

EMPLOYMENT TRIBUNALS

Claimant:	Mr Diego Burzotta				
Respondent:	Ristorante Cucina Ltd				
Heard at:	East London Hearing Centre On: 5 May 2021				
Before:	Employment Judge S Knight				
Representation					
Claimant: Respondent:	Roisin Swords-Kieley (Matrix Chambers) Daniella Gilbert (Pump Court Chambers)				

JUDGMENT

- 1. The Respondent unfairly dismissed the Claimant.
- 2. The Respondent is ordered to pay the Claimant £6,888.96.
- 3. For the purposes of the Employment Protection (Recoupment of Benefits) Regulations 1996:
 - (1) The total monetary award for unfair dismissal is £6,888.96.
 - (2) The prescribed element is £2,568.40.
 - (3) The prescribed element relates to 17 August 2020 to 5 May 2021.
- 4. The amount by which the total monetary award for unfair dismissal exceeds the prescribed element is £4,120.56.

REASONS IN RESPECT OF REMEDY

Introduction

- 1. Reasons in respect of liability were given orally at the hearing.
- 2. I now in writing give reasons in respect of remedy.
- 3. The figures below are also set out in the table at Annex 1.

Remedy

4. The Claimant is entitled to a Basic Award and a Compensatory Award.

Basic Award

- 5. The Claimant's gross weekly pay was £452.57. He had worked for the Respondent for 6 years at the EDT. 4 of those years were when he was over 41. He is entitled to 8 weeks' wages as his Basic Award.
- 6. Therefore, his **Basic Award is £3,620.56**.

Compensatory Award

- 7. The Compensatory Award compensates for the losses the Claimant suffered as a result of his dismissal. It is composed of a Prescribed Element (essentially dealing with losses up to the date of the hearing) and a Non-Prescribed Element (essentially dealing with other losses).
- 8. If the Claimant had not been dismissed then he would have worked normally until 4 November 2020, when there was a lockdown. From the EDT to 4 November 2020 the Claimant lost wages in respect of 80 days. His Basic Award would cover 42 of those days, but he worked for 9 days after he was given his notice. He would have been paid £364.59 net per week. As such, he requires compensation for 49 days (6.7143 weeks) at £364.59 per week. That is £2,447.96.
- 9. The Claimant would then have worked on reduced hours or been furloughed at 80% pay until 2 December 2020, when there was an end to lockdown. The Claimant lost wages in respect of 4 weeks. He would have been paid £306.86 net per week. As such, he requires compensation for 4 weeks at £306.86 per week. That is £1,227.44.
- 10. The Claimant would then have worked normally until 19 December 2020, when there was a lockdown. The Claimant lost wages in respect of 17 days (2.4286 weeks). He would have been paid £364.59 net per week. As such, he requires compensation for 2.4286 weeks at £364.59 per week. That is £885.43.
- 11. The Claimant would then have worked on reduced hours or been furloughed at 80% pay until 22 February 2021, when he got a new permanent better paying job. The Claimant lost wages in respect of 65 days (9.2857 weeks). He would

have been paid £306.86 net per week. As such, he requires compensation for 9.2857 weeks at £306.86 per week. That is £2,849.41.

- 12. The Claimant's lost pension contributions in respect of 23 weeks at £16.74 per week are £385.02.
- 13. Against this the Claimant gives credit for £5,226.86 earned since his dismissal.
- 14. His total lost wages are therefore £2,568.40.
- 15. There is no other claim which forms part of the Prescribed Element.
- 16. Therefore, the Prescribed Element is £2,568.40.
- 17. The Claimant is awarded £500 for loss of statutory rights.
- 18. The Claimant has no future losses as he now has a better-paying job.
- 19. Therefore, the Non-Prescribed Element is £500.
- 20. Therefore, the total **Compensatory Award is £3,068.40**.

Conclusion

21. The total monetary award for unfair dismissal is £6,888.96.

Employment Judge S Knight Date: 5 May 2021

ANNEX 1: REMEDY CALCULATIONS

FINDINGS OF FACT			Fill in on	ly the yellow cells.	Workings
Date of birth	08/03/1975	Age at EDT		45	Years:Weeks Calculation
Date of start of employment	01/12/2013	Full years of service at	EDT	6	10.5 weeks per full year worked under 22;
Effective date of termination ("EDT")	16/08/2020	Pay frequency		Weekly	1 week per full year worked between 22 and 41; 1.5 weeks per full year worked 41 or older.
Gross Weekly Pay	£452.57	Additional Award made	?	No	
Net Weekly Pay	£364.59	Compensatory Award u	incapped?	No	ERA ss 100(1)(a); 100(1)(b); 103A; 124(1A)
		Automatically unfair, with	th min. Basic Award?	No	ERA ss 100(1)(a); 100(1)(b); 101A(d); 102(1); 103
		Automatically unfair for	blacklisting?	No	
STATUTORY CAPS AND MINIMA				ly the yellow cells.	
Always required	0.000.00	Required where listed			
Max weekly gross wage at EDT	£538.00	Max compensatory awa		£88,519.00	
		Max compensatory awa	ard at EDT in this case	£23,533.64	
BASIC AWARD			Fill in on	ly the yellow cells.	
	Monthly	Weekly	No of Weeks	Total	Running total
Gross Wages	£1,961.14	£452.57	8.0	£3,620.56	£3,620.56
loos mageo	21,001.11	2102.01	0.0	20,020.00	23,020.30
Subtract					
Unreasonable refusal of reinstatement		s 122(1)		£0.00	£3,620.56
Conduct / contributory fault		s 122(2) & 3	0%	£0.00	£3,620.56
Redundancy payment		s 122(4)		£0.00	£3,620.56
NET BASIC AWARD				£3,620.56	-ve value is subtracted from Comp. Award
COMPENSATORY AWARD			Fill in on	ly the yellow cells.	
Prescribed Element					
Loss of wages inc taxable benefits to				T . (.)	
Dismissal to 4 Nov lockdown	Monthly	Weekly	No of Weeks	Total	
Net average lost wages	£1,579.89	£364.59	6.7143	£2,447.96	а
4 New lookdown to 2 Dec unlook	Monthly	Weekby	No. of Weeks	Total	
4 Nov lockdown to 2 Dec unlock	Monthly	Weekly £306.86	No of Weeks	£1,227.44	
Net average lost wages		2300.00	4	£1,227.44	þ
3 Dec unlock to 19 Dec tier 4	Monthly	Weekly	No of Weeks	Total	
Net average lost wages	wontiny	£364.59	2.428571429	£885.43	b1
net aronago loot nagoo		2001.00	2.120011120	2000.10	51
20 Dec tier 4 to 22 Feb job	Monthly	Weekly	No of Weeks	Total	
Net average lost wages	monuny	£306.86	9.285714286	£2,849.41	b2
Total Lost Wages to Hearing				£7,410.24	a+b+b1+b2
					Running total
Lost ERS pension contributions	Monthly	Weekly	No of Weeks	Total	
4.591%	£72.54		23.0000	£385.02	£7,795.26
Subtract					
Wages earned since dismissal				£5,226.86	£2,568.40
Actual total lost wages				£2,568.40	£2,568.40
Adjust by subtracting or adding, as ap	opropriate				
			Multiplier	Total	
Chance of dismissal anyway with fair proc ACAS Code breach increase / reduction	cedure	Polkey	0% 0%	£0.00 £0.00	£2,568.40
Conduct / contributory fault		s.124A s.123(6)	0%	£0.00	£2,568.40 £2,568.40
PRESCRIBED ELEMENT		5.123(0)	070	£2,568.40	C
				22,000.10	
Non-Prescribed Element					
Estimated future loss of wages (allowi	ing for failure to	mitigate)			
	Monthly	Weekly	No of Weeks	Total	Running total
Weeks to restoration of old wage level			0.0000		
Wages earned in new job	£0.00	£0.00			
Net average lost wages	£0.00	£0.00		£0.00	£0.00
Loss of other benefits		00.00	0.0000	£0.00	£0.00
Loss of pension rights Loss of statutory protection	£0.00	£0.00	0.0000	£0.00 £500.00	£0.00 £500.00
Loss of right to long notice				£0.00	£500.00 £500.00
Expenses in looking for work				£0.00	£500.00
Total				£500.00	
Adjust by subtracting or adding, as ap	opropriate				
	• •		Multiplier	Total	
Any other payment by Respondent (except				£0.00	£500.00
Chance of dismissal anyway with fair proc	cedure	Polkey	0%	£0.00	£500.00
Reduction for accelerated receipt	050/ 1- 050/	@50% of current bank interest		£0.00	£500.00
ACAS Code breach increase / reduction (s.124A	0%	£0.00	£500.00 £500.00
Failure to provide employment contract: 0		EA s 38 & Sched. 5	0	£0.00	
Protected disclosure not made in good fai Conduct / contributory fault	iui (0% lõ 25%)	s.123(6A)	<mark>0%</mark> 0%	£0.00 £0.00	£500.00
Excess of redundancy payment over basi	c award	s.123(6) s.123(1) or (7)	U%	£0.00 £0.00	£500.00 £500.00
Gross up if over £30,000	s amai'u	s.123(1) or (7) e.g. use Finlay table		£0.00 £0.00	£500.00 £500.00
NON-PRESCRIBED ELEMENT		5 , tablo		£500.00	d
COMPENSATORY AWARD				£3,068.40	c + d
ADDITIONAL AWARD for non-re-engage	ement s 117(3)		Fill in on	ly the yellow cells.	
	Monthly	Weekly	No of Weeks	Total	
ADDITIONAL AWARD	£1,961.14		0	£0.00	
			v	22.00	
SUMMARY			Fill in on	ly the yellow cells.	
Basic Award			01	£3,620.56	
Compensatory Award				£3,068.40	
Additional Award				£0.00	
TOTAL MONETARY AWARD owed by t					
EXCESS of Total Monetary Award over					
	r the Prescribed	Element		£4,120.56	
Less recoupment	r the Prescribed	Element		£4,120.56 £0.00	
Less recoupment TOTAL DUE to the Claimant	r the Prescribed	Element			