12 per week for 39 weeks. This gives **future losses of £10,261.68**.
17. The Claimant claimed loss of employer’s pension contributions at £40.60 per week for 12 weeks. I conclude that it is fair to award this amount. I award **lost pension contributions of £487.20**.
18. Considering the Claimant’s length of service with the Respondent and the prevailing economic climate, I award **£300 for loss of statutory protection**.
19. Considering the same factors, I award **£300 for loss of right to long notice**.
20. The Claimant has provided no receipts for his claimed expenses in looking for

work. The Respondent points out that the job searching appears to have been done remotely, given the nature of the applications made and the COVID-19 pandemic. I do not make an award for expenses in looking for work.

21. This gives a total **non-prescribed element of £11,348.88.**
22. This gives a total **Compensatory Award before grossing up of £25,759.40.**

Grossing up

23. Where the Tribunal awards more than £30,000 in compensation for an unlawful dismissal, income tax is generally charged on the excess over £30,000. The principle in *British Transport Commission v Gourley* 1956 AC 185; 8 December 1955 therefore requires the Tribunal to increase the amount awarded to ensure that, when this income tax is paid, the Claimant does not end up with less than the amount the Tribunal intended to award, and therefore be in a worse position than if he had not been dismissed.
24. Compensation is taxed in the year that it is received by the Claimant (section 403(2) of the Income Tax (Earnings and Pensions) Act 2003). **The Claimant must declare his compensation by completing a self-assessment income tax form at the end of the tax year in which he receives his compensation.**
25. The total monetary award before grossing up is £39,713.25. The amount by which the total monetary award before grossing up exceeds the tax-free element of £30,000 is £9,713.25.
26. Given his reduced income in the current tax year, the Claimant will likely pay tax at 20% on the amount by which his total monetary award exceeds the tax-free element of £30,000.
27. As such, in order to avoid an award which is too low, the excess of the monetary award over the tax-free element must be increased to £12,141.56. This is a difference of £12,141.56 - £9,713.25 = **£2,438.31 to account for grossing up**. This will be added to the non-prescribed element of the Compensatory Award.

Conclusions on Monetary Awards

28. **The Total Monetary Award is £42,141.56.**
29. **The Basic Award is £14,962.50.**
30. **The Compensatory Award is £28,187.71, made up of a prescribed element of £14,410.52 and a non-prescribed element of £13,777.19.**

Recoupment of social security benefits

31. The Employment Protection (Recoupment of Benefits) Regulations 1996 paragraph 8(2)(b)(ii) require that the total amount of recoupment of social security benefits by Jobcentre Plus will be the "*amount paid by way of or on*

account of universal credit for the UC period that would not have been paid if the [Claimant's] earned income for that period was the same as immediately before the period to which the prescribed element is attributable".

32. The relevant amount for the purpose of **recoupment is £1,008.65**, being the amount of universal credit received by the Claimant, to which he had not previously been entitled.

**Employment Judge S Knight
Date 11 December 2020**

Schedule: Remedy Calculations

FINDINGS OF FACT		Fill in only the yellow cells.		Workings
Date of birth	15/10/1959	Age at EDT	60	Years/Weeks Calculation 10.5 weeks per full year worked under 22; 1 week per full year worked between 22 and 41; 1.5 weeks per full year worked 41 or older. ERA ss 100(1)(a); 100(1)(b); 103A; 124(1A) ERA ss 100(1)(a); 100(1)(b); 101A(d); 102(1); 103
Date of start of employment	20/01/2000	Full years of service at EDT	19	
Effective date of termination ("EDT")	06/01/2020	Pay frequency	Weekly	
Gross Weekly Pay	£812.02	Additional Award made?	No	
Net Weekly Pay	£592.91	Compensatory Award uncapped?	No	
		Automatically unfair, with min. Basic Award?	No	
		Automatically unfair for blacklisting?	No	
STATUTORY CAPS AND MINIMA		Fill in only the yellow cells.		
Always required		Required where listed in yellow		
Max weekly gross wage at EDT	£525.00	Max compensatory award at EDT	£86,444.00	
		Max compensatory award at EDT in this case	£42,225.05	
BASIC AWARD		Fill in only the yellow cells.		
	Monthly	Weekly	No of Weeks	Total
Capped Gross Wages	£2,275.00	£525.00	28.5	£14,962.50
Subtract				
Unreasonable refusal of reinstatement		§ 122(1)		£0.00
Conduct / contributory fault		§ 122(2) & 3	0%	£0.00
Redundancy payment		§ 122(4)		£0.00
NET BASIC AWARD				£14,962.50
				Running total £14,962.50
				£14,962.50
				£14,962.50
				£14,962.50
				-ve value is subtracted from Comp. Award
COMPENSATORY AWARD		Fill in only the yellow cells.		
Prescribed Element				
Loss of wages inc taxable benefits to date of hearing (after allowing for failure to mitigate)				
Dismissal to new job	Monthly	Weekly	No of Weeks	Total
Net average lost wages to new job	£2,569.28	£592.91	5.2857	£3,133.95
New job to hearing	Monthly	Weekly	No of Weeks	Total
Wages earned in new job	£1,429.09	£329.79	42.8571	£14,133.86
Net average lost wages from old job	£1,140.19	£263.12		£11,276.57
Total Lost Wages to Hearing				£14,410.52
Subtract				
Wages / money in lieu of notice	£0.00	£0.00	0.0000	£0.00
Actual total lost wages				£14,410.52
Adjust by subtracting or adding, as appropriate				
			Multiplier	Total
Chance of dismissal anyway with fair procedure		Palkey	0%	£0.00
ACAS Code breach increase / reduction		§ 124A	0%	£0.00
Conduct / contributory fault		§ 123(6)	0%	£0.00
PRESCRIBED ELEMENT				£14,410.52
Non-Prescribed Element				
Estimated future loss of wages (allowing for failure to mitigate)				
	Monthly	Weekly	No of Weeks	Total
Weeks to restoration of old wage level			39.0000	
Wages earned in new job	£1,429.09	£329.79		£10,261.68
Net average lost wages	£1,140.19	£263.12		£10,261.68
Loss of other benefits	£0.00	£0.00	0.0000	£0.00
Loss of pension rights				£487.20
Loss of statutory protection				£300.00
Loss of right to long notice				£300.00
Expenses in looking for work				£0.00
Total				£11,348.88
Adjust by subtracting or adding, as appropriate				
			Multiplier	Total
Any other payment by Respondent (except excess of redundancy payment)				£0.00
Chance of dismissal anyway with fair procedure		Palkey	0%	£0.00
Reduction for accelerated receipt				£0.00
ACAS Code breach increase / reduction		§ 124A	0%	£0.00
Failure to provide employment contract: 0, 2, or 4 weeks		EA s 38 & Sched. 5	0	£0.00
Protected disclosure not made in good faith		§ 123(6A)	0%	£0.00
Conduct / contributory fault		§ 123(6)	0%	£0.00
Excess of redundancy payment over basic award		§ 123(1) or (7)		£0.00
Adjustment to account for grossing up				£2,428.31
NON-PRESCRIBED ELEMENT				£13,777.19
COMPENSATORY AWARD				£28,187.71
ADDITIONAL AWARD for non-re-engagement s 117(3)				
	Monthly	Weekly	No of Weeks	Total
ADDITIONAL AWARD	£2,275.00	£525.00	0	£0.00
SUMMARY		Fill in only the yellow cells.		
Basic Award				£14,962.50
Compensatory Award				£28,187.71
Additional Award				£0.00
TOTAL MONETARY AWARD owed by the Respondent				£42,141.56
EXCESS of Total Monetary Award over the Prescribed Element				£27,731.04
Less recoupment				£1,008.65
TOTAL DUE to the Claimant				£41,132.91