



EMPLOYMENT TRIBUNALS

Claimant: Mr L Smith
Respondent: National Rail Infrastructure Limited
By: CVP On: 1 February 2022
Before: Employment Judge Craft

Representation

Claimant: Ms A Palmer, Counsel
Respondent: Mr T Welch, Counsel

FURTHER JUDGMENTS ON REMEDY

1. This hearing had been convened following the Tribunal's Judgment promulgated on 19 November 2021 to determine the terms of the Claimant's reinstatement under s.113 (a) Employment Rights Act 1996.
2. The Respondent shall reinstate the Claimant in his job of Team Leader Track Inspections based at its Havant Depot on 1 April 2022 with the same contractual rights, terms and conditions to which he was entitled at the date of his dismissal.
3. The Respondent shall, under the terms of s.114(2)(a) pay the Claimant the sum of £58,846.86 in respect of his financial losses from his dismissal on 15 October 2019 to the date of his reinstatement which sum has been calculated on a net basis.
4. The Respondent had informed the Tribunal and the Claimant, in advance of the hearing, that it will discharge its obligations under the Reinstatement Order dated 19 November 2021 by payment of a compensation award for non-compliance, pursuant s.117 Employment Rights Act 1996. The Respondent made no further representations to challenge the practicability of the Claimant's reinstatement and confirmed that it accepts that in such circumstances it will be required to pay any financial awards made by the Tribunal within the terms of s.117(3) of the Employment Rights Act 1996.
5. The Respondent, by reason of its refusal to reinstate the Claimant to his job of Team Leader Track Inspections at Havant Depot shall pay the Claimant:
 - (a) A Basic Award of £3,675;

- (b) a Compensatory Award, including loss of statutory rights, under s.124 Employment Rights Act 1996 of £58,886.86; and
 - (c) an Additional Award under s.117(3) Employment Rights Act 1996 of £27,300.
6. The statutory cap to be applied to a Compensatory Award made to the Claimant is agreed to be £52,161.20. The Tribunal records that the Claimant continues to suffer substantial loss of wages in his new job as a result of the Respondent's refusal to reinstate him. However, the Claimant pursued no claim for future losses before the Tribunal in view of the result of the application of the statutory cap to the Compensatory Award and Additional Award made by the Tribunal.
 7. In this case in which the Respondent has not complied with the Reinstatement Order, the statutory cap may be exceeded only to the extent necessary to allow the aggregate of the Compensatory and Additional Awards to fully reflect the amount the Tribunal specified as payable under S.114(2)(a) in the first Judgment above for loss of earnings to date on which the Respondent was ordered to reinstate the Claimant.
 8. The Respondent shall, in addition to the paying the Basic Award, pay the claimant a Compensatory Award in the sum of £58,486.86.
 9. The Claimant's claims for unauthorised deductions of wages are dismissed on withdrawal by the Claimant.
 10. The Recoupment Regulations apply to the Compensatory Award as follows:
 - (a) The Prescribed element is: £1902.77;
 - (b) The Prescribed period is: 15 October 2019 – 20 September 2020;
 - (c) Total amount of the Award: £58,486.86; and
 - (d) Balance: £56,584.09
 11. The Claimant pursues a claim of costs in respect of the Remedy Hearing that was adjourned on 18 March 2021. The Tribunal directed that the Claimant's claim for costs should be submitted in writing to the Tribunal by 15 February 2022 and that the Respondent should submit its written representations in respect of the application for costs to the Tribunal by no later than 8 March 2022 for subsequent adjudication by the Tribunal.

Employment Judge Craft
Date: 17 February 2022

Judgment sent to parties: 22 February 2022

FOR THE TRIBUNAL OFFICE

Note

Reasons for the judgment having been given orally at the hearing written reasons will not be provided unless a written request is presented by either party within 14 days of the sending of this written record of the decision.