



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4105647/2022**

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**Held in Glasgow on 13 February 2023**

**Employment Judge D Hoey**

10 **Mr A Rodgers**

**Claimant  
Represented by:  
Himself**

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**Eyekon Services Ltd**

**Respondent  
Represented by:  
Not present**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

**The claimant was unfairly dismissed. He is awarded the sums of**

**(1) £5,490 (FIVE THOUSAND FOUR HUNDRED AND NINETY POUNDS)  
by way of a basic award and**

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**(2) £3,490 (THREE THOUSAND FOUR HUNDRED AND NINETY POUNDS  
by way of a compensatory award.**

**The recoupment regulations do not apply to this award. The other claims are dismissed.**

**REASONS**

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1. By ET1 presented on 19 October 2022 the claimant claimed unfair dismissal and seeking a redundancy payment. He argued that he had been told on 9 September 2022 that he was being dismissed by reason of redundancy, with no notice having been given. He was told that the respondent had lost the contract for the building and as a result they were dismissing him. The

claimant sought compensation and a redundancy payment. The respondent did not lodge a response to the claim.

2. The claimant and respondent had been notified of the hearing which had been fixed to determined liability and remedy. The respondent, although not having lodged a response, was given the opportunity to participate in the remedy hearing, to the extent permitted by the Employment Judge. The respondent had sought a postponement of the hearing late last week but that was refused. It was in the interests of justice to proceed with the hearing.
3. The hearing was conducted in person and the Tribunal heard from the claimant. The respondent did not attend and was not represented.

### Issues to be determined

#### **Unfair dismissal** (*Section 94 Employment Rights Act 1996*)

1. Was the reason, or the principal reason for the claimant's dismissal because of redundancy?
2. If so, did the respondent dismiss the claimant fairly for that reason taking account of the size, resources, equity and the merits of the case, considering whether a reasonable consultation with the claimant was carried out, a reasonable selection process was followed, reasonable steps were taken in respect of identifying and considering the claimant for alternative roles and whether the dismissal fell within the range of reasonable responses open to the Respondent?
3. What sums by way of compensation should be awarded to the claimant if he was unfairly dismissed.

### Findings in fact

4. The Tribunal is able to make the following findings of fact which it has done from the evidence submitted to it.

5. In June 2002 the claimant commenced employment with a predecessor of the respondent. He was caretaker/cleaner of a building. The claimant's employment changed by reason of TUPE and the respondent took control.
6. On 9 September 2022 the claimant was summarily dismissed. He was told that the respondent had lost the contract for the building and he was being dismissed with immediate effect.
7. The claimant worked 37.5 hours each week and earned £1,363 net each month which yields gross pay of £1,573 each month. A week's pay is therefore £314 net and £363 gross.
8. The claimant secured a new role earning a comparable income to that he previously earned after 10 weeks. He had not secured any relevant statutory benefits.

### Law

9. Redundancy is defined in section 139 of the Employment Rights Act 1996 as arising where the dismissal is wholly or mainly attributable to the fact the employer ceases or intends to cease to carry on the business for the purposes she was employed or in the place she was employed or where there is a cessation or diminution of the requirements for employees to carry out work of a particular kind or to carry out work of a particular kind in the place they were employed.
10. Under section 163 of the Employment Rights Act 1996, where an employee has been dismissed by reason of redundancy, they may be eligible for a statutory redundancy payment. An employee must have a minimum of 2 year's complete service and the payment is calculated according to the formula set out at section 162 of the 1996 Act, whereby the employee receives 1.5 week's gross pay for every year of employment in which they were not below 41, 1 week's gross pay for each year of employment when they were below 41 but not below 22 and 0.5 week's gross pay for each year they were below 22. The cap on a gross week's pay for someone dismissed when the

claimant was dismissed is £571. A maximum of 20 years can be taken into account.

11. Section 98 of the Employment Rights Act 1996 provides (so far as is presently  
5 relevant):

“(1) *In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –*

(a) *the reason (or, if more than one, the principal reason) for the dismissal, and*

10 (b) *that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*

(2) *A reason falls within this subsection if it –*

(c) *is that the employee was redundant”*

15 12. “Redundancy” is defined at ERA 1996, s. 139 as follows:

“(1) *For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to –*

(a) *the fact that his employer has ceased, intends to cease –*

20 (i) *to carry on the business for the purposes of which the employee was employed by him, or*

(ii) *to carry on that business in the place where the employee was so employed, or*

(b) *the fact that the requirements of that business –*

25 (i) *for employees to carry out work of a particular kind, or*

(ii) *for employees to carry out work of a particular kind in the place where the employee was employed by the employer,*

*have ceased or diminished or are expected to cease or diminish.”*

- 5 13. The reason for a dismissal may be redundancy in circumstances where the employee's own job was not work of the particular kind for which the requirement had ceased or diminished (see **Murray v Foyle Meats Ltd** [1999] ICR 827). It is the requirement for employees to do work of a particular kind which is significant. The fact work is constant or increasing is irrelevant.
- 10 Provided fewer employees are needed to do work of a particular kind there is a redundancy situation – **McCrea v Cullen** 1988 IRLR 30. It is important to consider whether the dismissal was attributable to the diminution or cessation of the requirements of the employer for employees to carry out work of particular kinds (which could involve work of several kinds) – **Contract Bottling Ltd v Cave** EAT/525/12.
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14. The starting point for principles determining the fairness of a redundancy dismissal is **Williams v Compair Maxam** [1982] ICR 156. Issues of unfairness may arise if there is insufficient warning (to enable employees to understand what is likely to happen and to plan), insufficient consultation (to
- 20 agree how dismissals would be effected to limit the hardship where possible), a fair process of selection (avoiding, where possible, total reliance on subjective views of managers with a degree of objectivity and ensuring the process is fair in accordance with the criteria) or insufficient efforts to identify alternative employment. This provided guidance and the Tribunal should
- 25 ensure the employer acts fairly and reasonably on the facts.
15. Were the Tribunal to conclude that there was some procedural unfairness in the dismissal, it should ask itself whether or not, had the procedure been a fair one, the claimant would have been dismissed in any event (**Polkey v AE Dayton Services Ltd** 1988] AC 344).

16. Where a claim is successful, a Tribunal can make 2 awards, a basic award (which is calculated in the same way as a redundancy payment, with only such sum being paid once) and a compensatory award.

**Basic award**

5 17. This is calculated in a similar way to a redundancy payment, namely half a week's gross pay for each year of employment when the claimant was under 22 (section 119 of the Employment Rights Act 1996).

**Compensatory award**

10 18. This must reflect the losses sustained by the claimant as a result of the dismissal. Section 123 of the Employment Rights Act 1996 states it 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  
15 taken by the employer. That can include a sum attributable to the loss of statutory rights and is commonly between £250 and £400.

19. No interest is awarded in respect of unfair dismissal compensation.

20 20. If a claimant has received certain benefits, including Job Seeker's Allowance, the Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 apply. This means that the respondent must retain a portion of the sum due until the relevant Government department has issued a notice setting out what the claimant is to be paid and what is to be refunded to the Government.

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**Discussion and decision**

21. The Tribunal decided that the claimant had been dismissed unfairly and that he was entitled to compensation. There was no consultation nor discussion with the claimant. No attempt was made to engage with the claimant and  
30 consider alternatives to dismissal. His dismissal was unfair. There was no evidence that following a fair procedure would have resulted in his dismissal

occurring in any event or within any period thereafter, the claimant's job continuing to exist. He was therefore unfairly dismissed.

22. With regard to a basic award, which would mirror a redundancy payment, the claimant is entitled to £5,490 (15 weeks given his service and income).

5 23. With regard to a compensatory award there was a 10 week period where the claimant was without income. He is therefore awarded 10 x £314 which is £3,140.

24. As the claimant lost the right to claim unfair dismissal (and other statutory rights) he is awarded the sum of £350 in respect of loss of statutory rights.

10 25. The total compensatory award is therefore £3490.

26. The claimant did not seek any statutory benefits and so the recoupment regulations do not apply.

27. The award is made in terms of the claimant's unfair dismissal and his claim for a redundancy payment is dismissed.

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**Employment Judge: D Hoey**  
**Date of Judgment: 13 February 2023**  
**Entered in register: 14 February 2023**  
**and copied to parties**

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