



EMPLOYMENT TRIBUNALS

Claimant: Mr James Smith

Respondent: Timber Trade Products Limited

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

1. The claim was issued in the Midlands (East) Employment Tribunal on 11 May 2022. The respondent has failed to present a valid response on time. The Employment Judge has decided that a determination can properly be made of the claim in accordance with rule 21 of the Rules of Procedure.
2. The respondent unfairly dismissed the claimant. It shall pay compensation assessed in the sum of **£5,219.71**.
3. The respondent dismissed the claimant in breach of contract. It shall further pay damages to the claimant assessed in the sum of **£599.20**.
4. The recoupment provisions do not apply.
5. The hearing listed on **19 September 2022** is cancelled.

REASONS

1. A determination was possible on the papers. I have taken into account the content of the ET1, the initial schedule of loss provided by the claimant and his subsequent response to the tribunal's request for further information.
2. The claimant is entitled to a basic award of £2119.50 (£471 x 3 x 1.5). At the date of termination Mr Smith earned £471 gross per week (£381.46 net), was aged 58 and had 3 completed years of service.
3. He is entitled to notional award to reflect the loss of accrued employment rights which I assess in the sum of £400.
4. He is entitled to compensation for the shortfall in net earnings between his old and new employments. He obtained new employment between 17 February and 3 May 2022 earning £311.67 net per week. After a part week of unemployment, he obtained a further new position on 9 May 2022 earning £338.70 net per week which is continuing. He claims 12 weeks future losses.
5. Those initial losses overlap with the period for which damages for breach of contract are to be assessed and cannot be awarded twice. The claimant was under a duty to mitigate his losses and appears to have taken reasonable steps to do so.

6. The damages for breach of contract notionally continue to 3 March 2022 as he was entitled to receive 3 weeks' notice of termination. He was dismissed summarily. He would have been entitled to £1144.38 (3 x £381.46 net pay) during that period but has mitigated part of that loss by obtaining new employment for which credit has to be given in the sum of £623.34. The net loss during the notional notice period is therefore £521.04.
7. From 4 March the claimant is entitled to compensation for financial loss arising from the unfair dismissal. The immediate losses (between then and this assessment) are to be assessed in three periods. Between 4 March and 3 May, the claimant's first period of alternative employment, he suffered a shortfall of £69.79 per week for 8.5 weeks. That is a loss of £593.22. There was then a gap of employment between 3 May and 9 May for which I award 3/5ths of a week's pay in the sum of £228.88. The final period is from 9 May to the date of this assessment, a period of 16 weeks, during which the shortfall in earnings was reduced to £42.76 per week amounting to £684.16. The total past loss is therefore £1506.26
8. The claimant claims a modest period of future loss of 12 weeks. I am satisfied that if he has not found new employment which fully mitigates his continuing loss by that date, it would not be just to expect the respondent's liability to continue beyond then. The future loss is therefore limited to that period in the sum of £513.12. (£42.76 x 12)
9. In addition, the claimant claims an uplift under s.207A of the Trade Union and Labour Relations (Consolidation) Act 1992 in the maximum figure of 25%. I am satisfied that this was a dismissal on grounds for which the ACAS code applied and an uplift is appropriate in view of the obvious breaches of that code. However, based on the claimant's own account of the process adopted by the employer, this was not an example of the most serious breach of the code for which the maximum should be reserved. I assess the appropriate uplift in the figure of 15%. Both claims presented are relevant claims within schedule A2 of the 1992 Act and the uplift will apply to both.
10. The total award in respect of unfair dismissal is therefore £4538.80 (2119.50 + 1506.26 + 400+513.12) +15% = £5219.71.
11. The total award of damages for breach of contract is therefore £521.04 + 15% = £599.20.

Employment Judge Clark

Date: 26 August 2022