



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

AND

Respondent

Mr R Woodall

Rico Logistics Ltd

REMEDY HEARING

HELD AT Birmingham (via CVP) **ON** 14 December 2021

EMPLOYMENT JUDGE Choudry

Representation:

For the claimant: In person

For the respondent: Mr Z Malik (Solicitor)

JUDGMENT ON REMEDY

1. The respondent is ordered to pay the claimant the following sums subject to the recoupment provisions as detailed in the attached Appendix:
 - 1.1 sum of £14,006.37 (gross) in respect of notice pay;
 - 1.2 a basic award of £8,925; and
 - 1.3 a compensatory award of £76,683.03.
2. The Employment Protection (Recoupment of Benefits) Regulations 1996 apply. The dates of the prescribed period are 29 January 2020 to 28 February 2021. The prescribed element is £52,257.56. The sum in excess of the prescribed element is £24,425.47.

REASONS

Background

1. Following a preliminary hearing on 11 and 12 February 2021 the respondent conceded that the claimant had been unfairly dismissed. As such, this matter was listed for a remedy hearing before me.
2. At the start of the hearing I explained to the claimant the remedies available to him. The claimant indicated that he was not seeking re-instatement nor re-engagement and compensation only.

Evidence and documents in relation to remedy

3. I was presented with an agreed bundle of documents of 127 pages and a skeleton argument from the respondent.
4. I heard evidence from the claimant in relation to the losses he had incurred and the attempts that he had made to mitigate his losses.

Issues

5. The issues for me to determine were:

Unfair dismissal

- 5.1 Does the claimant wish to be reinstated to their previous employment?
- 5.2 Does the claimant wish to be re-engaged to comparable employment or other suitable employment?
- 5.3 Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.
- 5.4 Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.
- 5.5 What should the terms of the re-engagement order be?
- 5.6 If there is a compensatory award, how much should it be? The Tribunal will decide:
 - 4.6.1 What financial losses has the dismissal caused the claimant?
 - 4.6.2 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
 - 4.6.3 If not, for what period of loss should the claimant be compensated?
 - 4.6.4 Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?

4.6.5 If so, should the claimant's compensation be reduced? By how much?

4.6.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

4.6.7 Did the respondent or the claimant unreasonably fail to comply with it ?

4.6.8 If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?

4.6.9 If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?

4.6.10 Does the statutory cap of fifty-two weeks' pay or the statutory maximum apply?

5.7 What basic award is payable to the claimant, if any?

Wrongful dismissal / Notice pay

5.8 What was the claimant's notice period?

5.9 Was the claimant paid for that notice period?

Facts

6. The claimant's continuous services commenced on 1 June 2002.
7. The claimant's salary with the respondent was on an annual salary of £95,000 (gross). His net monthly earnings were £5,302.99 resulting in net weekly earnings of £1,223.77.
8. On termination the claimant received 4 weeks' notice pay when he was entitled to 12 weeks due to his continuous service.
9. The claimant was seeking work from the date of his dismissal until September 2020 when he joined his current role at VNR Trading Limited. He then earned £1,300 (gross and net) per month up to March 2021 when the company could afford to increase his earnings to his pre-dismissal salary through a combination of salary and dividends. The claimant was not seeking losses from March 2021 nor for any future losses.
10. In the period November 2019 to September 2020 the claimant made significant attempts to seek alternative employment but due to the economic downturn due to Brexit and the COVID-19 pandemic he was unable to secure a role.
11. The claimant received the sum of £3,878.40 for Universal Credit in the period May 2020 to September 2020 and a further £213.76 for the period February 2021 to April 2021.
12. During evidence the claimant confirmed that he had not repaid the redundancy payment which he had incorrectly received from the Insolvency Service in the sum of £4,064 as he had thought that the Tribunal would deduct these sums from the compensation the Tribunal awarded.
13. The figures submitted by the claimant in his schedule of loss in relation to pension, car allowance and private medical care were agreed to by the respondent.
14. I was not presented with any payslips nor with net pay figures.

Applicable law

15. Section 86 of the Employment Rights Act 1996 provides:

*“(1) The notice required to be given by an employer to terminate the contract of employment of a person who has been continuously employed for one month or more—
(a) is not less than one week’s notice if his period of continuous employment is less than two years,
(b) is not less than one week’s notice for each year of continuous employment if his period of continuous employment is two years or more but less than twelve years, and
(c) is not less than twelve weeks’ notice if his period of continuous employment is twelve years or more.”*

16. Section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 provides :

*(1) This section applies to proceedings before an employment tribunal relating to a claim by an employee under any of the jurisdictions listed in Schedule A2.
(2) If, in the case of proceedings to which this section applies, it appears to the employment tribunal that—
(a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies,
(b) the employer has failed to comply with that Code in relation to that matter, and
(c) that failure was unreasonable,
the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 25%.
(3) If, in the case of proceedings to which this section applies, it appears to the employment tribunal that—
(a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies,
(b) the employee has failed to comply with that Code in relation to that matter, and
(c) that failure was unreasonable,
the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, reduce any award it makes to the employee by no more than 25%.
(4) In subsections (2) and (3), “relevant Code of Practice” means a Code of Practice issued under this Chapter which relates exclusively or primarily to procedure for the resolution of disputes.*

Submissions

17. The respondent confirmed that it was not seeking to argue that the claimant had not mitigated its losses nor was it seeking to argue Polkey. Mr Malik was concerned about the potential for double recovery if the claimant was awarded compensation for unfair dismissal and wrongful dismissal. He also argued that there should be no basic award as the claimant had received a redundancy payment from the Insolvency Service. Mr Malik also submitted that the claimant should not be awarded an uplift for a failure to comply with the ACAS Code by failing to treat the claimant's employment as a transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") on the basis that the respondent did not act unreasonably and it acted on the belief that TUPE did not apply and they terminated the claimant's employment during his probationary period.

Conclusions

12. In reaching my conclusions I have considered all the evidence I have heard and considered the documents to which I have been referred. I have also considered the very helpful submissions made by the parties.
13. I award compensation on the basis of the Annex to this Judgment. The claimant is awarded the basic award on the basis that he repays to the Insolvency Service the redundancy payment of £4,092.16 which he had received from the Insolvency Service. A copy of this Judgment will be sent to the Insolvency Service.
14. I agree with Mr Malik in relation to the alleged failure to comply with the ACAS Code of Practice and I am satisfied on the evidence before me that it would not be just and equitable to award an uplift in the compensatory award.

Employment Judge Choudry
Date on 14 December 2021

Annex

Gross Annual Salary	£95,000.00
Net Annual Salary	£63,635.88
Gross weekly pay	£ 1,826.92
Net weekly pay	£ 1,223.77
Gross day's pay	£ 260.27
Net day's pay	£ 174.35
Statutory week's pay	£ 525.00
Claimant's continuous employment commenced on : 1.6.2002	
Claimant's effective date of termination : 5.11.19	

Wrongful dismissal/Notice Pay: 12 weeks

A week's pay £1,826.92 x 12	£21,923.04
Less 4 weeks' notice received	£7,916.67
Total for wrongful dismissal	£14,006.37

Compensation for unfair dismissal**Period of loss 29 January 2020 to 28 February 2021 (56 weeks and 4 days)**

Basic Award

17 weeks x £525.00 per week	£8,925.00
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Compensatory Award

Losses from 29 January 2020 to 28 February 2021

Loss of earnings	£69,228.52
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56 weeks x £1,223.77 = £68,531.12

4 days x 174.35 = £697.40

Less income received	£16,970.96
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Gross and net monthly amount - £1,300.00

Gross and net weekly amount - £300.00

Gross and net daily amount - £ 42.74

56 weeks x £300 = £16,800.00

4 days x £42.74 = £170.96

Total loss of earnings	£52,257.56
Pension contributions	£6,333.34
Car Allowance	£4,373.28
Private medical	£2,666.67
Expenses in seeking alternative employment	£429.84
Loss of statutory rights	£500.00

Total compensatory award **£66,560.69 (net)**

Grossing up for tax

£30,000 tax free (£8,925.00 for the basic award and £21,075 of compensatory award)

Amount to be taxed £44,055.85 (compensatory award of £66,560.69 minus expenses of £429.84 and £21,075 of the compensatory award which can be paid tax free)

Up to £37,500 @ 20 % = £7,500

£6,555.85 @ 40% = £2,622.34

Total Payable

Wrongful dismissal - £14,006.37

Unfair dismissal :

Basic Award – £8,925.00

Compensatory Award - £76,683.03