



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr P Parry-Williams

**Respondent:** North West Logistics Limited

**Heard at:** Manchester Employment  
Tribunal (by CVP)

**On:** 28 October 2022

**Before:** Employment Judge Cookson  
Ms Dowling  
Mr Williams

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Ms R Jones (Counsel)

**JUDGMENT** having been sent to the parties on 7 November 2022 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following written reasons are provided:

## REASONS

### Background

1. These written reasons are provided in connection with the extemporaneous Judgment delivered at the hearing on 28 October 2022. A written Judgment was prepared although it appears from the administrative file that it was not sent to the parties immediately. The claimant sent some correspondence to the Tribunal about the application of recoupment which was responded to. It has only recently come to my attention that the claimant's request for written reasons for the remedy judgment was made within the 14 time limit. I had mistakenly understood the written judgment had been sent sooner and request for reasons was initially refused for that reason. I apologise for that misunderstanding and the resulting delay in providing these reasons.

2. Remedy was to be determined in this case in light of a Reserved Judgment on Liability which was sent to the parties on 11 July 2022. It was the unanimous decision

of the Employment Tribunal that the claimant had been unfairly dismissed but we accepted that there had been a significant prospect that he would have been dismissed had a fair process been followed, and for this reason we determined that any compensatory award should be reduced by 80% in accordance with section 123(1) of the Employment Rights Act 1996.

3. We also made a declaration that an unlawful deduction from wages had been made in respect of unpaid salary and commission, but that outstanding sum had been paid by the time our Reserved Judgment was issued and accordingly this formed no part of our decision on remedy.

4. In reaching our decision on remedy we received a bundle of documents containing a Schedule of Loss and amended Schedule of Loss from the claimant, a counter Schedule of Loss from the respondent and a skeleton argument from the claimant together with evidence of the claimant's earnings and other documents running to some 86 pages. Included within that bundle was some advice from solicitors which we disregarded.

5. In addition we heard sworn evidence from the claimant and received oral submissions from the respondent and the claimant.

### **Factual Findings**

6. In relation to the period of loss claimed by the claimant, he explained that although he had initially registered, he had not found using recruitment agencies and similar as an effective way of finding alternative employment. Based on his experience of this particular sector which he has worked in for a very long time, it was his experience that the best approach was to contact companies directly.

7. The claimant was dismissed on 11 August 2020. He received some unemployment benefit before securing a position with a company called UKI Express on 1 March 2021. The salary for that position was £35,000 per year plus a car allowance of £350 per month. Employment with that company was terminated in September 2021 for operational reasons. The claimant told us that he thought this would be a permanent position but the company had decided not pursue seeking to develop work further in the relation to his area of business.

8. The claimant then faced a further period of unemployment before securing a part-time position with a company called SSO Logistics Limited which started on 7 February 2022. The salary for that position is £21,000 reflecting the fact that the claimant works 27 hours per week.

9. The claimant told us that he will be unlikely to secure a full-time position due to his age and he doubted he would ever be able to secure a full-time position at the same salary as he had previously enjoyed. He asked us to award compensation in consideration for the loss of earnings and benefits from his dismissal up to the date when he secured alternative employment on 1 March 2021, and addition ongoing future loss taking into account his part-time employment with his new employer.

10. The claimant claimed loss of earnings from 12 August 2020 to the remedy hearing on 28 October 2022, which is a total of 807 days. He acknowledged that he had no entitlement to a basic award in light of the redundancy payment already paid.

11. In relation to the alternative employment which the claimant had been able to secure in March 2021, he told us that he had not anticipated that this would be a temporary position. He told us however that he had not been kept on in this role for operational reasons and this new employment ended on 30 September 2021.

12. The claimant was then unemployed from 1 October 2021 to 7 February 2022. He did not qualify for Universal Credit or other benefits during this period of unemployment as by then he had reached state pension age.

13. Part-time employment with SSO Logistics Limited was secured from 7 February 2022. The claimant told us that he had accepted part-time employment because that was the position on offer. He has not enquired if it would be possible for him to work full-time but hopes it will be possible to review this in the future.

14. In addition to lost salary, pension and benefits the claimant also sought to claim losses in respect of a pension that he had cashed in to assist with debt payments and a car purchase, and in respect of legal costs in relation to the settlement agreement which he had been offered by his employer prior to the termination of his employment but which had not resulted in successful settlement terms being agreed. The respondent had only agreed to pay the legal costs if the settlement agreement was signed.

15. The claimant also suggested that the Tribunal should award an uplift for failure to follow the Employment Rights Act 1996 and in his submissions he suggested that as a result of the respondent's failure to address his concerns during the appeal and grievance procedures he argued that the amount of his award should be uplifted by 20%. This appears to be a reference to the ACAS Code of Practice on Discipline and Grievances.

16. In her submissions Ms Jones reminded us of the provisions of section 123 of the Employment Rights Act 1996, that is that the Employment Tribunal must award compensation which is just and equitable reflecting the losses which a claimant has suffered in consequence of their unfair dismissal and which are attributable to the actions of the employer and which it is just and equitable to award.

17. Ms Jones pointed out that the claimant had obtained alternative employment in March 2021 which had been a permanent position which was likely to mean there was no substantial continuing loss. She pointed out that this can mean that the chain of causation in terms of the original dismissal is broken and that can be the case even if the new employment subsequently comes to an end. In terms of what happened later on, Ms Jones suggested to us that the claimant had not shown that he had made sufficient or significant attempts to mitigate his loss and pointed out that once he had secured alternative employment he had not continued to seek full-time employment and therefore if the Tribunal were minded to award loss up to the commencement of the part-time employment, any continuing shortfall should not be recoverable.

18. In terms of more significant loss moving forward Ms Jones pointed out that there was no reason to believe that the claimant faced any long-term difficulties in finding employment. He had been able to find two comparable positions and that in those circumstances it would not be appropriate to award any significant future loss. She drew our attention to the case of **Wardle v Credit Suisse and Investment [2011]**

**EWCA Civ 545.** That is a career loss case where it was held that it is only appropriate to award long periods of loss where there is no real prospect of a claimant obtaining new employment.

19. We accepted the respondent's submissions that when the claimant obtained new part-time employment that broke the chain of causation because when the claimant accepted that new employment it appeared to be permanent, even though that employment later proved to be only of short-term duration. We accept for this reason it would not be just and equitable for us to award compensation beyond the start of that new employment even though this significantly limits the amount of loss which we can award the claimant in the circumstances.

20. The claimant told us that he has been in receipt of benefits and on the basis that recoupment may apply we have applied the appropriate statutory provisions as set out in the Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 (SI 1996/2349). Recoupment is the process by which the state recovers from the respondent the value of certain benefits paid to the claimant. The prescribed element which is subject to recoupment is that part of the monetary award attributable to loss of wages or arrears of pay or losses due to the claimant for the period before the conclusion of the Tribunal proceedings. It does not include the figure that may have been awarded for loss of statutory rights, right to written particulars or the loss of benefits or pension.

21. The prescribed period for which recoupment applies is identified in column 3 of the schedule to the Regulations. It is usually the period between the effective date of termination and the date of the remedy hearing.

22. In this case we had identified in our Liability Judgment that there was a significant possibility that the claimant would have been dismissed by reason of redundancy if a fair procedure had been followed, and in our Liability Judgment we concluded that the amount of compensation paid to him should be reduced by 80% to take account of this.

23. Accordingly, the amount of compensation payable to the claimant has been reduced.

24. There was dispute between the parties about the amount that the claimant had been paid and we calculated the sums awarded as follows:

**Information taken into account in our calculation**

Date started employment	12/09/2013
Effective Date of Termination	11/08/2020
Date new equivalent job started or expected to start	01/03/2021
Remedy hearing date	28/10/2022
Date by which employer should no longer be liable	01/03/2021
Net weekly pay at EDT	536.26

Gross weekly pay at EDT 826.92

Gross annual pay at EDT 43,000.00

**Basic award**

Not payable in light of redundancy payment

**Compensatory award (immediate loss)**

*Loss of net earnings*

Number of weeks (28.9) x Net weekly pay (536.26) 15,497.91

Less payment in lieu -5,694.01

Plus car benefits 7,525.44

Plus employer's pension contributions 699.48

Total compensation (immediate loss) 18,028.82

**Adjustments to total compensatory award** – 80% reduction for reasons set out in the liability judgment

Compensatory award after adjustment above 3,605.76

Loss of statutory rights 500.00

**Total compensation 4,105.76**

Employment Judge Cookson

Date: 17 March 2023

REASONS SENT TO THE PARTIES ON  
20 March 2023

FOR THE TRIBUNAL OFFICE

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