



EMPLOYMENT TRIBUNALS

Claimant: Mr C Gill
Respondent: Gill Bailey Tavern Limited
Heard at: East London Hearing Centre (in public, by video)
On: 8 and 22 June 2021
Before: Employment Judge Moor

Representation

Claimant: Mr M Bascombe, lay person, friend of Claimant
Respondent: Mr Nathan, solicitor

JUDGMENT

It is the judgment of the Tribunal that the complaint of unfair dismissal is well-founded and succeeds.

The Respondent is ordered to pay to the Claimant £10,389.25.

The calculation of the award is at Annex 1.

Recoupment applies, I refer to Annex 2.

For the purposes of the Recoupment Regulations therefore:

The monetary award is £ 10,389.25

The prescribed element is £7,076.00

The period to which the prescribed element relates is 7 October 2020 to 22 June 2021.

The amount by which the monetary award exceeds the prescribed element is £3,213.25.

**Employment Judge Moor
Date: 23 June 2021**

ANNEX 1 CALCULATION

Effective date of termination	6 October 2020.
Age at date of termination	50
Complete years of service	5
Net weekly pay £450+30 =	£480
Gross weekly pay £632.	
Limit on week's pay for basic award	£538
Weekly pay while furlough £450x80%	£360
Furlough from 5.11.20 – 2.12.20 and 19.12.20 – 24.4.20	
20% reduction to Basic Award	
40% 'Polkey' reduction in loss of earnings from 24 April 2020.	
Calculation date	22 June 2020
End of loss of earnings	5 October 2020.
Earnings at £21,000 gross per annum = £344.62 net	

Basic Award	£
5 x 538	2690
Less contributory fault @ 20%	(538)
A: Basic Award	<u>2152</u>
Compensatory Award	
Past Net Loss of Earnings	
7.10.20- 5.11.20 4.2 weeks x 480	2016
5.11.20-2.12.20 4 weeks x 360	1440
2.12.20 – 19.12.20 2.6 weeks x 480	1248
19.12.20 – 24.4.20 18 weeks x 360	6480
24.4.20 – calculation date 8.6 weeks x 480	<u>4128</u>

	15312
Less 8,000 received November 2020	(8000)
Less Polkey 40% earnings from 24.4.20 (4128 x 40%)	<u>(1651.20)</u>
B: Past Loss Earnings	<u>5660.80</u>
C. ACAS uplift 25% on past loss	<u>1515.20</u>
Future Loss of Earnings	
Future net weekly loss including 40% Polkey reduction 480 - (192) = 288 per week	
Future net weekly earnings at 75% 344.62 x 75% = £258.46	
D: Future loss of earnings to 5 October 2021 15.2 weeks x (288-258.46) =	<u>449.00</u>
E. ACAS uplift on future loss 25%	<u>112.25</u>
F. Loss statutory rights	<u>500</u>
<u>Total Award (A + B + C + D + E + F)</u>	£10, 389.25

In my judgment I stated the correct figures for A – F, as above, but gave the total as 10289.25. I have corrected this arithmetical slip in this written judgment.

ANNEX 2 RECOUPMENT

Recoupment of Jobseeker's Allowance, income-related Employment and Support Allowance, Universal Credit and Income Support

The Tribunal has awarded compensation to the Claimant but not all of it should be paid immediately. This is because the Department for Work and Pensions (DWP) has the right to recover (recoup) any Jobseeker's Allowance, income-related Employment and Support Allowance, Universal Credit or Income Support which it paid to the Claimant after dismissal. This will be done by way of a Recoupment Notice which will be sent to the Respondent usually within 21 days after the Tribunal's judgment is sent to the parties.

The Tribunal's judgment states the total monetary award made to the Claimant and an amount called the prescribed element. Only the prescribed element is affected by the Recoupment Notice and that part of the Tribunal's award should not be paid until the Recoupment Notice has been received.

The difference between the monetary award and the prescribed element is payable by the Respondent to the claimant immediately.

When the DWP sends the Recoupment Notice, the Respondent must pay the amount specified in the Notice by the Department. This amount can never be more than the prescribed element of any monetary award. If the amount is less than the prescribed element, the Respondent must pay the balance to the Claimant. If the Department informs the Respondent that it does not intend to issue a Recoupment Notice, the Respondent must immediately pay the whole of the prescribed element to the claimant.

The Claimant will receive a copy of the Recoupment Notice from the DWP. If the Claimant disputes the amount in the Recoupment Notice, the Claimant must inform the DWP in writing within 21 days. The Tribunal has no power to resolve such disputes, which must be resolved directly between the Claimant and the DWP.