



## EMPLOYMENT TRIBUNALS

**Claimant:** Bharat Sachdev

**Respondent** Stephen M S Lai & Co Business Consulting Ltd

**Heard at:** Reading (by CVP) **On:** 4 January 2023

**Before:** Employment Judge Street

Appearances

For the Claimant: in person

For the Respondent: no attendance and no response filed.

## JUDGMENT

In the Judgment of the Tribunal,

1. The Claimant was unfairly dismissed.

In respect of unfair dismissal, the Respondent is Ordered to pay the Claimant the following:

Basic award	£2,284.61
Compensatory award	£26,400.00

**Total unfair dismissal award £28,684.61**

[The compensatory award was calculated at £41,906 net (inclusive of the award for loss of statutory rights) before grossing up for tax purposes, but is restricted by the statutory cap on damages which limits the total compensatory award to £26,400 (52 week's pay)]

2. The Claimant was harassed by the Respondent and the harassment was related to his age. The Claimant was entitled not to be harassed on the protected ground of age. That was age discrimination.

In respect of discrimination, the Respondent is Ordered to pay the Claimant the sum of **£2,447.65** inclusive of interest (calculation below).

3. The Claim for damages for breach of contract (holiday pay) succeeds.
4. The Claim for damages for breach of contract (expenses incurred) succeeds.



In respect of damages for breach of contract, the Respondent is Ordered to pay the Claimant the following gross sums due by way of damages:

Expenses	<b>£26.00</b>
Holiday pay (30 days)	<b>£3045.90</b>

5. **The total sum the Respondent is Ordered to pay the Claimant is £34,204.16**
6. The claims for notice pay, for unlawful deduction from earnings and in respect of a redundancy payment are dismissed.
7. The Claimant was not permitted to amend his claim to include the matters set out in the letter of 22 August 2022.

**Employment Judge Street**

Dated: 4 January 2023

Sent to the parties on:

2/2/2023

For the Tribunal:

NG

*Note 1: Reasons for the decision having been given orally at the hearing, written reasons will not be provided unless a written request is received from either party within 14 days of the sending of this record of the decision.*

*Note 2: Recoupment applies.*

Recoupment determines the amount held back from the claimant until the value of any state benefits subject to the recoupment procedures is known.

The prescribed period is 19 September 2021 to 4 January 2023.

The loss of earnings during the prescribed period – that is, the prescribed element - is £13,063.13. (calculation below)

The total award in respect of unfair dismissal is £28,684.61

The balance after the prescribed element is £17,136.71.



## Calculation of Loss of Earnings

### Past Loss

1 October 2021 to 4 January 2023 - 66 weeks

Monthly gross pay is £2200

Gross is £507.69 per week

Monthly net is £1823.64 inclusive of pension.

Net pay weekly £420.84

Net pay is loss of earnings over 15 months and one week, or 66 weeks

Net loss of earnings to date: £27,775.44

Less earnings to date £5252.08

Net past loss after mitigation £22,522.64 net

Projected loss of earnings for the future: £21,883.68 (one year, net)

Less projected earnings, £3000.

Projected future loss £18,883.68

Total past and future loss of earnings is £22,522.64 plus £18,883.68 = £41,406.32

But, subject to statutory cap of one year's earnings: £26,400

## Calculation of the reduced prescribed element after the application of the statutory cap

Award of holiday pay, (calculated gross, taxable) £3045.90

Basic award (calculated gross, taxable) £2284.61

Tax free element £30,000

Compensatory award excluding loss of statutory rights £41,406.32

Element of compensatory award attributable to the prescribed period (1 October 2021 to 4 January 2023) £22,522.64

Total taxable termination payments:

$2284.61 + 41,406.32 + £3045.90 = £46,736.83$

Less £30,000 tax free allowance = £16,736.83

Grossing up the taxable element to find the impact of tax:  $£16,736.83 / 0.8 = £20,921.03$

Adding those termination payments together:  $2284.61 + 3045.90$  (£5330.51) and deduct from £30,000. The tax free element of the compensatory award is £24,669.49

Add the grossed up taxable element of compensatory award to the tax free element:  $£20,921.03 + £24,669.49 = £45,590.52$

The application of the statutory cap reduces that to £26,400 (one year's salary)

26400 as a percentage of 45,590.52 is 58%. The percentage reduction is 42%.

The element of the compensatory award attributable to the prescribed period would be £22,522.64 but for the statutory cap.

The remaining 58% of that element after the reduction is £13,063.13.



### Calculation of Interest

Discrimination award – injury to feelings £2000

Interest at 8% from date of discrimination 23 March 2020 -145.5 weeks at 8%: £447.65

Total award **£2447.65.**

The discrimination is not related to the termination of employment.

8% is the statutory rate.