



EMPLOYMENT TRIBUNALS

Claimant: Mr S O'Brien
Respondent: Pride Scaffolding Ltd
Heard at: East London Hearing Centre (by telephone)
On: 23 February 2021
Before: Employment Judge Burgher

Appearances

For the Claimant: In person
For the Respondent: Did not attend

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was A by telephone conference call. A face to face hearing was not held because the relevant matters could be determined in a remote hearing.

REMEDY JUDGMENT

1. The Respondent is ordered to pay the Claimant the total sum of £26,321.18 in respect of his claims. This consists of:

1.1 £24,238.48 for unfair dismissal

1.2 £2,082.70 for wrongful dismissal.

2. The recoupment provisions apply

Prescribed period 17/01/2020 to 23/02/2021

Compensation cap not applied

Total award £26,321.18

Prescribed element £17,549.44

Balance £8,771.74

REASONS

1 A default judgment in respect of the Claimant's claims was issued on 11 February 2021.

2 The remedy hearing took place and the Claimant gave sworn evidence under affirmation. He clarified that he had been paid his all his holiday pay entitlements.

3 The Claimant's schedule of loss was assessed following evidence. The Claimant did not establish that he was entitled to a 3% annual pay rise from 2017 given the absence of any written support for the assertion or any grievance relating to the failure to increase salary during the relevant period.

4 The Claimant's claim for Christmas bonus was assessed on the basis of the sums he stated he received in previous years. The Claimant also had private access to a company van and a sum of £1000 is awarded as compensation in this regard.

5 The Claimant secured alternative employment on 30 September 2020. He is earning £45 per month less when pension deductions are accounted for.

6 Having considered the evidence, the Claimant is entitled to the following sums given the relevant calculations.

1. Details

Date of birth of claimant	22/10/1958
Date started employment	07/04/2014
Effective Date of Termination	12/12/2019
Period of continuous service (years)	5
Age at Effective Date of Termination	61
Remedy hearing date	23/02/2021
Date by which employer should no longer be liable	30/09/2021
Contractual notice period (weeks)	5
Statutory notice period (weeks)	5
Net weekly pay at EDT	£416.54
Gross weekly pay at EDT	£537.00
Gross annual pay at EDT	£27,924.00

2. Basic award

Basic award	£3,937.50
Number of qualifying weeks (7.5) x Gross weekly pay (525.00)	
Total basic award	£3,937.50

3. Damages for wrongful dismissal

Loss of earnings	£2,082.70
Damages period (5) x Net weekly pay (416.54)	

Total damages	£2,082.70
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4. Compensatory award (immediate loss)

Loss of net earnings	£24,034.36
Number of weeks (57.7) x Net weekly pay (416.54)	
Plus loss of statutory rights	£350.00
Plus loss of commission and/or bonus	£1,275.00
Less new employment from 30/09/20	-7,759.92
Plus Company Car	1,000.00

Total compensation (immediate loss)	18,899.44
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5. Compensatory award (future loss)

Loss of future earnings	13,037.70
Number of weeks (31.3) x Net Weekly pay (416.54)	
Less other earnings 23/02/21 to 30/09/2021	-11,636.16

Total compensation (future loss)	1,401.54
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6. Total compensatory award

Total Compensatory award	£20,300.98
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7. Summary totals

Basic award	3,937.50
Wrongful dismissal	2,082.70
Compensation award including statutory rights	20,300.98

Total	26,321.18
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AFTER COMPENSATION CAP OF £27,924.00 (GROSS ANNUAL PAY)	£26,321.18
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7 The recoupment provisions apply to the award.

Prescribed period 17/01/2020 to 23/02/2021

Compensation cap not applied

Total award	£26,321.18
Prescribed element	£17,549.44

Balance

£8,771.74

**Employment Judge Burgher
Date: 23 February 2021**