



## EMPLOYMENT TRIBUNALS

**Claimant:**

1. Raffaele Nigro
2. Jarek Bak
3. Chris Schneider
4. Heinrich Grethe

**Respondent:** Knightsbridge Residents Management Company Limited

**Heard at:** London Central (by video)

**Dates:** 5-6 September 2022

**Before:** Tribunal Judge McGrade acting as an Employment Judge (sitting alone)

### Appearances

**For the First, Second and Fourth Claimants:** L Caller (solicitor)

**For the Third Claimant:** In person

**For the Respondent:** E Grace (of counsel)

## RESERVED REMEDY JUDGMENT

The judgment of the Tribunal is:

1. The respondent must pay to the first claimant (Raffaele Nigro) the following sums: –
  - a. A basic award in the sum of £10,491
  - b. a compensatory award in the sum of £4,410.64.
2. The Employment Protection (Recoupment of Benefits) Regulations 1996 do not apply to the sums awarded.
3. The respondent must pay to the second claimant (Jarek Bak) the following sums: –

- a. A basic award in the sum of £4,304.
  - b. a compensatory award in the sum of £17,646.20.
4. The Employment Protection (Recoupment of Benefits) Regulations 1996 may apply to the sums awarded. The Prescribed Period is 1 September 2020 until 3 October 2021. The Prescribed Element is £16,518.86. The amount by which the total Judgment sums exceed the Prescribed Element is £5,431.34.
  5. The respondent must pay to the third claimant (Chris Schneider) the following sums:
    - a. A basic award in the sum of £8,070.
    - b. A compensatory award in the sum of £13,293.40.
  6. The Employment Protection (Recoupment of Benefits) Regulations 1996 do not apply to the sums awarded.
  7. The respondent must pay to the fourth claimant (Heinrich Grethe) the following sums:
    - a. A basic award in the sum of £2,421.
    - b. A compensatory award in the sum of 15,326.87.
  8. The Employment Protection (Recoupment of Benefits) Regulations 1996 do not apply to the sums awarded.

## **RESERVED REASONS**

9. I heard evidence from the claimants and Elena Kurcheika. I had witness statements from the three represented claimants and Elena Kurcheika. I was provided with four bundles of documents.

### **The Law**

10. Section 118 of the Employment Rights Act 1996 sets out the basis for an award of compensation for unfair dismissal. This provides as follows:-

(1) [...] where a tribunal makes an award of compensation for unfair dismissal under section 112(4) or 117(3)(a) the award shall consist of—

(a) a basic award (calculated in accordance with sections 119 to 122 and 126,

(b) a compensatory award (calculated in accordance with sections 123, 124, [124A and 126]).

### **Mitigation of loss**

11. Section 123 ERA sets out the position regarding mitigation. This provides as follows:-

(4) In ascertaining the loss referred to in subsection (1) the Tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales ...'

### Mitigation of loss

12. The respondent's counsel referred me to **Gardiner-Hill v Roland Berger Technics Ltd [1982] IRLR 498**, I accept that I should consider the following issues in the context of a failure to mitigate:-
- a. identify what steps were reasonable for the claimant to have to take in order to mitigate their loss;
  - b. consider whether the claimants did take reasonable steps to mitigate loss; and
  - c. assess to what extent, if any, the claimants would have actually mitigated her loss if they had taken those steps. In so doing, the ET must also consider the date on which those steps would have produced an alternative income, and to reduce the compensation by the amount of income that would have been earned.
13. I accept the burden of showing that a failure to mitigate has been unreasonable rests with the respondent, and that I should not apply too exacting a standard to a claimant (see Langstaff J in **Cooper Contracting Ltd v Lindsay [2016] UKEAT/1084/15/JOJ** at 16).

### Loss of bonus

14. The respondent operated a bonus scheme which regularly resulted in the claimants receiving a £1,000 bonus in January and July of each year. It was the respondent's position that had the claimants not been dismissed, they would all have received final written warnings, which would have resulted in a 100% reduction in any bonus payable (p122 supplementary bundle of documents). I took the view in the judgement on merits that dismissal was outwith the band of reasonable responses. Given the very limited nature of the claimants' conduct, I consider the most serious sanction that could appropriately have been imposed would have been a verbal warning, resulting in a 20% reduction in the standard bonus for a period of six months (p122 supplementary bundle of documents). This would therefore have resulted in a bonus payment of £800 of January 2021.

### First Claimant-Raffaele Nigro

15. The first claimant's employment with the respondent began on 4 August 2005. He was 51 years of age and had 15 years continuous service when his employment with the respondent terminated on 1 September 2020. The basic award was agreed at £10,491. His gross weekly wage was agreed at £629.93. His schedule of loss shows a weekly net pay figure of £520.29. The respondent's solicitor has provided a weekly net pay figure of £526.16, including meal allowance. I accept this figure. Employer pension contributions were 4% of gross salary (£25.17).
16. On 2 March and 3 July 2020, the first claimant had detailed discussions with Elena Kurcheika, the respondent's head of human resources, regarding his housing situation and the prospect of eviction. On the second occasion he indicated that he wanted to move to Italy, as he had family there. He suggested that the best time to do this would be around August or September 2020, as the child that his wife is expecting would then be old enough to travel. He asked whether his employers would be willing to make him redundant and to shorten his contractual notice period.

17. The first claimant was actively seeking council housing from as early as March 2020. However, I accept that he had made clear to his employer prior to the disciplinary proceedings that his strong preference was to move to Italy. He also made clear in the application for accommodation that he submitted on 11 March 2020, that he and his wife planned to leave the United Kingdom to go to Italy that summer (p83 bundle of documents). He returned to Italy in early September 2022, very shortly after his dismissal.
18. Given the precariousness of the first claimant's housing situation, the fact that he had not obtained alternative accommodation by the date of dismissal and his clearly expressed wish to return to Italy, I am satisfied on the balance of probabilities that had the first claimant not been dismissed on 1 September 2020, he would have returned to Italy shortly thereafter. I accept there may have been a delay while he awaited a decision on his housing application and negotiated with his employer over the notice he required to give and the possibility of voluntary redundancy. However, I am satisfied, had he not been dismissed, he would have left employment to return to Italy within a period of eight weeks of 1 September 2020. I therefore restrict his loss of salary to a period of eight weeks, (£4,209.38) and employer pension contributions to the same period (£201.36), giving a total of £4,410.64. In these circumstances, I do not consider it is appropriate to make any further reduction for failure to mitigate, as I consider he was entitled to take only limited steps to obtain alternative employment until his appeal was resolved and am not satisfied that he would have obtained employment within this period. As I am satisfied the claimant would have left the respondent's employment within eight weeks of dismissal, I do not consider it is appropriate to make any award for loss of statutory protection, bonus or for the expenses of looking for work and moving his family abroad.

### **Second Claimant Jarek Bak**

19. The second claimant's employment with the respondent began on 21 March 2013. He was 43 years of age and had seven years continuous employment when his employment with the respondent terminated on 1 September 2020. The basic award was agreed at £4,304. There was a dispute between the parties as to whether the second claimant's gross annual earnings were £40,835.68 or £38,835.68, as the second claimant sought to include the bonus figure within his gross earnings. The net weekly take-home pay, including bonus, shown on his schedule of loss was £630.03. The net weekly take-home pay, excluding bonus, but including meal allowance, provided by the respondent was £605.66. I accept this figure and will deal separately with loss of bonus. Employer pension contributions were payable at 4%.
20. The second claimant gave evidence that he began searching for work immediately after his dismissal, but was unable to secure alternative employment and took the decision to move to Poland in December 2021, as he could no longer afford to live in the United Kingdom. He admitted he had applied for only two jobs in the two month period after his dismissal. The explanation he gave other was that he was hoping to return to his position with the respondent. His appeal took place on 2 October 2020. He was notified of the decision by letter dated 3 December 2020. He obtained employment in Poland on 1 March 2021 at a considerably lower salary than he earned with the respondent. He indicated that he does not intend to return to the United Kingdom, as his fiancée has recently given birth to their son.

21. There was a dispute as to the second claimant's notice period. He indicated that he became entitled to 3 months' notice, when he was promoted to the role of a junior manager in January 2016, whereas it was the respondent's position that his notice entitlement was seven weeks. I note the letter issued to the second claimant dated 27 January 2016, confirming his new appointment, states that all benefits and terms and conditions remain unchanged, with the exception of the location and hours of work. I am satisfied on the balance of probabilities that his notice entitlement was seven weeks.
22. It is the respondent's position that the decision by the second claimant to move to Poland is an intervening act, which breaks the chain of causation. I am not satisfied the decision by the second claimant to move to Poland is an intervening act, which breaks the chain of causation. He had worked with the respondent for more than seven years. Had he not been dismissed, I am satisfied on the balance of probabilities that he would have remained with the respondent for at least another year.
23. The respondent also argues that the second claimant has failed to mitigate his loss. They point to the very substantial number of security jobs available in London, with the Totaljobs website listing 1,263 and 4,627 security jobs in London as at 22 June 2020 and 24 September 2021 respectively (p1-2 additional disclosure) and the gradually increasing number of vacancies within the economy generally over this period (p244 supplementary bundle of documents). It is the respondent's position that if the claimant had applied for more jobs than he had, he would have found employment by October 2020 and would have been earning a broadly equivalent salary by January 2021.
24. The second claimant took up employment in Poland on 1 March 2021. The documentary evidence before me indicates that he applied for eight posts, of which four were in the United Kingdom and four in Poland, between his dismissal and 10 February 2021. There is also evidence of some contact with three online recruitment agencies, namely Iworks, PMR and Indeed. He suggested he also used contacts to try to find work, but provided very little detail on the specific steps that he took.
25. Given the number of vacancies for security jobs in London between June 2020 and September 2021, and the gradually increasing number of vacancies within the economy generally over this period, I consider it would have been reasonable for the second claimant to have made greater efforts and applied for a substantially more posts, following his dismissal. I consider it was legitimate for him to take more limited steps to find alternative employment until he was advised of the appeal decision against dismissal on 3 December 2020. Had he taken more extensive steps to find alternative employment in early December 2020, I am satisfied that he would have obtained alternative employment by 26 January 2021, 21 weeks after his dismissal. His net loss for this period is £12,718.86. I have also awarded £627.34, being 4% of his gross salary for this period (excluding bonus), representing employer pension contributions. The figures before me (p9 additional disclosure) show average earnings for security guards in London as of September 2021 of around £31,000. I consider he would have earned around £100 net per week less for a period of 26 weeks, including loss of pension, by which time he would have returned to the same level of basic earnings. I therefore award £2,600 for this period. I also consider it is appropriate to award loss of the two gross bonuses of £800 and £1,000 he would have received in January and July 2021. I have awarded a net figure of £1,200 for loss of bonus. I also consider it appropriate to award £500 for loss of statutory rights.

26. In his schedule of loss, the second claimant has sought £1,500 in respect of the expenses of relocating to Poland and looking for alternative employment. In his statement, he describes spending £2,000 moving back to Poland, but admits he has no receipts. I am not satisfied it is appropriate to make any award for any costs associated with relocating to Poland for two reasons. Firstly, I have been provided with no documentary by the second claimant of his losses. Secondly, I am not satisfied it was necessary for the claimant to relocate to Poland in order to obtain employment and therefore I do not consider any costs should fall on the respondent.

### **Third Claimant Chris Schneider**

27. The third claimant's employment with the respondent began on 22 July 2010. He was 51 years of age and had ten years continuous service when his employment with the respondent terminated on 21 August 2020. The basic award was agreed at £8,070. His gross weekly earnings excluding pension contributions were £746.84. His net take-home pay was agreed at £586.02.

28. The third claimant took only limited steps to obtain alternative employment following his dismissal, as he was appealing the decision to dismiss him and was also contemplating a change in career. His appeal took place on 2 October 2020. He was notified of the decision by letter dated 3 December 2020. He forwarded his CV to his brother-in-law, as he had a contact in the security industry and applied for a role through a LinkedIn associate in early September 2020. He was offered alternative employment with Corps Security on 14 October 2020. He obtained this employment through a former colleague. He began site training for the new role in late October 2020. I am satisfied he took reasonable steps to find alternative employment.

29. The third claimant's net weekly wage was agreed at £586.02. Employer weekly pension contributions were also agreed at £29.88 per week. His net take-home pay for November and December 2020, and January 2021 was £1001.59, £1497.39 and £1154.57 respectively. He took up employment with Securitas Security services UK Ltd in February 2021. His net take-home pay for February and March 2021 was £1,240 and £2282.20 respectively. Although he suggested there was a three month delay before he was admitted to his employer's pension scheme, I note the payslips provided by him show deductions for pension from November 2020 (p 223 joint bundle of documents).

30. In my judgment on liability, I restricted the third claimant's compensatory award to 1 April 2021, as his evidence was that he intended to leave the respondent's employment in early to mid 2021, irrespective of whether he had another job.

31. Had the claimant remained in employment until 1 April 2021, he would have received net earnings of £18,635.43 (£586.02 x 31.8 weeks). His net take-home pay during this period was £6,174.16. His net loss of salary was therefore £12,461.27. I have restricted pension loss to a period of 10 weeks, as he was a member of a pension scheme in his new employment. This produces a pension loss figure of £298.80 (£29.88 x 10 weeks). I have also made an award for loss of the January 2021 bonus at a gross figure of £800, which I have reduced by a third to produce a net figure of £533.33. As he intended to leave the respondent's employment, I do not consider it is appropriate to make an award for loss of statutory rights.

#### Fourth Claimant Heinrich Grethe

32. The fourth claimant's employment with the respondent began on 9 January 2017. He was 60 years of age and had three years continuous service when his employment with the respondent terminated on **21 August 2020**. The basic award was agreed at £2,421, as it was accepted he had only three years continuous service, rather than the four years detailed in his schedule of loss. I accept the respondent's gross weekly wage figure (excluding bonus) of £699.53. His net weekly take-home pay, including meal allowance, was agreed at £573.76.
33. The fourth claimant was unemployed until 8 November 2021, when he obtained employment at the Dorsett Shepherd's Bush Hotel on a gross annual salary of £25,000. He found working night shifts difficult, in part due to his age, and resigned from that employment in late April 2022, as he had found alternative employment. He began working for G4S on 10 May 2022. He understood that would be based mainly in Putney, but was required to work all over London, and was given only one hour's notice of where he was to work. He resigned from this post at the end of June 2022. He took up his present post with Kingdom Security Services on 13 July 2022.
34. The fourth claimant accepted he had produced documentary evidence showing applications for only 24 jobs between October 2020 and May 2021. He indicated that he had applied for 57 vacancies in total, which he suggested was a figure that his job coach was happy with. I am prepared to accept he applied for around 50 posts between his dismissal in August 2020 and May 2021. It was put to him that he had applied for no vacancies between August 2020 and 11 October 2020. It was also put to him that on the basis of the figures put to the second claimant, there were very many vacancies in security in London. He could therefore have easily obtained employment at a much earlier stage.
35. The respondent submits that, given the claimant has suggested that his health had a considerable impact on his ability to continue with two of the roles that he obtained after his dismissal, there is a 70% likelihood that he would have left the respondent's employment around November and December 2020, in order to take up employment that provided a better work life balance.
36. I accept the fourth claimant may well have left the respondent's employment, in order to take up employment that involved shorter hours and no requirement to work nights, in order to provide him with a better work life balance. However, I am not satisfied this would have happened as early as November/December 2020. I consider the claimant would have remained in the respondent's employment until around late July 2021.
37. The respondent also submits the fourth claimant failed to mitigate his loss. Again, the respondent points to the substantial number of vacancies for security staff both in London and elsewhere.
38. I accept the fourth claimant's dismissal by reason of gross misconduct had a very substantial psychological impact upon him and that feelings of shame and embarrassment made it much more difficult for him to apply for alternative employment, in the period immediately after dismissal. I also accept that he considered his age and the fact that he was dismissed for gross misconduct was likely to make it more difficult for him to obtain alternative employment, which made it more difficult for

him to apply for alternative employment. However, I consider it would have been reasonable for the third claimant to submit substantially more applications during the period between his dismissal and May 2021, particularly given the number of vacancies for security staff in London at this time.

39. Had the fourth claimant submitted a greater number of applications for alternative employment, which I consider it would have been reasonable for him to do, I am satisfied that he would also have obtained alternative employment by 22 January 2021, 22 weeks after his dismissal. His net loss for this period is £12,613.92. I have also awarded £615.94 being 4% of salary (excluding bonus), representing employer pension contributions for this period. The figures before me (p9 additional disclosure) show average earnings for security guards in London as of September 2021 of around £31,000. I consider he would have earned approximately around £100 per week less for a period of 26 weeks, including any pension loss, by which time he would have returned to the same level of earnings. This produces an additional net loss figure of £2,600. I also consider it is appropriate to award loss of the two gross bonuses of £800 and £1,000 he would have received in January and July 2021. I have awarded a net figure of £1,200 for loss of bonus. As the claimant has chosen to move jobs on a number of occasions since his dismissal, I do not consider it is appropriate to make an award for loss of the right to long notice or loss of statutory protection., I have also made no award for the expenses of looking for work, as I have no evidence of those expenses.
40. Although the fourth claimant's statement referred to him having received universal credit, it became clear that he was named as a dependent on his wife's claim, and therefore did not receive the benefits personally.
41. I previously held that a 10% reduction in the compensatory award was appropriate, given the failure of the third claimant to appeal the decision to dismiss. This reduces the compensatory award to £15,326.87 (£17,029.86 x 0.9)

Tribunal Judge McGrade

Date 31 October 2022

Sent to Parties: 31/10/2022

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