



# EMPLOYMENT TRIBUNALS

**Claimants:** Mr A O'Donnell, Ms T O'Donnell and Mrs C O'Donnell

**Respondent:** The SMART Actuator Company Limited (in liquidation)

**Heard at:** Birmingham Employment Tribunal by CVP

**On:** 17-21 May 2021

**Before:** Employment Judge Cookson sitting with Mrs Astill and Mrs Gill

## Representation

Claimants: Mr Mellis (counsel)

Respondent: did not attend

# JUDGMENT

It is the unanimous decision of the Employment Tribunal that:

## *The First Claimant, Mr Antony O'Donnell*

1. Unlawful deduction from wages: an unlawful deduction from wages contrary to s13 of the Employment Rights Act 1996 (ERA) was made from Mr O'Donnell's wages in August and September 2019.
2. Unfair dismissal: Mr O'Donnell's was dismissed by the respondent on 24 September 2019 in accordance with s95(1)(a) of the ERA and his claim that he was unfairly dismissed under s94 of the ERA is upheld.
3. On the balance of probabilities, Mr O'Donnell would have been dismissed by reason of redundancy in any event on 27 August 2020 and his compensation should be reduced accordingly in accordance with s123(1) of the ERA.

4. Age discrimination: Mr O'Donnell's claims that he was subject to unlawful age discrimination contrary to s13 and s26 of the Equality Act 2010 (EqA) is not upheld and is dismissed.
5. The respondent is liable to pay Mr O'Donnell the following sums:

**Unfair dismissal:**

Basic award: £1250.30

Compensatory award including loss of statutory rights: £ 6,204.61

Total: 7,454.91

**Unauthorised deductions from wages:**

Total: unpaid wages (gross): £956.17

***The Second Claimant, Ms Tonya O'Donnell***

6. Disability discrimination: Ms O'Donnell was subject to unlawful direct discrimination contrary to s13 of the EqA and unlawful harassment contrary to s26 of the EqA by reason for her disability and her claims are upheld.
7. On the balance of probabilities Ms O'Donnell's dismissal was unfavourable treatment because of something arising in consequence of her disability contrary to s15 of the EqA.
8. Ms O'Donnell's claims for indirect disability discrimination and for a failure to make reasonable adjustments are not upheld and are dismissed.
9. Unlawful deductions from wages: an unlawful deduction from wages contrary to s13 of the Employment Rights Act 1996 (ERA) was made from Ms O'Donnell's wages between 31 July and 5 September 2019.
10. Unfair dismissal: Ms O'Donnell was summarily dismissed on 5 September 2019 in accordance with s95(1)(a) of the ERA and her claim that she was unfairly dismissed under s94 of the ERA is upheld.
11. The respondent failed to follow the ACAS Code of Practice on Discipline and Grievance and it is in the interests of justice that an uplift to compensation of 25% is applied.
12. On the balance of probabilities, Ms O'Donnell would have been dismissed by reason of redundancy in any event on 27 August 2020 and her compensation should be reduced accordingly in accordance with s123(1) of the ERA.
13. The respondent is liable to pay Ms O'Donnell the following sums:

**Compensation for disability discrimination**

Compensation for lost earnings: £7,620.93

Injury to feelings: £15,000  
Interest at 8%: £2,735.34  
Aggravated damages: £5,000  
Total: £ 30,356.27

**Unlawful deduction from wages**

Total: Unpaid wages (gross) £764.07

**Unfair dismissal**

Basic award: £446.53  
Compensatory award: Loss of earnings is compensated above  
Loss of statutory rights: £350  
Loss of redundancy pay though early termination of employment: £223.28 25% uplift to compensation to take account of non-compliance with ACAS code of practice: £143.32  
Total: £1,163.13

***The Third Claimant, Mrs Christine O'Donnell***

14. Unlawful deduction from wages: Mrs O'Donnell's claims for an unlawful deduction from wages contrary to s13 of the Employment Rights Act 1996 (ERA) are not upheld and are dismissed.
15. Unfair dismissal: Mrs O'Donnell's was dismissed by the respondent on 24 September 2019 in accordance with s95(1)(a) of the ERA and her claim that she was unfairly dismissed under s94 of the ERA is upheld.
16. On the balance of probabilities, Mrs O'Donnell would have been dismissed by reason of redundancy in any event on 27 August 2020 and her compensation should be reduced accordingly in accordance with s123(1) of the ERA.
17. The respondent is liable to pay Mrs O'Donnell the following sums:

**Unfair dismissal:**

Basic award: £1562.92  
Compensatory award including loss of statutory rights: £ 7,668.28  
Total: £9,231.20

Employment Judge Cookson

Date 27 May 2021

