



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4101950/2020 (A)

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Held via telephone conference call on 17 July 2020

Employment Judge P O'Donnell

10 **Mr M McNaught**

**Claimant
In Person**

Uppermost Business Gifts Ltd

**Respondent
No appearance and
No representation**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that the Claimant was unfairly dismissed and awards him the sum of £4718 (Four thousand seven hundred and
20 eighteen pounds) as compensation.

The Employment Protection (Recoupment of Jobseekers' Allowance & income Support) Regulations 1996 apply to this award. For the purposes of the Regulations, the "prescribed element" of the award is £4368, the prescribed period is 3 January 2020 to 9 April 2020, the total award is £4718 and the balance is £350.

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REASONS

Introduction

1. The Claimant has brought a complaint of unfair dismissal.
2. The Respondent did not enter a response to the claim. The Respondent had entered into a creditors' voluntary liquidation on 9 April 2020 and this was
30 confirmed in correspondence from the liquidators. The liquidators did not enter a response on behalf of the Respondent and there was no appearance by or on behalf of the Respondent at this hearing.

Conversion to a Final Hearing

3. At one stage the hearing was to be a Final Hearing conducted by telephone but was listed instead as a Preliminary Hearing by telephone.
4. The Tribunal canvassed with the Claimant whether he would have any
5 objection in converting the Preliminary Hearing to a Final Hearing. He had none.
5. The Tribunal considered that it was properly constituted to hold a Final Hearing in this case and that there would be no prejudice to either party in doing so.
- 10 6. The Tribunal also took into account the overriding objective, particularly the need to avoid unnecessary delay which would arise if a further hearing had to be listed for a Final Hearing to be held.
7. In these circumstances, the Tribunal exercised its power under Rule 48 of the Rules of Procedure to convert the Preliminary Hear

15 Findings in fact

8. The Tribunal made the following relevant findings in fact:-
 - a. The Claimant commenced employment with the Respondent in
October 2016 as an engraver.
 - b. At the time of his dismissal, he was paid £382.50 a week gross and
20 £312 per week net.
 - c. On 19 December 2019, the Claimant was informed that the Respondent would cease to trade on 3 January 2020 and that he would be dismissed on that date as a result.
 - d. The Respondent did not cease to trade until it went into liquidation on
25 9 April 2020. Other employees continued to work for the Respondent in the intervening period.

- e. The Claimant was paid redundancy pay at the statutory rate when he was dismissed.
- f. The Claimant was in receipt of Universal Credit after his dismissal. He remains unemployed and in receipt of this benefit to the date of the hearing.

Relevant Law

9. Section 94 of the Employment Rights Act 1996 makes it unlawful for an employer to unfairly dismiss an employee. The test for unfair dismissal can be found in s98 of the Employment Rights Act 1996 (ERA). The initial burden of proof in such a claim is placed on the respondent under s98(1) to show that there is a potentially fair reason for dismissal. There are 5 reasons listed in s98.

Decision

10. The Tribunal found that the Respondent had not discharged the burden of showing that the Claimant was dismissed for one of the potentially fair reasons listed in s98 of the ERA. The Respondent did not enter a response, did not attend a hearing and led no evidence to discharge the burden of proof.
11. In these circumstances, the Tribunal held that the Claimant was unfairly dismissed.

Remedy

12. The statutory redundancy payment made to the Claimant on his dismissal was calculated on the same basis as the Tribunal would calculate any basic award for unfair dismissal. The Claimant has to give credit for the payment made on dismissal and this would cancel any basic award. For this reason, no amount for basic award is given.
13. The Tribunal considered that it would be appropriate to award the sum of **£350** for loss of statutory rights.

14. In relation to the award for loss of wages, the Tribunal had to consider whether the Claimant would have been dismissed on 9 April 2020 when the Respondent actually went into liquidation. The Tribunal considered that this was a potential intervening act and the Claimant would have been fairly dismissed by reason of redundancy on this date.
15. The Claimant submitted that he believed that he would not have been dismissed on this date on the basis that one of the four websites which the Respondent operated was still live and apparently accepting orders.
16. The Tribunal considered that it would not be just and equitable to make an award for loss of wages for the period after 9 April 2020. On the basis of the available evidence, the Respondent went into liquidation on this date and this would, in the normal course of events, meant that it ceased to trade.
17. In these circumstances, the period of loss of wages would run from 3 January 2020 to 9 April 2020, a total of 14 weeks. The loss of wages would therefore amount to $14 \times \text{£}312 = \text{£}4368$ and this is the compensation for loss of wages which is awarded by the Tribunal.
18. The Tribunal, therefore, awards a total of **£4718** as compensation for unfair dismissal.
19. As the Claimant has been in receipt of Universal Credit, the Employment Protection (Recoupment of Jobseekers' Allowance & income Support) Regulations 1996 apply to this award. For the purposes of the Regulations, the "prescribed element" of the award is £4368, the prescribed period is 3 January 2020 to 9 April 2020, the total award is £4718 and the balance is £350.
20. In these circumstances, the relevant department will serve a notice on the respondent stating how much is due to be repaid to it in respect of Universal Credit. Meantime the Respondent should only pay to the Claimant the amount by which the monetary award exceeds the prescribed element. The balance, if any, falls to be paid once respondent has received the notice from the Department.

Employment Judge: Peter O'Donnell

Date of Judgment: 05 August 2020

Entered in register: 07 August 2020

5 and copied to parties