



EMPLOYMENT TRIBUNALS

Claimant: Mr L Riley-Heenan

Respondent: Safety-Kleen U.K. Ltd

Considered on the papers at: Tribunals Hearing Centre, 50 Carrington Street, Nottingham, NG1 7FG

On: 17 November 2022

Before: Employment Judge Adkinson sitting alone

RECONSIDERATION JUDGMENT

After considering the respondent's application of 15 November 2022 for reconsideration, and after considering **rules 70-73** of the Tribunal's rules of procedure IT IS ORDERED THAT the respondent's application of 15 November 2022 for reconsideration of the basic award is refused because there are no reasonable prospects of the original decision being varied or revoked.

REASONS

1. The respondent seeks to have the basic award reconsidered, as ordered to be paid in paragraph 3.1 of the judgment. It seeks to argue that the judgment awards a basic award to the claimant in respect of his notice pay. The respondent then argues that:

"It is the Respondent's belief that at the termination date, by virtue of the Tribunal's finding that the Claimant was unfairly dismissed, the Claimant was entitled to his statutory notice pay. He did not serve this notice period and as such, there should be a Post-Employment Notice Pay (PENP) liability applied to the award. The Respondent is of the view that the basic award is PENP and as such should be subject to deductions because any part of the damages payment subject to the PENP rules, or otherwise subject to tax, should be grossed up (by a figure which represents notional tax) to take account of the employee's liability for tax. This is based on of the principle laid down in **Shove v Downs Surgical Ltd [1984] ICR 532.**"
2. The Tribunal considers the argument misguided.

3. The Tribunal notes that:
 - 3.1. The respondent conceded at the hearing that the only potentially fair reason for which it dismissed the claimant was “some other substantial reason”. The original argument that the dismissal was redundancy was abandoned and so with it any argument that the basic award be set off against the redundancy pay;
 - 3.2. The basic award and total award is below £30,000 and so not liable to tax;
 - 3.3. There is no authority cited for the proposition that a basic award is PENP or any other form of notice pay, and the Tribunal is unaware of any;
 - 3.4. The basic award compensates for loss of job security and the fact and manner of dismissal, not lost earnings or lost potential earnings. The latter is the subject of the compensatory award.
 - 3.5. The basic award has been calculated in accordance with statute, and was agreed between the parties;
 - 3.6. There is no provision that the Tribunal can see in the **Employment Rights Act 1996 section 122** to reduce the basic award as alleged, or any other provision elsewhere in the statute outside of protected disclosure legislation, which is not applicable here. No statutory provision has been cited by the respondent to support its contention that such a deduction is legally possible, even if the argument were sound. The Tribunal notes that Reductions in the basic award can only be made where expressly permitted by statute: **Cadbury Ltd v Doddington [1977] ICR 982 EAT**.
 - 3.7. The Tribunal has not actually awarded any notice pay to the claimant;
 - 3.8. Properly read, the obiter comments in **Shove** (especially at 543B-C) distinguishes between basic and compensatory awards and what can be set off under different heads. It makes clear basic awards cannot be set off against consequential damages. This makes sense on the basis that basic awards compensate for loss of job security, not loss of income.
4. The argument advanced therefore conflates compensation or damages for notice pay and lost earnings with compensation for loss of job security. The argument is flawed. No statutory provision is advanced that would empower the Tribunal to make the deduction or set-off asked for anyway. The Tribunal is unaware of any. Therefore, there is no prospect of variation or revocation.

Employment Judge Adkinson

Date: 17 November 2022

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