



EMPLOYMENT TRIBUNALS

Claimants

1. Mrs M Hewer
2. Mr E Martin
3. Mr R Burke
4. Mr W Lake
5. Mr V Panayioutou

Respondents

1. HCT Group (in administration)
2. HCT Group Operations
Community Interest Company
(Cic) (in administration)
3. *LC Transport (Uk) Ltd (dissolved
22.4.22)*

Heard at: London Central Employment Tribunal

On: 13 January 2023

Before: Employment Judge Adkin

Members: Mr T Cook
Ms C Marsters

Representation

For 1st & 2nd Claimants: Mr A. Carter of Counsel

For 3rd Claimants: Mr M. Shephard of Counsel

For the 1st & 2nd Respondents: No representative; written representations

JUDGMENT

The reconsideration application brought by the First Claimant and Second Claimant (dated 27.12.22) and the reconsideration application brought by the Third Claimant (dated 25.12.22) pursuant to rule 70 of the Employment Tribunal (Constitution & Rules of Procedure) Regulations 2013, Schedule 1 ("the Rules") are both granted.

The remedy sums set out in a Judgment and written reasons dated 14 December 2022 are **varied** as follows.

First Claimant Mrs M Hewer

- (1) Mrs M Hewer was automatically unfairly dismissed by the Second Respondent pursuant to regulation 7(1) of TUPE and wrongfully dismissed by the Second Respondent.
- (2) The Second Respondent shall pay Mrs M Hewer the following sums:
 - a. Basic award of £11,961.11.
 - b. Compensatory award of £16,762.84.
 - c. Loss of statutory rights £500.
 - d. Damages for breach of contract (notice pay) of £4,784.40.
 - e. Accrued but untaken annual leave pursuant to the Working Time Regulations 1998 (Holiday Pay) of £4,619.64.
 - f. ACAS uplift on the above pursuant to section 207A TULRCA 1992 at 20% amounting to £7,725.60.
 - g. Grossing up element £4,088.40.
 - h. The total of the above sums is **£50,441.99**.

Second Claimant Mr E. Martin

- (3) Mr E Martin was automatically unfairly dismissed by the Second Respondent pursuant to regulation 7(1) of TUPE 2006 (Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE")) and wrongfully dismissed by the Second Respondent.
- (4) The Second Respondent shall pay Mr E Martin the following sums:
 - a. Basic award of £9,600.42.
 - b. Compensatory award of £14,491.20.
 - c. Loss of statutory rights £500.
 - d. Damages for breach of contract (notice pay) of £4,347.36.
 - e. Accrued but untaken annual leave pursuant to the Working Time Regulations 1998 (Holiday Pay) of £1,495.38.
 - f. ACAS uplift on the above pursuant to section 207A TULRCA 1992 at 20% amounting to £6,068.87.
 - g. Grossing up element £1,630.31.
 - h. The total of the above sums is **£38,151.54**.

Third Claimant Mr R. Burke

- (5) Mr R Burke was automatically unfairly dismissed by the Second Respondent pursuant to regulation 7(1) of TUPE 2006 (Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE")) and wrongfully dismissed by the Second Respondent.

- (6) The Second Respondent shall pay Mr R Burke the following sums:
- a. Basic award of £11,961.
 - b. Compensatory award of £13,298.85.
 - c. Loss of statutory rights £500.
 - d. Damages for breach of contract (notice pay) of £4,784.40.
 - e. Accrued but untaken annual leave pursuant to the Working Time Regulations 1998 (Holiday Pay) of £1,714.37.
 - f. ACAS uplift on the above pursuant to section 207A TULRCA 1992 at 20% amounting to £6,451.72.
 - g. The total of the above sums is **£38,710.34**.

Other orders made on 14 December 2022 remain unchanged, save the unless order which has been superseded by subsequent orders.

REASONS

Application regarding breach of contract claims

1. By a judgment dated 14 December 2022 the Tribunal made awards for the first three Claimants including compensatory awards for unfair dismissal.
2. Notwithstanding that there had been breaches of contract for failure to pay notice pay, no further awards were made for these claims on the basis that this would be overlap with the compensatory awards and be impermissible double recovery. This was done, exercising the discretion of the Tribunal to prefer compensatory awards to the breach of contract damages, based on an understanding that the Claimants could recover ACAS uplifts pursuant to section 207A TULRC(A) 1992) for the compensatory award but not the breach of contract claims.
3. The First, Second and Third Claimants made applications in substantially similar terms, that Paragraph 1 of Schedule A2 of TULR(C)A 1992 (“the Schedule”) includes claims under the Employment Tribunal Extension of Jurisdiction (England and Wales) Order 1994 (SI 1994/1623) which confers jurisdiction to award damages for breach of contract which arises or is outstanding on termination (i.e. notice pay). Since claims for breach of contract are contained within the Schedule, ACAS uplifts apply equally to such claims and the Tribunal erred in exercising its discretion on this basis.
4. The practical effect in this case is potentially to preclude the claimants from seeking remedies against the Secretary of State under section 182 of the Employment Rights Act 1996.

5. We have unanimously accepted the submission that it is in the interests of justice to grant the application for reconsideration and substitute the order above. This allows the first three Claimants the opportunity to pursue other remedies given that the Second Respondent is in administration.

Application regarding First Claimant's award only

6. This application was based on the submission that the First Claimant had suffered a shortfall of £1,283.24 by operation of the statutory cap under section 124(1ZA)(b) of the Employment Rights Act 1996 i.e. 52 weeks at "a weeks pay" within the definition in section 221(2).
7. This case the statutory cap is $£398.70 \times 52 = £20,732.40$.
8. Based on the calculation of net weekly pay set out at paragraph 28 – 29th of Mr Carter's skeleton argument on remedy dated 6 December 2022, which is £414.37, the amount of pay for 52 weeks, prior to the application of any would be $52 \times £414.37 = £21,547.24$, i.e. above the statutory cap.
9. As per our decision in the application above, however, we have awarded the First Claimant Mrs Hewer £4,784.40 damages for breach of contract. The Claimant cannot double recover. The amount of compensatory award we have made is $£21,547.24 - £4,784.40 = £16,762.84$. We have accepted the figures put forward by Mr Carter.
10. Even allowing for an ACAS uplift of 20% this figure for the compensatory award falls below the statutory cap. We find, in simple terms that the statutory cap has no application in this case.

Grossing up

11. In a written submission made to the Tribunal this morning by Mr Carter, he applies for the awards to the First and Second Claimants to be grossed up on the basis that parts of the awards will fall to be taxed when paid to the First and Second Claimants.
12. The Tribunal considers that it is in the interests of justice to grant this application to gross up the relevant awards. We have accepted the amounts calculated for the grossing up figures set out in the order above.

CASE MANAGEMENT ORDERS

13. Pursuant to the Employment Tribunal (Constitution & Rules of Procedure) Regulations 2013, Schedule 1 ("the Rules") **it is ordered that:**
 - (1) By **19 June 2023** the Second Claimant shall notify the Tribunal as to the status of the appeal and any proposals as to the listing of the remaining

claims in the Second Claimant's claim and whether the Preliminary Hearing listed for 3 July 2023 need be effective.

- (2) A Preliminary Hearing with a time estimate of 2 hours is listed on **2pm, Monday 3 July 2023.**

Employment Judge Adkin

Dated: 14 March 2023

Judgment and Reasons sent to the parties on:

15/03/2023

For the Tribunal Office