



EMPLOYMENT TRIBUNALS

Claimant: Mr A Hatch

Respondent: H2M Engineering Ltd

At an Open Attended Hearing

Heard at: Leicester

On: 21 May 2021

Before: Employment Judge Ahmed (sitting alone)

Representation

Claimant: In person

Respondent: Mr Simon Hoyle, Consultant

JUDGMENT ON REMEDY

1. The Respondent is ordered to pay to the Claimant compensation for unfair dismissal of £5,015.08 net.
2. The Employment Protection (Recoupment of Jobseekers Allowance and Income Support) Regulations 1996 apply:
 - 2.1 The monetary award is £5015.08.
 - 2.2 The amount of the prescribed element is £3670.08.
 - 2.3 The period to which the prescribed element is attributable is 7 August 2020 to 2 October 2020.
 - 2.4 The amount by which the monetary award exceeds the prescribed element is £1345.00.

REASONS

1. This was a hearing on the issue of remedy, the Tribunal having found at an earlier hearing on 8 March 2021 that the Claimant was unfairly dismissed.

2. At this remedy hearing the Claimant gave oral evidence expanding upon his schedule of loss and his witness statement. Despite not producing a witness statement, in breach of the orders given for this hearing, the Respondent was permitted to give oral evidence through Mr Andrew Forryan as it was in the interests of justice to do so.

3. The Respondent makes an offer to re-engage or reinstate the Claimant because following the lockdown period the order books are now full. As Mr Forryan put it the work has returned with a vengeance. The Respondent has written to several of the employees who were made redundant inviting them to return to their former role and some have done so. The Respondent says that it is finding it difficult to recruit suitably qualified staff.

4. The Claimant does not wish to be reinstated nor does he wish to be re-engaged by the Respondent. I explained to him that if he was re-instated he would be entitled to arrears of pay since termination but Mr Hatch was adamant that he did not wish to return to the Respondent. In those circumstances it is not practicable for an order for reinstatement/re-engagement to be made. I have gone on to consider compensation.

5. The Claimant has not found alternative employment nor has he been actively seeking it. He says the main reasons are down to his physical and mental health. The physical issue is that he suffers from rheumatoid arthritis. The mental health issue is that he suffers from stress, anxiety and depression. He says he has suffered from both of these impairments for some time. There is no evidence to suggest that either of these have been caused by the dismissal.

6. The Claimant's frank evidence to the Tribunal was that he was practically unable to work from the time of the redundancy onwards. He has not applied for any jobs and therefore remains unemployed. He has been in receipt of Jobseeker's Allowance and State Benefits since dismissal. He does not consider himself to be fit to work at present.

7. The question at the end of the day is: what has the Claimant lost? The task for the tribunal here is to assess the loss flowing from the dismissal. That in turn involves determining how long the Claimant would have been employed. In that respect I make the following findings:

7.1 I have already found that the Claimant would not have been dismissed by reason of redundancy in July/August 2020. The selection process was designed to pick the Claimant for redundancy rather than because of a reasoned assessment of the criteria;

7.2 The Claimant would have remained in employment throughout September 2020 because all employees were furloughed during that period.

7.3 The Claimant is likely to have returned to work in early October 2020 when the business was resuming operations and when the initial furlough scheme was to coming to an end. By then he was already unfit to work.

7.4 The Claimant is likely to have gone on sickness absence in October 2020. He is likely to have remained on sick until he was dismissed for incapability.

7.5 The Claimant would then have been in receipt of statutory sick pay during his absence as there is no right to contractual pay.

7.6 The absence management procedures would have begun due to his inability to return to work at some point.

7.7 The Claimant is then likely to have been fairly dismissed because of capability.

8. In those circumstances it seems to me that what the Claimant has lost is 8 weeks' pay between the 7 August and 2 October 2020. His net weekly pay was £458.76. I have taken this figure from the pleadings as neither party produced any documentary evidence on pay at this hearing.

9. I make no further award for loss of earnings beyond 2 October 2020. I appreciate that the Claimant might only have received 80% of his normal pay under furlough whereas what he is being awarded for loss of earnings is full pay. However, the starting point is the contract and the Claimant would ordinarily be entitled to his full wages under the contract. The Claimant might not have agreed to be furloughed. The Respondent may have topped up his wages to 100%. I therefore consider that it is appropriate to award loss of earnings at the Claimant's actual wage rather than any lower figure.

10. I also award £538.00 for loss of statutory rights as the Claimant will need to work for another employer for two years in the future to acquire the right not to be unfairly dismissed.

11. I should say a word about the basic award. Of course, a redundancy payment normally extinguishes the basic award. However, I note from the dismissal letter that the amount paid by way of the statutory redundancy payment was incorrect. The payment was also made without any accompanying calculation in breach of section 165 Employment Rights Act 1996. The Claimant was aged 53 at the relevant date. He had been employed for 4 years. His gross weekly pay was £603.00, which is capped at £538.00. The redundancy payment should therefore have been £3228.00 (6 x £538.00). There is a shortfall of £807.00 which shall be the amount of the basic award in this case.

12. In summary, the award is as follows:

Basic Award.....£807.00

Compensatory Award

(1) Loss of earnings (8 weeks at £458.76).....	£3670.08
(2) Loss of statutory rights.....	£538.00
Total compensatory award.....	£4208.08
Add basic award.....	£807.00
Grand Total	£5015.08.

13. The Recoupment Regulations will apply. This means that the Respondent is only required to pay £1345.00 at this stage. It must hold back the rest until a notice is served by the relevant Government Department. If no notice is served the full amount is payable. It must pay the amount set out in the notice and the balance to the Claimant. An explanatory note shall accompany the judgment explaining the position.

Employment Judge Ahmed

Date: 5 August 2021

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

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