



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr R Johnston  
**Respondent:** Salop Caravans (Cosford) UK Ltd  
**Heard at:** Birmingham      **On:** 16 & 17 December 2019  
**Before:** Employment Judge Miller  
**Representation**  
**Claimant:** Mr M Edwards – legal representative  
**Respondent:** Mr N Brockley – counsel

## RESERVED JUDGMENT ON REMEDY

1. The respondent shall pay the claimant the sum of **£7,046.06** by way of compensation for unfair dismissal.
2. The respondent shall pay the claimant the sum of **£315.17** for its failure to pay the claimant holiday pay. This is the gross figure and is payable subject to deductions as wages.

## REASONS

### Introduction

1. The claimant was unfairly dismissed for the reasons given at the hearing on 17 December 2019. Those reasons included a finding that had the dismissal been conducted fairly there was a 25% chance that the claimant would have been dismissed.
2. The claimant brought a claim for unpaid holiday pay in respect of 5 days. That claim was successful.

## Issues

3. The issues for me to determine are therefore what compensation the claimant is entitled to for being unfairly dismissed and how much holiday pay the claimant is entitled to.

## Law

4. The provisions dealing with compensation for unfair dismissal are those set out in section 118 – 126 of the Employment Rights Act 1996.
5. Section 118 says
  - (1) Where a tribunal makes an award of compensation for unfair dismissal under section 112(4) or 117(3)(a) the award shall consist of—
    - (a) a basic award (calculated in accordance with sections 119 to 122 and 126), and
    - (b) a compensatory award (calculated in accordance with sections 123, 124, 124A and 126).
6. Section 119 – 122 deal with the calculation of the basic award and section 122(4) says
  - (4) The amount of the basic award shall be reduced or further reduced by the amount of—
    - (a) any redundancy payment awarded by the tribunal under Part XI in respect of the same dismissal, or
    - (b) any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy (whether in pursuance of Part XI or otherwise).
7. Section 123 provides, as far as is relevant,
  - (1) Subject to the provisions of this section and sections 124, 124A and 126, the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.
  - (2) The loss referred to in subsection (1) shall be taken to include—
    - (a) any expenses reasonably incurred by the complainant in consequence of the dismissal, and
    - (b) subject to subsection (3), loss of any benefit which he might reasonably be expected to have had but for the dismissal.
  - (3) The loss referred to in subsection (1) shall be taken to include in respect of any loss of—
    - (a) any entitlement or potential entitlement to a payment on account of dismissal by reason of redundancy (whether in pursuance of Part XI or otherwise), or
    - (b) any expectation of such a payment,

only the loss referable to the amount (if any) by which the amount of that payment would have exceeded the amount of a basic award (apart from any reduction under section 122) in respect of the same dismissal.

8. Section 124 provides that the compensatory award shall be capped at the lower of £80,541 or 52 weeks wages.

9. In respect of holiday pay, regulation 30 of the Working Time Regulations 1998 provides as far as is relevant

(1) A worker may present a complaint to an employment tribunal that his employer—

...

(b) has failed to pay him the whole or any part of any amount due to him under regulation 14(2) or 16(1).

...

(5) Where on a complaint under paragraph (1)(b) an employment tribunal finds that an employer has failed to pay a worker in accordance with regulation 14(2) or 16(1), it shall order the employer to pay to the worker the amount which it finds to be due to him.

## Findings

10. The claimant's final date of employment was 12 March 2018. He was entitled to nine weeks' notice pay. The claimant's gross earnings with the respondent were £1,376.24 per calendar month. This equates to £315.17 per week. The claimant's net earnings were £1,162.88 per month which equates to £266.31 per week.
11. Although the claimant was summarily dismissed and paid in lieu of notice, his notice pay continued to be paid on a monthly basis at the end of the month, one month in arrears. He therefore continued to be paid in respect of the period up to and including 31 May 2018. He was paid 11 weeks and three days' notice pay.
12. The claimant was paid a redundancy payment of £2858.40. It was not disputed that the claimant received the correct redundancy payment.
13. The claimant secured temporary employment from 2 November 2018 to 17 January 2019. Throughout this period of employment, the claimant's income was at least that which he earned during his employment with the respondent.
14. The claimant then secured permanent employment from 21 March 2019. The claimant's earnings from this employment are such that he has no ongoing losses.
15. From the claimant's effective date of termination until he secured permanent employment is 53 weeks and 3 days. The claimant was employed during this period for 8 weeks and 3 days. The claimant therefore had a total of 45 weeks unemployment. However, the claimant experienced no losses in respect of his notice period of 9 weeks so that the total period for which the claimant was unpaid is 36 weeks.
16. The claimant's net losses for this period are £9587.16.

17. The claimant made reasonable attempts to secure employment throughout this period. The evidence the claimant provided included a list of regular job searches and he said that he had had conversations with people about informal opportunities. I accept the claimant's evidence that although he was skilled in his previous role it was not straightforward to transfer those skills to the more specialised field of electrical engineering. The claimant recognized this and also applied for a number of lower skilled jobs. The fact that the claimant secured and was prepared to take temporary employment and then secured a permanent job supports this finding.
18. The claimant gave evidence that he had no other income, whether from benefits or anything else, during this period and in the absence of any evidence to the contrary I accept that evidence.

## Conclusions

### Compensation for unfair dismissal

19. The claimant is entitled to the following compensation for unfair dismissal

#### Basic award

20. The claimant has received a redundancy payment and pursuant to section 123(4) this is offset against his entitlement to a basic award. The claimant is not therefore entitled to a basic award.

#### Compensatory award

21. The claimant had a period of unemployment of 36 weeks during which time his net losses were £9587.16.
22. The claimant has lost his statutory rights accrued after 8 years. For this I make an award of £500.
23. The total compensatory award is therefore £10,087.16
24. The claimant was overpaid for two weeks and 3 days for his notice. This payment is 2.6 multiplied by £266.31 giving a total of £692.41. This amount is deducted from the claimant's losses taking the total to £9394.75.
25. I found that there was a 25% chance that the claimant would have been selected for redundancy had a fair process been adopted. I therefore reduce the compensatory award by 25% to give a total of £7,046.06.
26. The total compensatory award is therefore **£7,046.06**.
27. The cap under section 124 does not apply as 52 weeks' wages is £16,388.84.

### Compensation for unpaid holiday pay

28. Pursuant to regulation 30(5) of the Working Time Regulations 1998 the claimant is entitled to payment of the five days holiday pay that he did not receive.
29. The claimant's gross weekly wage is based on a five-day working week. The claimant is therefore entitled to **£315.17** for unpaid holiday pay.

### Offset of holiday pay

30. The parties were told in the course of giving judgment that unpaid holiday pay would be offset by the overpaid notice pay. In considering this remedy judgment I have decided that the appropriate way to deal with the

overpayment of notice pay is to take it into account in calculating the compensatory award as set out above.

---

Employment Judge **Miller**

19 December 2019