



5

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4107374/2020

Held by Cloud Video Platform (CVP) on 25 March 2021

10

Employment Judge: Ronald Mackay (sitting alone)

Mr M Bentley

**Claimant
Represented by:
Mr Hemi –
Solicitor**

15

No Ordinary Designer Label Limited t/a Ted Baker

**Respondent
Not Present and
Not Represented**

20

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

25

The judgment of the Tribunal is that the Claimant was unfairly dismissed and the Respondent is ordered to pay the Claimant the sum of £50,859 by way of compensation. The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 apply to this award. The prescribed element is £33,125 and relates to the period from 1 November 2020 to 25 March 2021. The monetary award exceeds the prescribed element by £17,734.

30

REASONS

- 1 The Claimant was employed by the Respondent as Head of European Retail. He had his office base in Glasgow.
- 2 The Claim is one of unfair dismissal. The Claimant was dismissed with effect from 30 July 2020. He was paid in lieu of 3 months' notice. In his ETI,

the Claimant accepted that he had been dismissed by reason of redundancy, that being a potentially fair reason for dismissal in accordance with section 98(4) of the Employment Rights Act 1996 (“ERA”).

5 3 The Respondent has not defended the claim, and has not, accordingly advanced any reason for the dismissal. At the outset of the Hearing, however, the Claimant’s solicitor repeated the concession that a redundancy situation existed and that that state of affairs was the reason for the Claimant’s dismissal. The fairness of the dismissal was, however,
10 challenged on a number of grounds set out in the ET1. In giving evidence, the Claimant focussed on what he saw as failures in the consultation process and failures in relation to the treatment of suitable alternative employment.

4 In the absence of any evidence to challenge the Claimant’s account, the
15 Tribunal found the dismissal to have been unfair.

5 The Tribunal then went on to consider the question of compensation.

Basic Award

6 The Claimant having conceded that the dismissal was by reason of
redundancy, the exclusion from entitlement to a basic award in section
20 122(4) of ERA applies. The Claimant accepted that he had received the correct statutory redundancy payment. He did not, accordingly, claim a basic award.

Compensatory Award

7 Since his dismissal, the Claimant has not received any employment income.
25 He received Jobseeker’s Allowance for 6 months amounting to £1,933.10. He is undertaking unpaid consultancy work for a start-up business. He described the retail sector as being very challenging in terms of opportunities – particularly at his level and location. He has not been successful in any application he has made.

8 The Claimant elected not to apply for an alternative position with the Respondent. On being questioned by the Tribunal about this, he stated that he no longer had trust in the Respondent to manage the process fairly. The role ultimately went to an external candidate in preference to a colleague of the Claimant who did apply.

9 The Claimant's solicitor produced a schedule of loss. From that, the Claimant's weekly net salary and benefits amounted to £1,601.23. The schedule deducted Jobseeker's Allowance, but this was added back by the Tribunal on the basis that it will be recovered under the Recoupment Regulations. The Claimant's losses from 1 November (the prior three months being covered by the payment in lieu of notice) to the date of hearing are £33,125. The Tribunal was satisfied that those losses should be awarded in full.

10 The Tribunal went on to consider whether to award future loss. The Claimant sought an overall compensatory period of 12 months. Having regard to the evidence of the Claimant, the forecasts for economic improvement in the short term and the Claimant's ongoing duty to mitigate his losses, the Tribunal awarded a further 10 weeks' loss, amounting to £16,102.

20 11 The total compensatory award on a net basis is accordingly £49,227.

12 The portion above £30,000 requires to be grossed up in accordance with section 401 of the Income Tax (Earnings and Pensions) Act 2003. The Claimant did not address the question of grossing up. Based on the information before the Tribunal, and on the basis that the Claimant has had no income in the current tax year, using the Scotland tax rates for the tax year 2021/2022, the relevant calculation is as follows:

Tax Band	Rate	Calculation	Gross	Difference

Less than £12,571	0%	-	-	-
£12,571 £14,667	- 19%	£2,096 ÷ 0.81	£2,588	£492
£14,668 £19,227	- 20%	£4,559 ÷ 0.8	£5,699	£1,140

13 The total payment required in order to gross up the award is accordingly £1,632; the total compensatory award is £50,859.

14 The Respondent is also liable to pay Employer National Insurance
5 contributions in respect of the award in excess of £30,000.

15 The Claimant having received Jobseeker's Allowance, the Recoupment
Regulations apply to the compensatory award. The prescribed element
is £33,125 and relates to the period from 1 November 2020 to 25 March
2021. The monetary award exceeds the prescribed element by £17,734 and
10 this sum is payable immediately. The Respondent should await
confirmation of the balance to be paid to the Claimant in accordance with
the Recoupment Regulations.

15 Employment Judge: Ronald Mackay
Date of Judgment: 29 April 2021
Entered in register: 29 April 2021
and copied to parties