



# EMPLOYMENT TRIBUNALS

**Claimant:** Christopher Harding  
**Respondent:** Halls Distribution Ltd (in voluntary liquidation)  
**Heard on:** 4 January 2023 by Cloud Video Platform  
**Before:** Employment Judge Saward (sitting alone)  
**Representation:**  
Claimant: In person  
Respondent: No attendance or representation

## REMEDY JUDGMENT

1. Following the Judgment as to liability on 21 November 2022, the respondent is ordered to pay to the claimant **£5,586.99** calculated as follows:-

7 weeks net pay for wrongful dismissal	£1,534.61
Pay in lieu of holiday accrued but not taken	£761.55
<u>Unfair dismissal</u>	
Basic award (10.5 x £253.85)	£2665.43
Compensatory Award	
(i) Loss from 28.9.21 to 5.10.21	£175.40
(ii) Loss of statutory rights	£450
Total compensatory award	£625.40
<b>TOTAL AWARD</b>	<b>£5,586.99</b>

2. The Employment Protection (Recoupment of Benefits) Regulations 1996 do not apply to this award.

# REASONS

## Introduction and evidence

1. Judgment on liability was entered in favour of the claimant at a full merits Hearing on 21 November 2022 in respect of his claims for unfair dismissal, wrongful dismissal (notice pay) and holiday pay. The claimant had not sent details of his losses prior to that Hearing for a financial award to be calculated and so this Remedy Hearing was listed to enable a schedule of loss and supporting information to be provided.
2. As the respondent company has ceased trading, reinstatement or re-engagement of the claimant is not an option.
3. No response having being filed, the claim is uncontested in its entirety.
4. The Tribunal took sworn evidence from the claimant who had also provided an email with his calculations as to the sums claimed.
5. The issue before the Tribunal was how much should the claimant be awarded.

## Findings of fact

6. At the date of dismissal on 10 August 2021, the claimant was aged 64 and had been employed continuously by the respondent for 7 complete years. He was employed to work 40 hours per week over 5 days.
7. The claimant stated that he was paid at an hourly rate of £9.50, being £380 per week equating to £1,646 per month gross. This differs from the ET1 claim form where the claimant stated that his gross monthly salary was £1,100 and net salary of £950 per month. The claimant was unable to provide an explanation for the disparity and thought his claim form must be wrong.
8. The claimant was issued with written terms of employment particulars but he has not kept a copy. The claimant was issued with payslips prior to being suspended but has not retained them. The claimant stated that his salary was paid into his joint bank account with his wife. No bank statements were produced to evidence the amount of salary received or any other supporting documentary material whatsoever.
9. The claimant believes that his contract provided for 4 weeks' notice of termination. This is less than the minimum statutory notice of 7 weeks for an employee with 7 years continuous service. The claimant received no payment in lieu of notice.
10. The claimant obtained another job working as a self-employed driver on 5 October 2021 earning a higher rate of pay. Until then, the claimant was unemployed from the date of dismissal on 10 August 2021. He had applied to numerous transport companies for work as a driver and also to supermarkets.

11. The claimant's annual leave year began on 1<sup>st</sup> January. The claimant had accrued but untaken holiday at the date of his dismissal for which he was not paid. The claimant's annual leave entitlement was 25 days plus bank/public holidays. 221 days of the claimant's leave year had elapsed at the date of his dismissal. He had accrued 15 days annual leave entitlement. He had not taken any leave in 2021 due to the coronavirus pandemic.
12. The claimant did not claim any state benefits whilst unemployed.

### The Law

13. Section 119 of the Employment Rights Act 1996 ('ERA') sets out provisions for calculating the **basic award**. For an employee who was not below the age of 41 years throughout his employment, it amounts to one and half week's pay for each year of employment.

14. Section 122 ERA – Basic award reductions

(2) Where the tribunal considers that any conduct of the complainant before the dismissal was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly.

15. Section 123 ERA deals with the **compensatory award** and provides:

(1) Subject to the provisions of this section and sections 124, 124A and 126, the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.

(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...

(6) Where the tribunal finds that the dismissal was to any extent caused or contributed by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.

16. Section 124 sets out limits of compensatory awards made under section 123. In this instance, the award must not exceed 52 weeks gross pay.

17. Where an employer has failed to follow procedures, the tribunal, when determining any compensatory award under section 123(1) of ERA, must ask itself what would or might have happened if a fair procedure had been followed. This involves an element of speculation. The proposition comes from the case of **Polkey v AE Dayton Services Ltd** [1988] ICR 142, HL, which held that where there is an unfair dismissal on procedural grounds,

compensation may be reduced to reflect the likelihood that the employee would have been dismissed anyway had a proper procedure been followed.

Breach of contract/ notice pay

18. Where there is a contract of employment with an express term stating the period of notice then that is the period applicable provided it is not shorter than the statutory minimum period within section 86 ERA.
19. The statutory notice required to be given to terminate the contract of employment of a person who has been continuously employed for a period of 2 years or more (but less than 12 years) is not less than one week's notice for each year of continuous employment (section 86(1)(b) ERA).
20. Where the employer is in breach of contract, the purpose of damages is to put the claimant in the position they would have been in had there been compliance with the contract of employment.

Holiday pay

21. A worker is entitled to be paid a week's pay for each week of leave. A week's pay is calculated in accordance with the provisions of sections 221-224 ERA, with some modifications.
22. If there is no contractual right to payment in lieu of accrued leave, the claim would be for leave calculated in accordance with the statutory formula set out within regulation 14(3)(b) of the Working Time Regulations 1998. If an employee has worked only part of a leave year, reg 13(5) of the Regulations provide for pro rata accrual.

**Consideration and Conclusions**

23. Whilst the claimant gave sworn oral evidence as to his income, there was wide disparity with figures originally provided in the ET1 claim form and no adequate explanation. In the absence of any supporting information and without the provision of any net figures, I have utilised the original figures of £1,100 per month gross and £950 per month net as the basis for calculations.
24. Should further information become available to indicate that the figures are wrong, then it is open to the claimant to apply for a reconsideration within 14 days of my written decision being sent out.
25. The claimant was entitled to 7 weeks' statutory notice. He is therefore due the sum of £1534.61 net (£219.23 per week x 7) for wrongful dismissal.
26. The claimant suffered an unlawful deduction from wages in respect of accrued but untaken holiday entitlement of 15 days, and is due the sum of £761.55 gross.

27. As the claim is uncontested there is no evidence before me to indicate that any deductions would be appropriate to an award for unfair dismissal by reason of contributory fault or Polkey.
28. The total basic award for unfair dismissal is calculated on the basis of 1.5 weeks' gross pay for each year of employment in which the employee was not below the age of 41. Throughout his 7 years' service the claimant was aged over 41. His gross weekly pay was £253.85. Therefore, he is entitled to a basic award of £2665.43.
29. Turning to the compensatory award. Having been awarded 7 weeks' notice pay, compensation can only be awarded from the end of the notice period ending on 28 September 2021. As the claimant had secured self-employed work at a higher rate of pay with effect from 5 October 2021, there remained 4 working days when the claimant would have suffered financial loss. He is therefore awarded 4 days net pay compensation amounting to £175.40.
30. The claimant has suffered a loss of statutory rights for which the sum of £450 shall be awarded.

*Employment Judge Saward*

Employment Judge

4 January 2023

Date

JUDGMENT & REASONS SENT TO THE PARTIES ON

7<sup>th</sup> January 2023

GDJ  
FOR THE TRIBUNAL OFFICE