



EMPLOYMENT TRIBUNALS

Claimant

Mr P. Patterson

Respondent

Total Auto Glazing Services Ltd

AND

HEARD AT: Watford Tribunal Centre (Hybrid) **ON:** 20 October 2021

BEFORE: Employment Judge Douse (Sitting alone)

Representation:

For Claimant: Mr Donnelly, Solicitor

For Respondent: In person

JUDGMENT

1. The respondent is ordered to pay the claimant a basic award of **£1,335** and a compensatory award of **£19,802.77**
2. The respondent is ordered to pay the claimant the net sum of **£121.17** in relation to unpaid holiday pay
3. The respondent is ordered to pay the claimant the gross sum of **£1335** in relation to unpaid wages

REASONS

1. The remedy judgment followed a liability judgment that:
 - 1.1 The Claimant was an employee, with a minimum of 2 years' service
 - 1.2 The Claimant was unfairly dismissed
 - 1.3 The Claimant is entitled to pay for accrued and unused holiday entitlement
 - 1.4 The Respondent unlawfully deducted wages from the Claimant

Unfair dismissal

Basic award

2. The basic award is designed to compensate the employee for the loss of job security caused by the unfair dismissal by awarding him or her a sum almost exactly equivalent to a statutory redundancy payment.
3. The Claimant's gross pay per week at the relevant time, calculated at 80% furlough pay, was £445.
4. The Claimant had two full years of service by the time of dismissal.
5. The Claimant was over 41 years of age during each of those years of service, and is therefore entitled to one and a half week's pay for each of those years.
6. I calculated the basic award as follows:
 - 6.1 $£445 \times 1.5 \text{ weeks} = £667.50$;
 - 6.2 $£667.50 \text{ multiplied by } 2 \text{ years} = £1335$

Compensatory award

7. The compensatory award loss is assessed by reference to the net pay that the Claimant would have earned but for the dismissal, and is calculated based on their salary at the time of dismissal.

Immediate loss

8. Immediate loss addresses the period between the dismissal – 8 May 2020 - and the hearing where the tribunal decides on compensation. It is limited to a statutory maximum of 52 weeks' pay.
9. The Claimant's net weekly pay at the relevant time, calculated at 80% furlough pay, was £363.51
10. The Claimant is therefore entitled to a maximum compensatory award of £18,902.52.
11. In relation to the Claimant's mitigation of those losses, I considered the following:
 - 11.1 what steps were reasonable for the claimant to have to take in order to mitigate his loss;
 - 11.2 whether the claimant did take reasonable steps to mitigate loss; and
 - 11.3 to what extent, if any, the claimant would have actually mitigated his loss if he had taken those steps.
12. The burden of proof is on the employer to show that the claimant acted unreasonably. If the tribunal finds that there has been a failure to mitigate, it decides when the Claimant would have found a new job had they taken the appropriate steps, and what the rate of pay would have been in the new job.
13. The Respondent has not put forward any evidence that the Claimant has acted unreasonably in respect of his mitigation efforts.
14. The Claimant would have been searching for a new job in the middle of a pandemic and multiple lockdowns, which had greatly affected employment opportunities. This would no doubt have made it much more difficult for the Claimant to find work.
15. I also considered the Claimant's personal circumstances particularly relevant to the issue of mitigation. He had been instructed to shield due to his vulnerabilities to Covid-19, and as such his ability to work was restricted at least until Covid restrictions eased. Taking Judicial Notice, the easing of restrictions occurred on 19 July 2021.
16. As the Claimant started a new job on 26 July 2021, just a week after the easing of Covid-19 restrictions, I infer that it was only the combination of economic and health issues that prevented him from seeking new employment earlier. I therefore

conclude that there was no unreasonable failure to mitigate losses on behalf of the Claimant, so he is entitled to the full 52 weeks award of £18,902.52.

Future loss

17. Future loss addresses the estimated loss after the hearing.
18. The Claimant found new employment from 26 July 2021, earning more than he had when working for the Respondent. As such, I made no award for future losses.

Recoupment

19. The Employment Protection (Recoupment of Benefits) Regulations 1996 apply to the immediate loss element of the compensatory award, where the Claimant has received social security benefits.
20. The Claimant was in receipt of Universal Credit from 10 May 2020. Between that date and the end of the period of immediate loss applied above, he was receiving £1116.67 each month, and received a total of £13,400.04. This is the prescribed amount, which is treated as stayed, payable to the Department of Work and Pensions/Job Centre Plus, rather than directly to the Claimant.
21. The amount by which the monetary award exceeds the prescribed element is £5,502.48. This is payable directly to the Claimant.

ACAS uplift

22. The Claimant requested an uplift of 25% to reflect the Respondent's failure to follow any of the ACAS Codes of Practice.
23. I considered that an award was just and equitable in all the circumstances, but that 10% was a more appropriate figure. I reached this conclusion by taking into account the Respondent's size and relative knowledge of human resources and employment procedures.

Loss of statutory rights

24. Because of the unfair dismissal, lost the right not to be unfairly dismissed until he has worked long enough for a new employer, and lost the rights to a statutory notice. As is common practice for Tribunals, I made a nominal award of £350.

Holiday pay

25. The Claimant was owed two days holiday at the date of termination. His net daily rate (on 80% furlough) was £60.58.

26. Therefore, the Claimant is entitled to payment of £121.17

Deduction from wages

27. The Claimant was owed wages for the weeks commencing 19 April, 26 April, and 3 May 2020, which the Respondent failed to pay. They therefore made unlawful deductions.

28. The Claimant's gross weekly rate of pay (on 80% furlough) was £445. Therefore, he is entitled to payment of £1335.

Employment Judge K Douse

Dated: ...26 May 2022.....

Sent to the parties on:

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For the Tribunal Office