



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4103571/2020 (A)

Heard via telephone conference call on 19 October 2020

Employment Judge S Walker

5 **Mr J Lindsay**

**Claimant
Represented by:
Mr Bathgate -
Solicitor**

10 **CITB**

**Respondent
No appearance and
No representation**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Before the hearing commenced, the Tribunal issued a judgment under rule 21 as follows:

1 the claim of unfair dismissal succeeds; and

20 2 the claim of disability discrimination succeeds.

The hearing was restricted to determining issues relating to the appropriate remedy.

The Tribunal orders that:

1 in respect of unfair dismissal, the respondent is ordered to pay to the claimant the sum of **£57863**.

25 2 in respect of the claim for disability discrimination, the respondent is ordered to pay to the claimant the sum of **£67347**.

REASONS

1 The respondent has not presented a response to the claim and did not attend the hearing. The Tribunal has issued a rule 21 judgment without a hearing on liability

and proceeds on the basis that the claimant succeeds in his claim of unfair dismissal and disability discrimination.

2 I heard evidence from the claimant, some documents were presented and Mr Bathgate made submissions on remedy.

5 **Findings in fact**

3 I make the following findings in fact in relation to remedy:

4 The claimant was employed by the respondent for 22 years.

5 He was 67 at the date of his dismissal on 19 February 2020.

6 His weekly wage at that date was £560 (net) and £743 (gross).

10 7 His employer paid pension contributions into a defined contributions scheme at the rate of 9%.

8 From 8 May 2018 until his employment was terminated, the claimant was absent from work and received 4 months on full pay and 6 months on half pay. This meant he was paid £36405 less over that period than if he had been in receipt of full pay throughout.
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9 Had he not been dismissed, the claimant intended to work until he was 70 years old.

10 The claimant was upset that the respondent did not make efforts to find him alternative employment within its organisation which he believed he was capable of doing.
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11 The claimant has made efforts to find alternative employment but has not succeeded in doing so.

12 He is in receipt of a state pension of £140 per week. he has no other income.

13 He has not drawn down his employer's pension.

Relevant law

14 Section 118 of the Employment Rights Act 1996 sets out how compensation for
unfair dismissal is to be calculated. The claimant is entitled to a basic award under
section 119. This is calculated on his age and length of service and the amount
5 of a week's pay. The amount of a week's pay is the gross amount and is subject
to a statutory maximum which was £525 at the relevant time.

15 The claimant is also entitled to a compensatory award. Section 126 provides that
this is "such amount as the tribunal considers just and equitable in the
circumstances having regard to the loss sustained by the claimant in
10 consequence of that dismissal in so far as that loss is attributable to action taken
by the employer."

16 The compensatory award is subject to a statutory maximum of 52 weeks' pay
(which includes any employer's pension contributions.)

17 In a successful complaint of discrimination, the claimant is entitled to
15 compensation for any financial loss incurred as a result of the discrimination and
compensation for injury to feelings. There are broad bands of award for injury to
feelings set out in the well known case of *Chief constable of West Yorkshire Police
v Vento (No 2)* [2003] IRLR 102, CA.

18 For both the compensatory award and for compensation for unfair dismissal, the
20 claimant is required to take reasonable steps to mitigate his loss. It is a matter for
the respondent to prove that the claimant has not done so.

Decision

19 The basic award for unfair dismissal is calculated as follows – 20 weeks x 1.5 (as
the claimant was over 41) x £525 as the applicable statutory maximum. This gives
25 a basic award of £15750.

20 In relation to the compensatory award, I am satisfied from the claimant's evidence
that he has taken steps to mitigate his loss by looking for other work and not just
in the area he previously worked in. I also accept that due to his age and the
current economic climate it will be difficult for him to obtain other work. Unusually,

I am therefore prepared to award the 2 years loss of earnings asked for by the claimant being £58248.

21 The claimant is also entitled to compensation for loss of pension contributions that would have been paid by the respondent over that period being £6957.

5 22 The claimant is entitled to recognition that he has lost his statutory rights by being dismissed. I award £350 in this respect.

23 I do not consider that the claimant's state pension should be deducted from the award. The claimant would have been entitled to draw this, regardless of his employment status, so it does not affect his loss of earning. It is simply that he
10 would have opted not to draw it had he continued in employment.

24 This would give a compensatory award of £65555. The statutory maximum for a compensatory award is 52 x a week's pay. A week's pay for this purpose would be £809.87 (£743 + pension contribution). So, the maximum compensatory award would be £42113. I therefore award this sum.

15 25 The balance of £23442 for loss of earnings can be awarded as compensation for disability discrimination, which is not subject to such a cap.

26 Added to that is the shortfall in wages which the claimant was still in employment. It is the claimant's case that it was the failure by the respondent to redeploy him which was the reason he was not at work and therefore why he was not being
20 paid his full salary. It is the claimant's case that that was an act of discrimination and that claim has succeeded. That is £36405.

27 In addition, I award £7500 for injury to feelings being close to the top of the lowest band in Vento.

28 This gives a total of £67347 as compensation for discrimination.

5 Employment Judge: Susan Walker
Date of Judgment: 20 October 2020
Entered in register: 06 November 2020
and copied to parties

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