



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr C Randa

**Respondent:** Abellio London Ltd

**Heard at:** Croydon via CVP      **On:** 14/1/2022

**Before:** Employment Judge Wright  
Ms H Bharadia  
Mr J Turley

## Representation

Claimant: Ms M Ahmed - solicitor

Respondent: Ms R Jones - counsel

**UPON APPLICATION** made by letter dated **21/2/2022** to reconsider the Judgment dated **14/1/2022** under rule 71 of the Employment Tribunals Rules of Procedure 2013, and without a hearing, the Judgment is amended as follows:

## REMEDY JUDGMENT

The claimant applied for reinstatement. The application was refused.

It is the unanimous judgment of the Tribunal that the claimant is awarded the following sums:

Basic award 13 x £508 = £7,620

Net loss of wages £595.14 x 9 weeks (date of termination to date the claimant commenced a new job) = £5,356.26

Pension contribution ~~£101.56~~ **£23.44** x 9 weeks = £914.04 **£210.96**

Loss of statutory rights £500

Total payable to the claimant £14,390.30      **£13,687.22**

# REASONS

1. It was the unanimous Judgment of the Tribunal dated 24/5/2021 that the claim of unfair dismissal contrary to the Employment Rights Act 1996 succeeded and the claimant's dismissal was unfair.
2. The claimant is now legally represented and he applied for reinstatement. This application was refused. The claimant was unfairly dismissed on 3/5/2018, over three years ago. The Tribunal heard unchallenged evidence that the respondent had reorganised in January 2019 and the claimant's former role no longer existed. For those reasons, it was impractical to award reinstatement.
3. The basic award was correctly calculated by the respondent.
4. The claimant secured alternative employment commencing on 2/7/2018 and he therefore suffered nine weeks' loss of salary. That sum was calculated using his net weekly rate of pay of £595.14.
5. The claimant claimed loss of his employer's pension contribution. The pension contribution figure to be applied was £101.56 *per month*. The claimant contended for a higher figure of £190.48, however that was the respondent's pension contribution figure in 2015, not at the date of termination.
6. The respondent submitted the sum of £500 for loss of statutory rights was too high. The Tribunal however agreed to award the sum sought by the claimant.
7. The claimant sought to claim £1,552.50 for a failure to provide written reasons for dismissal. Not only did the claimant not plead such a claim; he did not advance any evidence on this matter.
8. Similarly, in his schedule of loss, he claimed £9,375 in respect of his notice period. He did not plead a wrongful dismissal claim and nor did he make an application to amend his claim. It is also unclear why he claimed a 10% Acas uplift in respect of this sum. In line with that, his claim for statutory holiday pay during the notice period also fails (again, the claimant claimed an unclear 25% Acas uplift).
9. The claimant claimed £8,381.12 in respect of 44-months' pension contributions; using the 2015 employer's contribution rate of £190.48. Even though his contract of employment stated that he would be eligible to join his new employer's auto-enrolment scheme; the claimant said he was somehow prevented from doing so. There are two issues with this; firstly, the scheme is an *auto-enrolment* scheme, which an employee then has to opt-out of. Secondly, if the claimant failed to join his new employer's scheme, that is a failure to take reasonable steps to mitigate his loss and not something for which the respondent is liable.

10. As no order for reinstatement was made, the claimant is not entitled to compensation for a failure to reinstate him. Even if a reinstatement order had been made, stating that the respondent had failed to reinstate him was clearly premature.
11. Finally, the Tribunal declines to award the claimant his lost wages in respect of the days which he attended the final hearing in May 2021. Additionally, the final hearing lasted four days, not five.
12. The claimant's schedule of loss does not factor in s.124 of the Employment Rights Act 1996.
13. The claimant did not advance an application for re-engagement and nor did he seek any other form of compensation.
14. A note for the representatives and their clients. The Tribunal wishes to record its displeasure at the shoddy preparation of this matter by the respective solicitors. The Tribunal had deliberately listed the remedy hearing to allow time for the Judgment to be received, considered and instructions taken. The hearing was not listed immediately after the December holiday period (so not on the 3/1/2022) to allow time in the New Year for the parties to co-operate in respect of what was outstanding.
15. It is understood the claimant had been out of the UK until 11/1/2022. Either, he booked the trip after the date for the remedy hearing was set, in which case it was his choice to travel on those particular dates. Or, the trip was booked prior to listing the remedy hearing, in which case, if that was going to cause problems, it was up to the claimant to raise that as an issue and request an alternative date. In either case, apart from when he was traveling, there was nothing to prevent the claimant giving instructions remotely. That being said, the claimant said he instructed his solicitor on 31/12/2021 when he was out of the country in any event.
16. Instructions in respect of the claimant's pension contributions were being taken at 9.30am on the morning of the hearing. The claimant's amended schedule of loss was also updated on the morning of the hearing. The respondent's witness statement was dated 13/1/2022 and the claimant's 12/1/2022. There was nothing to indicate to the contrary that the preparation for this matter had been left to the very last minute and that is not acceptable. The bundle was not paginated.
17. This hearing should have been completed within two-to-three hours and would have been had the parties properly prepared. The written reasons clearly stated that the parties should be able to agree the basic award and they were unable to even do that. It is not proportionate for the Tribunal to be tasked with such basic matters. This is particularly so once the claimant was legally represented, which he had been for the last two weeks. There was no legal basis for many of the sums claimed by the claimant.
18. Time was wasted at the start of the hearing due to the sloppy preparation. Had there been a floating case, the Tribunal would have taken that case

and sent these parties away to properly prepare. The parties are reminded of their obligations under the overriding objective and their duty to assist the Tribunal.

Employment Judge Wright  
Date 14/1/2022 **and reconsidered on**  
**28/2/2022**