



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Michael Hannant

**Respondent:** Hambling Utility Services Limited

**Before:** Employment Judge Allen QC

**Members:** Ms Harwood  
Mr Quinlan

## JUDGMENT ON RECONSIDERATION APPLICATION

1. Following an application by the Claimant dated 5 January 2021 inviting the tribunal to reconsider parts of its Judgment sent to the parties on 4 January 2021, the full tribunal have reconsidered part of its calculation of remedy in relation to the Claimant's successful claim of unfair dismissal and paragraphs 7 and 8 of the Judgment sent to the parties on 4 January 2021 are amended and now read as follows:
  7. *The claim for unfair dismissal succeeds. The reason for dismissal was redundancy but the dismissal was procedurally unfair. The compensatory award comprises the following elements:*
    - a. *400 loss of statutory rights*
    - b. *8840 net loss of earnings for a period of 6 months*
    - c. *This totals 9240*
    - d. *This amount is reduced to 25% of the total on the basis of the tribunal's reduction of compensation under the principle in Polkey to take account of the possibility that the Claimant would have been dismissed in any event if a fair process had been followed.*
  8. *The total net amount payable by the Respondent to the Claimant for unfair dismissal is therefore £2,310.*

2. For the avoidance of doubt, the other paragraphs of the original judgment remain as they are.
3. The remainder of the Claimant's application for reconsideration dated 5 January 2021 is dismissed.
4. The Respondent's application for reconsideration dated 25 February 2021 is dismissed.

## REASONS

1. By ET1 claim form presented on 18 May 2020, the Claimant brought claims against the Respondent for unfair dismissal, disability discrimination, notice pay, arrears of pay and holiday pay.
2. This matter was heard on 15 December 2020. Judgment was reserved and sent to the parties on 4 January 2021 with written Reasons.
3. A request by the Claimant for a reconsideration of part of the decision was received by email on 5 January 2021.
4. Rules 70, 71 and 72(1) of the Employment Tribunal Rules 2013 state:

### **70 Principles**

A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again.

### **71 Application**

Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

### **72 Process**

(1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.

(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.

(3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part”

5. The judgment as it stood contained the following order:

**7. The claim for unfair dismissal succeeds. The reason for dismissal was redundancy but the dismissal was procedurally unfair. The compensatory award comprises the following elements:**

**a. 400 loss of statutory rights**

**b. 2040 net loss of earnings for a period of 6 months**

**c. This totals 2440**

**d. This amount is reduced to 25% of the total on the basis of the tribunal’s reduction of compensation under the principle in *Polkey* to take account of the possibility that the Claimant would have been dismissed in any event if a fair process had been followed.**

**8. The total net amount payable by the Respondent to the Claimant for unfair dismissal is therefore £610.**

6. The reasons as they stood contained the following provisions:

9. It was specifically agreed after the lunch adjournment that gross weekly pay was £400 and net weekly pay was £340

...

56. Six months of net loss at £340 per month comes to £2,040 net.

57. Adding £400 for loss of statutory rights to reflect the fact that the Claimant would need to work for a new employer for 2 years to regain the right to claim unfair dismissal and the right to a redundancy payment, the total compensatory award is £2,440.

58. 25% of that figure is £610.

7. The basis of the Claimant’s reconsideration request is that the tribunal has fallen into a calculation error in that at paragraph 56, it has used the figure for a week’s net pay instead of a month’s net pay and that therefore the calculations at paragraphs 57 and 58 are also wrong and therefore that the figures in paragraph 7(b) and paragraph 8 of the judgment are also wrong.

8. The request for reconsideration was referred initially to EJ Allen QC who accepted that the application was in time and that on the basis that the calculation used by the tribunal appeared to be plainly wrong, there was a reasonable prospect of the original decision being varied or revoked and therefore the application will proceed to the second stage for consideration before the full tribunal.

9. The Claimant's email of 5 January 2021 also made reference to grossing up of the unfair dismissal loss of earnings figure. The tribunal has no record of hearing submissions on why it would be that an award of substantially under £30,000 would not be covered by section 41 ITEPA 2003 nor has the email of 5 January 2021 set out any such submissions. EJ Allen QC determined that there was no reasonable prospect of the original decision being varied or revoked in that regard.
10. The Respondent was given the opportunity to make representations and by email dated 25 February 2021, the Respondent made its own application for reconsideration. The Claimant responded by email dated 25 February 2021 objecting to that application. Neither party requested a hearing. Neither party objected to EJ Allen QC's proposal that the matter be dealt with on paper.
11. The Respondent's application was considerably out of time and in addition, EJ Allen QC determined that there was no reasonable prospect of the original decision being varied or revoked in relation to any of the matters raised. The Respondent's application did not therefore pass through the first stage of the reconsideration process.
12. The full tribunal were sent the application and both parties' emails of 25 February 2021 and the full tribunal decided that it had fallen into error in using the figure for a week's net pay instead of a month's net pay and that paragraphs 7 and 8 of the Judgment would be varied as follows to read:
  - 7. The claim for unfair dismissal succeeds. The reason for dismissal was redundancy but the dismissal was procedurally unfair. The compensatory award comprises the following elements:**
    - a. 400 loss of statutory rights**
    - b. 8840 net loss of earnings for a period of 6 months**
    - c. This totals 9240**
    - d. This amount is reduced to 25% of the total on the basis of the tribunal's reduction of compensation under the principle in *Polkey* to take account of the possibility that the Claimant would have been dismissed in any event if a fair process had been followed.**
  - 8. The total net amount payable by the Respondent to the Claimant for unfair dismissal is therefore £2,310.**
13. The full tribunal also decided that paragraphs 56 to 58 of their Reasons be varied as follows:
  56. Six months of net loss at £340 per week comes to £8,840 net.
  57. Adding £400 for loss of statutory rights to reflect the fact that the Claimant would need to work for a new employer for 2 years to regain the right to claim unfair dismissal and the right to a redundancy payment, the total compensatory award is £9,240.
  58. 25% of that figure is £2,310.

14. The tribunal apologises to the parties for the confusion caused by its calculation error.

**Employment Judge Allen QC**  
**Date: 10 March 2020**