



EMPLOYMENT TRIBUNALS

Claimant: Mr Timothy Benstead

Respondent: Certsure LLP

REMEDY JUDGMENT

1. The Judgment of the Tribunal is that there is no monetary award to be made to the claimant for the finding that he was unfairly dismissed by the respondent.
2. There is no need for any remedy hearing.

REASONS

Introduction

1. The claimant, Mr Timothy Benstead, was employed by the respondent, Certsure LLP ('Certsure'), as a Principal Technical Author from 30 January 2006 until his dismissal on 6 November 2020 by reason of redundancy. In this role Mr Benstead managed the Technical Publications Team, comprising 5 employees. The claimant has an ACAS certificate dated 11 January 2021.
2. By a claim form dated 6 February 2021 Mr Benstead claims that his dismissal was unfair within section 98 of the Employment Rights Act 1996. In essence, in his claim form, he contends that the dismissal was not a genuine redundancy situation for the business, and he was dismissed for some other reason, being personal tensions with Mr O'Neil. Mr Benstead also claims that the process of dismissal was unfair as he should have been considered for any redundancy in a selection pool of 3 people. Mr Benstead has an ACAS certificated dated 11 January 2021.
3. The respondent provides United Kingdom approved accreditation services, providing an auditing service to determine competency of building industry providers. It provides accreditation services for Building Regulation Schemes and technical and electrical support by way of publications and helplines to the building industry. By grounds of resistance dated 9 March 2021 the respondent contests the claim. It contends that Mr Benstead was fairly dismissed by reason of redundancy, or some other substantial reason, being reorganisation of its business.

4. By Judgment dated 26 May 2022 and sent to parties on 12 June 2022 the Tribunal concluded that the dismissal was part of a genuine redundancy, and this was the reason for Mr Benstead's dismissal. The dismissal was procedurally unfair. The Tribunal concluded that had the process been fair two situations would have arisen:
 - 4.1. The respondent would have considered whether there was an appropriate selection pool for the closure of the Principle Technical Author role; and
 - 4.2. The respondent would have reasonably explored alternative employment.
5. The Tribunal concluded that had a reasonable investigation of alternative employment been undertaken Mr Benstead would not have accepted any role identified. He fundamentally disagreed with the business strategy of the business going forward and had told the respondent, and the Tribunal at the liability hearing, that he could not work in the business in the future. As such the Tribunal reduced the compensatory award by 100% to reflect the chance that, even if Mr Benstead had been chosen from the selection pool, he would not have stayed in the business given his mindset.
6. A remedy hearing was listed for 27 September 2022. On 3 August 2022 the respondent's solicitor wrote to the Tribunal requesting that the remedy hearing be vacated, and that the Tribunal consider remedy as a paper hearing on the basis that:
 - 6.1. The claimant had received an enhanced redundancy payment exceeding, and which must offset, its calculation of the basic award.
 - 6.2. There is no basis for a compensatory award given the Tribunal's conclusion this must be reduced by 100% under the principles set out in *Polkey v A E Dayton Services Limited* 1998 ICR 142.
7. The respondent's request for a paper hearing was copied to the claimant's representative as required by Rule 30 of the Employment Tribunal Rules of Procedure 2013 (the 'Rules'). The Tribunal has not received any objections from the claimant to remedy being determined on the papers.
8. The Tribunal granted the request to vacate the remedy hearing and requested a copy of the Schedules of Loss and Counter Schedule of Loss to enable it to consider remedy on the papers. Having considered the Schedule of Loss and Counter Schedule, which were received by the Tribunal on 29 September 2022, and given the conclusions in the liability Judgment, applying Rule 2 the Tribunal considers that it is proportionate to the complexity of the issues for remedy, and that it will save expense for both parties, to determine remedy on the papers.

Basic award

9. The claimant was 58 years old at the effective date of termination. He had been employed by the respondent for 15 years. The applicable multiplier is 1.5, applied for 15 years at a gross weekly salary of £1,288.41. The statutory cap for the year of dismissal is £538. Therefore, the basic award to which the claimant is entitled is: £12,105.
10. The claimant has received an enhanced redundancy payment of £38,652 inclusive of the statutory redundancy entitlement of £12,105; he states this on

his Schedule of Loss. This offsets the basic award to which he is entitled. Therefore, no award is made for the basic award.

Compensatory award

11. Applying the Tribunal conclusion that the claimant's compensatory award must be reduced by 100%, no award is made.

Reinstatement or re-engagement

12. At the liability hearing the claimant confirmed to the Tribunal that he was not seeking an order for reinstatement or re-engagement and was not prepared to consider any offers of employment from the respondent now or in the future.

Employment Judge Hutchings

14 November 2022

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES
ON 6 December 2022

FOR EMPLOYMENT TRIBUNALS