



EMPLOYMENT TRIBUNALS

Claimant: Mr C Palfrey

Respondent: Altrad Employment Services Limited

Heard at: Cardiff by video **On:** 1st June 2022

Before: Employment Judge Howden-Evans

Representation

Claimant: Mr Cross, legal representative

Respondent: Mr Warren-Jones, legal representative

REMEDY JUDGMENT

The employment judge's decision is:

1. It is not practicable for the Respondent to re-engage or re-instate the Claimant.
2. The Claimant is awarded compensation for unfair dismissal (under s118 to 126 Employment Rights Act 1996) of £39,330 which has been calculated as set out in the Annex attached to this Judgment.
3. The Respondent is liable to pay the Claimant the net sum of **£39,330** and will account for any tax and National Insurance due on this sum.
4. The Employment Protection (Recoupment of Job Seekers Allowance and Income Support) Regulations 1996 do not apply to this judgment.
5. Interest will accrue at a rate of 8% per annum on any amount of this award that remains unpaid 14 days after the date of this judgment. (See Article 3 (1) Employment Tribunals (Interest) Order 1990). This means if the whole amount remains unpaid it will accrue interest at a rate of £8.62 per day.

EMPLOYMENT JUDGE HOWDEN-EVANS

Dated: 28th July 2022

Judgment posted to the parties on
29 July 2022

For Secretary of the Tribunals Mr N Roche

Notes

Reasons for the judgment 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.

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Calculations

Parties agree the Claimant's salary with the Respondent was:

- Net pay: £505 per week
- Gross Pay: £720 per week (exceeding the £525 per week maximum amount of a week's gross pay for calculating the basic award for unfair dismissal).

The Claimant's Effective Date of Termination: 24th February 2020. He was 59 years old at the date of dismissal.

The Employment Judge awarded a 20% uplift to both the Basic Award and the Compensatory Award to reflect the Respondent's unreasonable failure to comply with the ACAS disciplinary code (s207A Trade Union and Labour Relations (Consolidation) Act 1992).

The Employment Judge considered whether it was appropriate to make a *Polkey* deduction; I declined to make such a deduction as it was highly unlikely the Claimant would have been dismissed if there had been a fair procedure.

The Employment Judge considered whether it was appropriate to reduce the basic and/or compensatory award to reflect any blameworthy conduct on the part of the Claimant. I was satisfied that there had been no blameworthy conduct on the part of the Claimant; there is no reduction for contributory conduct.

The Employment Judge was satisfied there had been no failure to mitigate loss. I accepted it was reasonable for the Claimant to take 19 months (76 weeks) to start his new career, particularly considering the impact the dismissal had upon the Claimant's mental health, his lack of IT skills, the ongoing pandemic and as the Claimant was of an age that was more vulnerable to the effects of Covid.

Basic Award

2 years' service x	
1.5 (as the Claimant was aged over 41) x	
£525 (maximum weekly gross pay) =	£1,575
Plus ACAS uplift (20% of £1,575)	<u>£315</u>
	£1,890

Compensatory Award (immediate loss)

Loss of Earnings	
76 weeks x £505 net pay	£38,380
Loss of Statutory Rights	<u>£500</u>
	£38,880
Plus ACAS uplift (20% of £38,880)	<u>£7,776</u>
	<u>£46,656</u>

Statutory Cap applied (per s124 Employment Rights Act 1996) which limits the total amount of the compensatory award to 52 weeks' gross weekly pay (52 x £720)

= £37,440 for compensatory award plus £1,890 basic award = £39,330