



EMPLOYMENT TRIBUNALS

Claimant: Mr W Norton

Respondent: Agricultural Industries Limited

HELD by: CVP

ON: 6 May 2021

BEFORE: Employment Judge Shulman

REPRESENTATION:

Claimant: In person

Respondent: Mr E Cattaneo, Director

JUDGMENT

1. The respondent shall pay the claimant the sum of £4,255.00 in respect of unfair dismissal.
2. The respondent shall pay the claimant in lieu of notice in the sum of £1,168.00.
3. The claims for unauthorised deduction of wages and holiday pay are dismissed on withdrawal by the claimant.

REASONS

1. Introduction

This is a remedy hearing from a decision following a hearing on 23 November 2020, when amongst other things, it was decided that the claimant had been unfairly dismissed by the respondent. Additionally the claimant was owed wages and holiday pay. He has been paid for those two items in the sum of £669.30 with which he is satisfied and those claims will be dismissed.

2. The issues

2.1 The claimant elected for compensation for unfair dismissal and the question is how much is that compensation going to be.

2.2 Further it is an issue as to whether or not there should be an uplift for breach of the ACAS Disciplinary Code.

2.3 Finally there is an issue as to whether the claimant should receive his notice pay.

3. Facts

The Tribunal having carefully reviewed all the evidence (both oral and documentary) before it finds the following facts (proved on the balance of probabilities):

3.1. When the claimant was dismissed on 29 May 2020 his gross pay was £331 per week and his net pay was £292 per week. His date of birth is 5 March 1993 and he was aged 27 at the time of his dismissal. He had commenced work for the respondent on 1 February 2016.

3.2. Following his dismissal the claimant looked for work and found a job as a ground worker commencing on 6 July 2020, earning £380 per week gross and £315 per week net.

3.3. The respondent admits that it did not follow proper procedures in accordance with the ACAS Disciplinary Code, the breaches of which are set out in the decision following the hearing on 23 November 2020.

3.4 The respondent did not pay the claimant his four weeks' notice.

4. The law

4.1 With regard to the law I am just going to deal with the question of uplift and notice pay.

4.2 So far as uplift is concerned this can be found in **section 207A Trade Union and Labour Relations (Consolidation) Act 1992** and that provides in subsection 2 that where it appears to the Employment Tribunal that the claim to which proceedings relate concerns a matter to which a relevant code of practice applies, and in this case the ACAS Disciplinary Code, and the employer has failed to comply with that code in relation to that matter and the failure is unreasonable, then the Employment Tribunal may if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 25%. The uplift applies to cases of unfair dismissal.

4.3 So far as the non-payment of pay in lieu of notice is concerned, where an employer dismisses an employee without notice and without pay in lieu of notice the general rule is that the employee is entitled to include net pay for the statutory or contractual notice period in his or her claim for immediate loss from the dismissal. See **Norton Tool Co Limited v Tewson** [1972] ICR 501 NIRC. This is because good industrial practice requires employers to make payments in lieu of notice when they dismiss employees with no or inadequate notice. The uplift provisions of section 207A as mentioned above do not apply to non-payment of notice.

5. Determination of the issues

(After listening to the factual and legal submissions made by and on behalf of the respective parties) the determinations all apply to remedy:

- 5.1. The claimant elected for compensation.
- 5.2. The Recoupment Regulations apply (see annexe for explanation of their effect).

5.3. The Tribunal has awarded compensation for unfair dismissal as follows:

5.3.1. Basic award - £331.00 x 4, which is the length of period of the claimant's service multiplied by one, which is the multiplier having regard to the claimant's age, equals £1,324.00

5.3.2. Compensatory award

5.3.2.1. Immediate loss. Net pay £292.00 per week from 29 May 2020 until 5 July 2020. That is **five** weeks and three days or 38 days, equals £1,580.80.*

5.3.2.2. Loss of statutory industrial rights - £500.00

Subtotal - £3,404.00

5.3.2.3. I have decided in this case to award an uplift at the top end as there was a clear breach of the ACAS Disciplinary Code, 25% of £3404.00, equals £851.00

5.3.2.4 (i) Grand total £4,255.00

(ii) Prescribed element £1,580.00

(iii) Period of prescribed element 29 May 2020 to 5 July 2020

(iv) Excess of (i) over (ii) = £2675.00

5.4. Notice

Having regard to the provisions set out in the case of **Norton Tool** above I award four weeks' notice to the claimant at £292.00 per week, which equals £1,168.00.

* After the hearing the respondent contacted the tribunal questioning the award in paragraph 5.3.2.1 above. The sum of £1580.00 is correct. It represents 38 days or 5 weeks and 3 days net pay. When I pronounced the decision I mentioned 7 weeks instead of 5, but the figures awarded were correct and remain unchanged. I have corrected the number of weeks.

Employment Judge Shulman

Date: 12 May 2021