



EMPLOYMENT TRIBUNALS

Claimant: Alexander Agombar

Respondent: Lookers Plc

Heard at: East London Hearing Centre **On:** 7 May 2021

Before: Employment Judge S Knight

Representation

Claimant: Unrepresented, in attendance

Respondent: Stuart Sanders (Littleton Chambers)

JUDGMENT

1. The Claimant was unfairly dismissed by the Respondent.
2. The Respondent is ordered to pay the Claimant £5,997.20.
3. For the purposes of the Employment Protection (Recoupment of Benefits) Regulations 1996:
 - (1) The total monetary award for unfair dismissal is £5,997.20.
 - (2) The prescribed element is £1,925.
 - (3) The prescribed element relates to 1 August 2020 to 7 May 2021.
 - (4) The amount by which the total monetary award for unfair dismissal exceeds the prescribed element is £4,072.21.

REASONS ON REMEDY

Introduction

The parties

1. The Claimant was employed by the Respondent between 16 January 2017 and 31 July 2020 as a Sales Executive at the Respondent's Colchester branch. The Respondent is a motor retail and aftersales service provider, with branches across the United Kingdom.

The claims

2. The Claimant claims for unfair dismissal. The Respondent says the dismissal was fair and that it was for reasons of redundancy.
3. On 18 September 2020 ACAS was notified under the early conciliation procedure. On 9 October 2020 ACAS issued the early conciliation certificate. On 20 November 2020 the ET1 Claim Form was presented. On or around 21 January 2021 the ET3 Response Form was sent to the Tribunal.

Procedure, documents, and evidence heard

Procedure

4. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was "**V: video whether partly (someone physically in a hearing centre) or fully (all remote)**". A face-to-face hearing was not held because it was not practicable due to the COVID-19 pandemic and no-one requested the same.
5. All participants attended the hearing through Cloud Video Platform.
6. At the start of the hearing I checked whether any reasonable adjustments were required. Those in attendance confirmed that none were required.

Documents

7. I was provided with an agreed Hearing Bundle comprising 270 pages.
8. Witness statements were provided separately from the Claimant, Peter Eldred, Steven Thompson, and Terry Bradshaw.

Evidence

9. At the hearing I heard evidence under affirmation from all of the witnesses. Each of the witnesses adopted their witness statements. Each witness was cross-examined in turn, and expanded upon their witness statements.

Closing submissions

10. Both parties made oral closing submissions. The Respondent provided written calculations in relation to remedy.

Judgment

11. At the conclusion of the hearing I gave a judgment orally on liability, and the principles for calculating remedy. I reserved my judgment in respect of the calculation of the remedy itself. No written reasons have been requested in respect of the judgment on liability.

Conclusions

Principles of calculation

12. This was a redundancy exercise which involved a real redundancy situation. As 2 out of 11 employees were to be dismissed in any event, there was (all other things being equal) approximately an 18% chance that the Claimant would be dismissed fairly if a fair procedure had been adopted or if selection criteria had been fairly applied to the Claimant. However, not all other things were equal. The Claimant did fall towards the bottom of the grading. I conclude that there was a 25% chance that the Claimant would have been dismissed anyway.
13. I conclude that it would not be appropriate to increase any award due to a failure to comply with the ACAS Code of Practice in relation to the Claimant's grievance.
14. The parties agree that the Claimant has mitigated his loss.
15. The parties agree that the Claimant's remedy should not be reduced due to contributory fault.
16. The Claimant is entitled to a Basic Award and a Compensatory Award.
17. The parties agree that the Basic Award is cancelled out by the redundancy payment the Claimant received.
18. The Compensatory Award is composed of a Prescribed Element (which compensates for losses up to the date of the hearing) and a Non-Prescribed Element (which compensates for other losses).
19. The Claimant's net pay in employment was £28,303 per year. That is £544.29 per week net.
20. The Claimant got a new job after dismissal. The Claimant says that since his dismissal he has worked for 28 weeks over a period of 31 weeks, and that he has received 28 payslips in that time.
21. The Claimant therefore says that his average weekly wage in his new job should be calculated as the total earnings over 31 weeks divided by 31 weeks.
22. In contrast, the Respondent says that the Claimant's average weekly wage in his

new job should be calculated as the total earnings over 31 weeks divided by the 28 weeks that they say he actually worked.

23. One of the missing payslips is 23 December 2020. It is clear from the cumulative total earnings on the payslip dated 16 December 2020 that the Claimant had earned £11,844.51 gross up to that date. The payslip on 30 December 2020, issued for the period 24-30 December 2020, relates to £448.80 gross. However, the cumulative total earnings on 30 December 2020 was £12,742.11. That is more than the figure for the cumulative total on 16 December 2020 and the earnings for 24-30 December 2020. As such, it is clear that the Claimant did earn in the period of 17-23 December 2020.
24. However, the Claimant has not disclosed his net earnings for the week of 17-23 December 2020. As such, it is impossible to include this figure in the total earnings in order to calculate the average earnings. I conclude that to reach the average weekly earnings it is just and equitable to disregard the week of 17-23 December 2020 from both the total earnings and the number of weeks that the earnings are divided by.
25. The other two missing payslips are for 10 February 2021 and 17 February 2021. It is clear from the cumulative total earnings on his payslips that he did not earn anything during those two weeks. On 3 February 2021 the payslip's cumulative total gross pay to date was £15,313.71. The payslip 3 weeks later on 24 February 2021 (for 1 week, 18-24 February 2021) was for £224.40. That would bring his cumulative total gross pay to £15,538.11. That is precisely the figure that appears for cumulative gross pay on the 24 February 2021 payslip. As such, it is clear that the Claimant did not earn in the period of 4-17 February 2021 (2 weeks).
26. As such, the average weekly earnings for the Claimant in his new job will be calculated by dividing his total net earnings (excluding those of the week of 17-23 December 2020) by 28 weeks.
27. The Claimant now works 10% less than he did, as he has a half day off a week. He agrees he should give 10% credit for this.
28. The Claimant is paid on top of his wages, as an expense, the cost of using a car in his new job. This merely compensates him for a new expense he is forced to incur. As such, the mileage in his new job will be discounted from the calculation of his wages earned in his new job.
29. In his new job, the Claimant's net average annual pay calculated on this basis is £25,838.06. This is £496.89 per week.
30. The difference between the Claimant's net pay from the Respondent and in his new job is $£544.29 - £496.89 = £47.40$ per week.

Calculation of award

31. It was 40 weeks from the dismissal to the Tribunal hearing. That is a loss of $40 \times £47.40 = £1,896$.
32. The Claimant lost £670.66 net in pension contributions.

33. That is a total Prescribed Element of £2,566.
34. That is then reduced by 25% to take account of the chance of dismissal fairly.
35. **Therefore, the Prescribed Element is £1,925.**
36. The Claimant will be awarded £500 for loss of statutory rights / statutory protection.
37. The Claimant's future loss will be calculated based on it taking 2 years to reach his former level of earnings.
38. That is $104 \times £47.40 = £4,929.60$
39. That is a Non-Prescribed Element of £5,429.
40. That is then reduced by 25% to take account of the chance of dismissal fairly.
41. **The Non-Prescribed Element is £4,072.20**
42. **The Compensatory Award is £5,997.20.**

**Employment Judge Stephen Knight
Date 12 May 2021**

ANNEX 1: REMEDY CALCULATIONS

FINDINGS OF FACT		Fill in only the yellow cells.	
Date of birth	08/03/1991	Age at EDT	29
Date of start of employment	16/01/2017	Full years of service at EDT	3
Effective date of termination ("EDT")	31/07/2020	Pay frequency	Weekly
Gross Weekly Pay	£538.00	Additional Award made?	No
Net Weekly Pay	£544.29	Compensatory Award uncapped?	No
		Automatically unfair, with min. Basic Award?	No
		Automatically unfair for blacklisting?	No

Workings
 Years/Weeks Calculation
 10.5 weeks per full year worked under 22;
 1 week per full year worked between 22 and 41;
 1.5 weeks per full year worked 41 or older.
 ERA ss 100(1)(a); 100(1)(b); 103A; 124(1A)
 ERA ss 100(1)(a); 100(1)(b); 101A(d); 102(1); 103

STATUTORY CAPS AND MINIMA		Fill in only the yellow cells.	
Always required		Required where listed in yellow	
Max weekly gross wage at EDT	£538.00	Max compensatory award at EDT	£88,519.00
		Max compensatory award at EDT in this case	£27,976.00

BASIC AWARD		Fill in only the yellow cells.	
	Monthly	Weekly	No of Weeks
Gross Wages	£2,331.33	£538.00	3.0
			Total
			£1,614.00
Subtract			
Unreasonable refusal of reinstatement		s 122(1)	£0.00
Conduct / contributory fault		s 122(2) & 3	0%
Redundancy payment		s 122(4)	£1,614.00
			£0.00
NET BASIC AWARD			£0.00

Running total
 £1,614.00
 £1,614.00
 £1,614.00
 £0.00

-ve value is subtracted from Comp. Award

COMPENSATORY AWARD		Fill in only the yellow cells.	
Prescribed Element			
Loss of wages inc taxable benefits to date of hearing (after allowing for failure to mitigate)			
Dismissal to new job / hearing	Monthly	Weekly	No of Weeks
Net average lost wages in old job	£2,358.59	£544.29	0.0000
			Total
			£0.00
New job (if applicable) to hearing	Monthly	Weekly	No of Weeks
Wages & benefits earned in new job	£2,153.19	£496.89	40.0000
Net average lost wages	£205.40	£47.40	
			Total
			£1,896.00
Total Lost Wages to Hearing			
			£1,896.00
Lost ERS pension contributions	Monthly	Weekly	No of Weeks
Difference between old and new jobs			
			Total
			£670.66
Other employment benefits lost	Monthly	Weekly	No of Weeks
	0.00	£0.00	0.0000
			Total
			£0.00
Subtract			
Wages / money in lieu of notice			£0.00
			Total
			£2,566.66
Actual total lost wages			
			£2,566.66
Adjust by subtracting or adding, as appropriate			
		Multiplier	Total
Chance of dismissal anyway with fair procedure	Polkey	25%	£641.67
ACAS Code breach increase / reduction	s.124A	0%	£0.00
Conduct / contributory fault	s.123(6)	0%	£0.00
			Total
			£1,925.00
PRESCRIBED ELEMENT			£1,925.00

a

b

a+b

Running total
 £2,566.66
 £2,566.66
 £1,925.00
 £1,925.00
 £1,925.00

Non-Prescribed Element		Fill in only the yellow cells.	
Estimated future loss of wages (allowing for failure to mitigate)			
Weeks to restoration of old wage level	Monthly	Weekly	No of Weeks
Wages earned in new job	£2,153.19	£496.89	104.0000
Net average lost wages	£205.40	£47.40	
			Total
			£4,929.60
Loss of other benefits			£0.00
Loss of pension rights	£0.00	£0.00	0.0000
Loss of statutory protection			£500.00
Loss of right to long notice			£0.00
Expenses in looking for work			£0.00
			Total
			£5,429.60
Adjust by subtracting or adding, as appropriate			
		Multiplier	Total
Any other payment by Respondent (except excess of redundancy payment)			£0.00
Chance of dismissal anyway with fair procedure	Polkey	25%	£1,357.40
Reduction for accelerated receipt	@50% of current bank interest rate		£0.00
ACAS Code breach increase / reduction (-25% to +25%)	s.124A	0%	£0.00
Failure to provide employment contract: 0, 2, or 4 weeks'	EA s 38 & Sched. 5	0	£0.00
Protected disclosure not made in good faith (0% to 25%)	s.123(6A)	0%	£0.00
Conduct / contributory fault	s.123(6)	0%	£0.00
Excess of redundancy payment over basic award	s.123(1) or (7)		£0.00
Gross up if over £30,000	e.g. use Finlay table		£0.00
			Total
			£4,072.20
NON-PRESCRIBED ELEMENT			£4,072.20

Running total
 £4,929.60
 £4,929.60
 £4,929.60
 £4,929.60
 £5,429.60
 £5,429.60
 £5,429.60

d

c + d

COMPENSATORY AWARD		Fill in only the yellow cells.	
ADDITIONAL AWARD for non-re-engagement s 117(3)			
	Monthly	Weekly	No of Weeks
ADDITIONAL AWARD	£2,331.33	£538.00	0
			Total
			£0.00

SUMMARY		Fill in only the yellow cells.	
Basic Award			£0.00
Compensatory Award			£5,997.20
Additional Award			£0.00
TOTAL MONETARY AWARD owed by the Respondent			£5,997.20
EXCESS of Total Monetary Award over the Prescribed Element			£4,072.21
Less recoupment			£0.00
TOTAL DUE to the Claimant			£5,997.20