



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr. Jackson

**Respondent:** Mr Gary Greenwood t/a G & A Maintenance

**Heard at:** Leeds (by CVP)      **On:** 10 December 2020

**Before:** Employment Judge Buckley

## Appearances

For the claimant: Ms Skelton (**Lay** representative)

For the respondent: In person

This has been a remote hearing, which has not been objected to by the parties. The form of remote hearing was V: (Video). A face to face hearing was not held because it was not practicable and no-one requested the same and all the issues could be determined in a remote hearing.

## CORRECTED RESERVED REMEDY JUDGMENT

1. The respondent shall pay the claimant the sum of **£333.28** for unfair dismissal. This is a basic award only. There is no compensatory award and therefore the recoupment regulations do not apply.
2. The respondent shall pay the claimant the sum of **£1,360.52** compensation for wrongful dismissal.
3. The respondent shall pay the claimant the sum of **£820.90** for failure to provide a s 1 statement.

## REASONS

### *Compensation for unfair dismissal*

#### *Compensatory award*

1. For the reasons given orally in the liability judgment I found that the claimant

would have been fairly dismissed at the same time in any event. He is therefore not entitled any compensatory award, this applies equally to any award for loss of statutory rights.

*Basic award*

2. There was a dispute as to the correct figure for a weeks' pay. I find on the balance of probabilities that the claimant had no normal working hours. The payslips provided show that he worked different hours each week, some described as 'basic' and some described as 'overtime'. Both the basic and overtime hours varied each week. There was no written contract or statement of terms and conditions and no oral evidence of any agreed normal working hours.
3. Section 254 of the ERA 1996 provides that where there are no normal working hours in force for the employee, the amount of a week's pay is the amount of the employee's average weekly remuneration in the period of twelve weeks ending either on the date of dismissal if it was on the last day of a week or, if the date of dismissal was not the last day of a week, with the last complete week before the date of dismissal.
4. I found that the claimant was dismissed with effect on 28 March 2020. Because the claimant did not have normal working hours, the calculation includes any remuneration which would include overtime. It also includes any holiday pay received during that period, and, in accordance with the EAT decision in **University of Sunderland v Drossou [2017] IRLR 1087**, any pension contributions made by the employer.
5. The best evidence I have before me as to remuneration during the 12 weeks prior to 28 March comes from the payslips from January, February and March 2020. I note that the respondent's accountant has made various annotations suggesting that the claimant had been overpaid during that period due to an error, however I have not heard any evidence from the accountant and I find on the balance of probabilities that the claimant's total remuneration is accurately represented by the amounts set out in those payslips.
6. The period of time covered by the three payslips up to the date of termination is 12 weeks and 3 days. In the circumstances I find that the figures in the payslips are the best evidence I have of the claimant's remuneration over a 12 week period before his dismissal.
7. The total remuneration received by the claimant in the relevant period was £4925.42 which is the total of:  
January 2020: £1656.07  
February 2020: £1923.77  
March 2020: £1345.58
8. The average gross weekly pay in those 12 weeks for the purposes of the basic award is £410.45 (£4925.42 divided by 12).
9. The claimant's age and length of service means that the basic award is

calculated by multiplying that figure by 4. The basic award is therefore:

$$£410.45 \times 4 = £1641.80$$

10. The claimant has received a redundancy payment of £1308.52 which is set off against the basic award. **The basic award is £333.28.**

### ***Notice pay***

11. The claimant was entitled to 4 weeks' notice. I award 4 weeks' net pay. I have calculated the average net weekly pay received by the claimant in January and February and used that figure as his net weekly pay. I have not included March because the net monthly pay on that payslip includes the redundancy payment. I have added the employer's pension contributions:

Net pay in January = £1353.96

Net pay in February = £1561.57

Net pay per calendar day = 2915.53 divided by 60 = £48.59

Average net weekly pay: 7 x 48.59 = £340.13

4 weeks' net pay = 4 x £340.13 = £1,360.52

12. **Wrongful dismissal award = £1,360.52**

### **S 1 statement**

13. At the date the ET1 was issued the claimant had not been provided with a s 1 statement. Taking into account the size of the employer and its administrative resources, I make an award of 2 weeks' pay, using the same figure for a week's pay used in the basic award. The award is therefore 2 x £410.45 = **£820.90**

Employment Judge Buckley

Date 8 January 2021

### **Notes**

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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