



EMPLOYMENT TRIBUNALS

Claimant: Mr David Aaron Sumnall

Respondent: Body Power Ltd

Heard at: Birmingham (by CVP)

On: 17 and 18 March 2022

Before: Employment Judge Meichen (sitting alone)

Appearances

For the claimant: in person

For the respondent: no appearance or representation

JUDGMENT

1. The claimant's claims of failure to pay holiday pay and commission are dismissed following withdrawals of those claims by the claimant.
2. The claimant was unfairly dismissed by the respondent.
3. The claimant did not contribute to his dismissal by any blameworthy conduct.
4. There was no percentage chance that the claimant could have been fairly dismissed.
5. The respondent unreasonably failed to comply with the ACAS code and an uplift of 20% has been made to the compensatory award to reflect that.
6. The claimant did not unreasonably fail to mitigate his loss.
7. The respondent is ordered to pay the claimant the following subject to the recoupment provisions:
 - a. A basic award of £968.99.

This was calculated on the basis of the claimant's two years' service and gross pay of £2083.33 per month.
 - b. A compensatory award of £11865.60.

This was calculated as follows: 6 months loss of net pay (6 x 1648) plus 20% increase for the respondent's failure to follow the ACAS code.

8. The respondent is also ordered to pay the claimant £350 for loss of statutory rights.
9. The grand total to be paid by the respondent to the claimant, subject to the recoupment provisions, is £13184.59.
10. The Employment Protection (Recoupment of Benefits) Regulations 1996, SI 1996 No 2349, apply. In accordance with those Regulations: (a) the total monetary award made to the claimant is £14079.96; (b) the amount of the prescribed element is £11865.60; (c) the dates of the period to which the prescribed element is attributable are 27 December 2019 to 18 March 2022; (d) the amount by which the monetary award exceeds the prescribed element is £2214.36.

Employment Judge Meichen

18 March 2022

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