



2200006/2018

THE EMPLOYMENT TRIBUNALS

BETWEEN

Mr Zane Jensen Claimant
and
Inspired Thinking Group Limited Respondent

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: London Central ON: 16 November 2021

EMPLOYMENT JUDGE: Mr Paul Stewart MEMBERS: Mr David Kendall and
Mr Jim Carroll

Appearances:

For Claimant: Ms Zoë Baker, friend of Claimant

For Respondent: Mr Patrick Keith of Counsel

JUDGMENT

The unanimous judgment of the Tribunal is that the Respondent should pay a total of £8,487 to the Claimant.

REASONS

1. This was a hearing conducted by CVP. We heard evidence from the Claimant who had provided a witness statement. Mr Keith asked some questions which we understand followed roughly the outline of the questions he had put in writing yesterday for the Claimant.

Facts

2. This Remedy Hearing follows on the failure of the parties to agree a remedy in the aftermath of the judgment sent to the parties on 3 September 2019 whereby, unanimously, we held that the Respondent had discriminated against the Claimant on the grounds of disability in choosing to dismiss him; that the dismissal was unfair; that the Claimant did not to any extent cause or contribute to his own dismissal; and, by a majority, we found that, had a fair procedure been adopted, the Claimant would have been dismissed within the same time.
3. The Claimant presented a Schedule of Loss which is contained in the Remedies Bundle and the Respondent has presented a Counter-Schedule that follows the Schedule in the bundle.
4. One item on the Schedule and Counter-Schedule was agreed and that was the Basic Award at £1,467.
5. The Claimant had argued in the Schedule for a Compensatory Award comprising, mainly, loss of earnings. However, as Ms Baker conceded, the claim for loss of earnings cannot survive the majority finding that, had a fair procedure been adopted, the Claimant would have been dismissed within the same timeframe.

6. The loss of statutory rights invoked a difference in approach with the Respondent arguing that the amount should be no more than £350 and the Claimant asserting that, as he had to work for two years to regain his right not to be unfairly dismissed, he should be awarded half a week's wage for each of the two years of statutory rights lost. For the calculation of a week's pay, he used the gross pay he received from the Respondent, namely £673.08.
7. The Respondent's approach appears to be that the loss of statutory rights should follow a conventional amount which varies from £350 to £400 depending on the approach of the particular Tribunal that is adjudicating. This seems to us to lack principle. It also fails to distinguish between the loss of statutory rights for a person earning, say, £150 per week and one earning four times that amount. Clearly, the loss in that example must be different. For this reason, we prefer the approach advanced by the Claimant of half a week's pay for each of the two years which the Claimant is compelled to work at new employment to recover his statutory rights with one adjustment, that being the substitution of a week's net pay for a week's gross pay. That means we award £520 under that head.
8. In respect of injury to feelings, we were faced with the Claimant asserting the award should be £10,000 and Mr Keith asserting that the award should be no more than £5,700. We were in agreement with Mr Keith that the award should be in the lower of the Vento bands but we differed slightly on where the award should be placed in that lower band. To us, the amount that seemed right was £6,500.
9. We should mention that the Claimant had argued for an uplift in the compensatory award (which only comprises the loss of statutory rights) pursuant to section 207A of the TULR(C)A 1992. While we had adjudged the dismissal to be unfair, we were not convinced that any breach of the ACAS Code of Practice had been established such as to warrant an uplift.
10. Accordingly, our judgment is that the Respondent should pay the Claimant the sum of £8,487.

EMPLOYMENT JUDGE - Stewart

On: 17 November 2021

DECISION SENT TO THE PARTIES ON

.18/11/2021.

FOR SECRETARY