



EMPLOYMENT TRIBUNALS

Claimant: Miss P Bensley

Respondent: J & K Retail Limited

Heard at: Leeds by CVP **On:** 16 September 2021

Before: Employment Judge Tegerdine

Representation

Claimant: In person

Respondent: Mr V Kataria (Director)

JUDGMENT

The judgment of the Employment Tribunal is that:

A. UPON the claimant's complaint of unfair dismissal:

1. The claimant was unfairly dismissed by the respondent.
2. The respondent shall pay to the claimant compensation for unfair dismissal of **£4,336.00**, which has been calculated in accordance with the schedule.
3. The Employment Protection (Recoupment of Benefits) Regulations 1996 apply.
4. For the purposes of regulation 4 of the Recoupment Regulations 1996:

Total monetary award:	£4,336.00
Prescribed element:	£3,051.20
Prescribed period:	8 March 2021 to 16 September 2021
Excess of total monetary award over prescribed element:	£1,284.80

B. UPON the claimant's unauthorised deduction from wages complaint:

1. The claimant's claim for unauthorised deduction from wages is well founded.
2. The respondent shall pay to the claimant the gross sum of **£34.88** being the amount of the unauthorised deduction from wages properly payable to the claimant in respect of wages for work performed by the claimant on 1 February 2021.

- C. UPON the claimant's breach of contract claim:
1. The claimant was dismissed without notice on 8 February 2021 in circumstances where she was entitled to four weeks' notice to bring her contract of employment to an end.
 2. The respondent shall pay to the claimant the gross sum of **£697.60** being an amount equivalent to four weeks' pay as damages for breach of contract.
- D. **The respondent shall pay to the claimant the sum of £2,016.68 on or before 30 September 2021** (being: upon the unfair dismissal award, the basic award of £784.20 and the non-prescribed element of the compensatory award of £500; the unauthorised deduction from wages award of £34.88; and the damages for breach of contract of £697.60).
- E. **The respondent shall pay any further sums which are due to the claimant in respect of the prescribed element of the compensatory award to the claimant within 14 days of the date of service upon the respondent of a recoupment notice** by the Department of Work and Pensions.

THE SCHEDULEBasic award

- (1) The basic award (3 years' service x 1.5 x gross weekly pay of £174.40) is **£784.80**.

Compensatory award

- (2) Claimant's net weekly pay to 31 March 2021: £174.40

Claimant's net weekly pay from 1 April 2021: £178.20

(The claimant was paid the National Minimum Wage by the respondent. The applicable rate of the Minimum Wage increased to £8.91 per hour with effect from 1 April 2021. This higher rate of the National Minimum Wage would have applied to the claimant from 1 April 2021 onwards, which means the claimant's gross and net weekly pay would have been £178.20 from 1 April 2021).

- (3) Loss of earnings between 8 March 2021 (the day after the claimant's 4 weeks' notice period would have expired) and the day of the hearing (8 March 2021 to 16 September 2021):

3.5 weeks @ £174.40 p/w =	£610.40
24 weeks @ £178.20 p/w =	£4,276.80

Past loss of wages =	£4,887.20
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- (4) Less sums earned from the claimant's new job between 19 May 2021 and the day of the hearing (19 May 2021 – 16 September 2021):

17 weeks @ £108 p/w =	£1,836.00
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| (5) Net loss of wages (£4,887.20 - £1,836.00) = | £3,051.20 |
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| (6) Add loss of statutory rights = | £500.00 |
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| (7) Total compensatory award (£3,051.20 + £500.00) = | £3,551.20 |
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- (8) TOTAL AWARD FOR UNFAIR DISMISSAL (basic + compensatory award)

£4,336.00

Claimant **Miss P Bensley**
Respondent **J & K Retail Limited**

**ANNEX TO THE JUDGMENT
(MONETARY AWARDS)**

Recoupment of Benefits

The following particulars are given pursuant to the Employment Protection (Recoupment of Benefits) Regulations 1996, SI 1996 No 2349.

The Tribunal has awarded compensation to the claimant, but not all of it should be paid immediately. This is because the Secretary of State has the right to recover (recoup) any jobseeker's allowance, income-related employment and support allowance, universal credit or income support 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 was sent to the parties.

The Tribunal's judgment states: (a) the total monetary award made to the claimant; (b) an amount called the prescribed element, if any; (c) the dates of the period to which the prescribed element is attributable; and (d) the amount, if any, by which the monetary award exceeds 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 Secretary of State sends the Recoupment Notice, the respondent must pay the amount specified in the Recoupment Notice to the Secretary of State. 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 Secretary of State informs the respondent that it is not intended 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 Secretary of State. If the claimant disputes the amount in the Recoupment Notice, the claimant must inform the Secretary of State in writing within 21 days. The Tribunal has no power to resolve such disputes, which must be resolved directly between the claimant and the Secretary of State.

Case No: 1802836/2021

Employment Judge Tegerdine

Date 20 September 2021