



EMPLOYMENT TRIBUNALS

Claimant: E Churchill

Respondent: BSP (Knockholt) Ltd

Heard at: London South Employment Tribunal

On: 6 October 2021

Before: Employment Judge L Burge

Appearances

For the Claimant: In person

For the Respondent: Did not attend

REMEDY JUDGMENT

It is the Judgment of the Tribunal that:

1. Subject to (2) and (3) the Respondent should pay to the Claimant the total sum of £5919 comprising a basic award of £728.00 and a Compensatory Award of £5191.
2. The Employment Protection (Recoupment of Benefits) Regulations 1996 apply to this award.
 - (a) the total award is £5,919
 - (b) the "Prescribed Element" is £3,686.77
 - (c) the "Prescribed Period" is 07/11/2020 to 17/11/2021
 - (d) the amount by which the monetary award exceeds the Prescribed Element is £2,322.23
3. Payment of the prescribed element in the sum of £3,686.77 shall be stayed until the Secretary of State has served on the Respondent a recoupment notice in respect of Income Support received by the Claimant or has notified the Respondent that it does not intend to serve such notice.

REASONS

1. By a claim form presented on 8 December 2020 the Claimant made claims relating to her dismissal from employment with the Respondent on 6 November 2020. The Respondent did not file a response and has not participated in these proceedings. EJ Abbott decided that the Claimant had been unfairly dismissed and a remedy hearing was listed for 6 October 2021.
2. At the remedy hearing on 6 October 2021 the Claimant said that she had received benefits after she was dismissed but she did not have any documents with her to show this nor what pay she had received from the Respondent.
3. The Claimant sent in details of her income after the hearing as requested.
4. The Claimant did not have normal working hours. Section 224 of the Employment Rights Acts 1996 says that a week's pay is calculated by working out the average weekly pay in the 12 weeks before she was dismissed. In the Claimant's case this was £104 net average pay per week.

Employment Judge **L BURGE**

17 November 2021

JUDGMENT SENT TO THE PARTIES

25 November 2021

Jocelyn Erskine-Kellie

FOR THE TRIBUNAL OFFICE

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ANNEX TO THE JUDGMENT

Recoupment of Jobseeker's Allowance, income-related Employment and Support Allowance, universal credit and Income Support Protective Awards

Under the Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996, it is the responsibility of the respondent to inform the Department for Work and Pensions (DWP) of the following information in writing:

- a) name, address and National Insurance number of every employee the award relates to; and
- b) the date of termination (or proposed termination) of every employee the award relates to.

This information should be sent to the DWP within 10 days of the judgment being announced at the hearing or within 10 days of the date that the judgment was sent to the parties if the judgment was reserved. If it is not reasonably practicable for the respondent to meet this deadline, the information must be sent as soon as is reasonably practicable after the 10 day period.

The remuneration due to an employee under the award should not 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 of receiving the above information from the respondent.

When the DWP sends the Recoupment Notice, the respondent must pay the amount specified in the Notice by the Department. The balance of the remuneration under the award is then payable to the employee(s) subject to the deduction of any tax or social security contributions. If the DWP informs the respondent that it does not intend to issue a Recoupment Notice, the respondent must immediately pay the whole of the remuneration 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.