



EMPLOYMENT TRIBUNALS

Claimant: Mr L Stuart

Respondent: Greenrod Ltd.

Heard at: East London Employment Tribunal

On: 25 February 2022

Before: Employment Judge Burgher

Appearances

For the Claimant: Mrs S Taylor (Mother in Law)

For the Respondent: Ms SJ Wood (Consultant)

REMEDY JUDGMENT ON RECONSIDERATION

The remedy Judgment sent to the parties on 14 July 2020 is varied.

The Respondent is now ordered to pay the Claimant the total sum of £13682.54 in respect of his successful claims.

REASONS

1 Following representations from the parties I accepted that the remedy judgment sent to the parties on 14 July 2020 should be reconsidered as the Respondent did not receive notice of the remedy hearing.

2 The issues for reconsideration were queried. Ms Wood submitted that:

2.1 The wrongful dismissal should not be awarded on the basis that the Claimant committed gross misconduct.

2.2 Issues of mitigation, *Polkey*, ACAS uplift and conduct should be reconsidered.

2.3 The level of injury to feelings was too high.

3 I heard evidence from Mr Paul Harris and Ms Karen Harris from the Respondent. The Claimant gave evidence and Mrs Taylor gave evidence in support. All witnesses gave evidence under oath and were subject to cross examination and questions from the Tribunal. I was also referred to relevant pages in the hearing bundle.

4 Given that the default judgment for liability had not been revoked the Claimant is entitled to remedy for his claims for wrongful dismissal, unfair dismissal and disability discrimination. In summary, the Claimant's case was that the acts he was dismissed for related to his disability and his dismissal was not justified.

Wrongful dismissal

5 In these circumstances, it was not open to the Respondent to seek to revisit the wrongful dismissal claim, or the award for it, at all. The amount initially awarded therefore stands.

Mitigation

6 Further, no documentary evidence was provided to establish that the Claimant could have obtained alternative work sooner than he did; or that he should have achieved a higher salary sooner. The duty was on the Respondent to establish this and a simple assertion by the Respondent's witnesses to this effect was insufficient to persuade me otherwise. Therefore, my conclusions relating to the period for loss of earnings remains.

Polkey

7 Ms Wood submitted that the Claimant would have been dismissed in any event had a fair procedure been followed and a reduction to compensation should be applied to reflect this. In summary, she stated that the Claimant did not provide medical evidence to establish his failure to respond to texts on 1 November 2019 and going AWOL. I do not accept this submission. On any view, the Respondent was aware of the Claimant's previous episodes of depression and had accommodated this, his behaviour on 1 November 2019 and following weekend was unusual and unexplained, it is more likely that following proper enquiry, clearly forewarning the Claimant in writing of the case against him prior to the disciplinary meeting he would have been properly placed to mount his defence, which he did by appeal. However, no appeal meeting was held and no investigation into the Claimant's medical assertions was conducted. I do not make any adjustment for *Polkey*.

ACAS uplift

8 Whilst I am critical of the Respondent in not providing a letter of allegations to the Claimant before the disciplinary panel and not arranging an appeal outcome, it is clear that the Claimant was told about the basis of the disciplinary meeting, he attended with Ms Taylor and had an opportunity to postpone it but wanted to get it out of the way. In these circumstances I reduce the ACAS uplift to 15%.

Conduct

9 I do not accept Ms Wood's submissions that the Claimant committed gross misconduct. It was alleged that the Claimant had also stolen material from a client and stored inappropriate items in the Respondent's company van that he had use of. However, these alleged matters were known about by the Respondent prior to the disciplinary hearing on 13 November 2019 but not raised with the Claimant. Mr Green thought he had enough to dismiss the Claimant with.

10 However, it is clear that the Claimant did not raise his medical issues at the disciplinary hearing and could easily have done so. I consider him to be at fault in this regard and reduce his basic and compensatory award by 20% to reflect this.

Injury to feelings

11 I do not accept Ms Wood's submission that the award of £5500 for injury to feelings is unwarranted. This was in effect a dismissal arising from the Claimant's disability and an award in the middle of the low band is appropriate. The £900 contended for by Ms Wood is rejected.

Conclusion

12 Having considered the evidence and the documents I concluded that it was appropriate to reconsider the remedy judgment and I order the Respondent to pay the Claimant the sums calculated as specified below.

1. Details

Date of birth of claimant	03/06/1978
Date started employment	06/06/2016
Effective Date of Termination	13/11/2019
Period of continuous service (years)	3
Age at Effective Date of Termination	41
Remedy hearing date	13/07/2020
Date by which employer should no longer be liable	25/01/2021
Contractual notice period (weeks)	3
Statutory notice period (weeks)	3
Net weekly pay at EDT	438.46
Gross weekly pay at EDT	557.54
Gross annual pay at EDT	28,992.00

2. Basic award

Basic award	1,575.00
Number of qualifying weeks (3) x Gross weekly pay (525.00)	
Less amount for unreasonable refusal to be reinstated	0.00
Less redundancy pay already awarded	0.00
Less 20% conduct reduction	315.00

Total basic award **1,260.00**

3. Damages for wrongful dismissal

Loss of earnings	1,315.38
Damages period (3) x Net weekly pay (438.46)	
Less sums obtained, or should have been obtained, through mitigation	-468.32
Earnings	
Simpsons (East Anglia) Ltd (25/11/2019 to 04/12/2019)	468.32
Plus failure by employer to follow statutory procedures @ 15%	127.06

Total damages **974.12**

4. Compensatory award (immediate loss)

Loss of net earnings	13,899.18
Number of weeks (31.7) x Net weekly pay (438.46)	
Plus loss of statutory rights	500.00
Less sums obtained, or should have been obtained, through mitigation	-11,551.93
Earnings	11,551.93
Simpsons (East Anglia) Ltd (05/12/2019 to 13/07/2020)	11,551.93

Total compensation (immediate loss) **2,847.25**

5. Compensatory award (future loss)

Loss of future earnings	12,276.88
Number of weeks (28) x Net Weekly pay (438.46)	
Less sums expected to be obtained through mitigation	-10,199.00
Earnings	10,199.00
Simpsons (East Anglia) Ltd (14/07/2020 to 25/01/2021)	10,199.00

Total compensation (future loss) **2,077.88**

6. Adjustments to total compensatory award

Plus failure by employer to follow statutory procedures 738.77
 £4925.13 @ 15%

Sub total £5663.90

Less 20% conduct 1132.78

Sub total £4531.12

Plus interest (compensation award) @ 8% for 416 days £413.14

Compensatory award before adjustments	4,925.13
Total adjustments to the compensatory award	19.13
Compensatory award after adjustments	£4,944.26

7. Non financial losses

Injury to feelings 5,500.00

Plus interest @ 8% for 833 days 1004.16

Total non-financial award	6504.16
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8. Summary totals

Basic award 1,260.00

Wrongful dismissal 974.12

Compensation award including statutory rights 4944.26

Non-financial loss 6504.16

Total	13,682.54
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13 The total due to be paid by the Respondent to the Claimant is therefore **£13,682.54**.

Employment Judge Burgher
 Dated: 25 February 2022