



## EMPLOYMENT TRIBUNALS

**Claimant:** Mr Roger Smith  
**Respondent:** Cosgrove Leisure Parks UK Ltd  
**Held at:** London South (by CVP)  
**On:** 5 December 2022 & 30-31 January 2023  
**Before:** Employment Judge Hart

### REPRESENTATION:

**Claimant:** Litigant in person  
**Respondent:** Mr Clement (counsel)

## REMEDY JUDGMENT

The Judgment of the Tribunal is that:

1. It is 'just and equitable' to award an uplift of 20% for failure to comply with the ACAS Code of Practice on Disciplinary and Grievance procedures ("the ACAS uplift");
2. The respondent is ordered to pay the claimant notice pay for wrongful dismissal of **£2,978.28 net**. This was calculated as follows:
  - 2.1 Six weeks' contractual notice pay of £2,274.18.
  - 2.2 Six weeks' loss of free accommodation of £207.72.
  - 2.3 Increase of £496.38, representing the 20% ACAS uplift.
3. The respondent is ordered to pay the claimant a basic award for unfair dismissal of **£4,165.78 gross**. This was calculated as follows:
  - 3.1 Nine weeks' pay of £4,339.35.
  - 3.2 Increase of £867.87, representing the 20% ACAS uplift.
  - 3.3 Reduction of £1,041.44, representing the 20% that the claimant contributed towards his dismissal.

4. The respondent has been found to have unfairly dismissed the claimant and is ordered to pay the claimant a compensatory award of **£703.49 net**. This was calculated as follows:
  - 4.1 Loss of earnings between 13 November 2021 and 1 January 2022, taking into account loss of free accommodation, of £187.06.
  - 4.2 Cost of moving accommodation, amounting to £340
  - 4.3 Loss of statutory rights of £450.
  - 4.4 Reduction of £244.26, representing the 25% chance that the claimant would have been dismissed had a fair procedure been followed.
  - 4.5 Increase of £146.56, representing the 20% ACAS uplift.
  - 4.6 Reduction of £175.87 representing the 20% that the claimant contributed towards his dismissal.
  
5. The respondent is ordered to pay the claimant outstanding holiday pay of **£607.51 gross**, calculated as follows:
  - 5.1 5.25 days outstanding leave at date of dismissal of £506.26.
  - 5.2 Increase of £101.25 gross, representing the 20% ACAS uplift.

## REASONS

### INTRODUCTION

1. This is the remedy judgment in relation to the claimant's claims for unfair dismissal, wrongful dismissal and holiday pay. The parties and their witnesses attended by CVP.

### THE HEARING

2. On 31 January 2023, the Tribunal announced the following judgment in relation to liability:
  - 2.1 The correct name of the respondent is Cosgrove Leisure Parks UK Ltd.
  - 2.2 The claimant's claim for wrongful dismissal succeeds.
  - 2.3 The claimant's claim for unfair dismissal succeeds.
  - 2.4 The compensatory award is to be reduced on a 'just and equitable' basis, to account for the 25% chance that the claimant would have been dismissed had a fair procedure been followed.
  - 2.5 The claimant contributed to his dismissal, and the basic and compensatory unfair dismissal award is to be reduced by 20%.Full reasons for the judgment were provided orally at the hearing.
  
3. In relation to remedy the parties relied on the original hearing bundle of 267 pages (reference to page numbers in this document are references to pages of this bundle). The parties confirmed that there were no additional documents relied on for the remedy hearing.

4. The parties also relied on the witness evidence and statements of the claimant and Ms Layla Merrick (respondent's Operations Administrator and HR Manager).
5. The claimant provided a schedule of loss (pages 240-241). He confirmed that he was not seeking the remedy of reinstatement / re-engagement.
6. The parties agreed that the remedy issues to be determined were:
  - 6.1 What basic award is the claimant entitled to?
  - 6.2 What, if any, compensation is the claimant entitled to for loss of earnings, and how much?
  - 6.3 Whether the claimant was entitled to compensation for loss of accommodation (caravan) and if so how much?
  - 6.4 Whether the claimant was entitled to claim expenses incurred due to the change in his accommodation, and if so how much?
  - 6.5 Whether the claimant was entitled to claim for loss of use of a company vehicle, and if so how much?
  - 6.6 Whether the claimant was entitled to loss of statutory rights, and if so how much?
  - 6.7 Whether there should be an ACAS uplift for failure to comply with the ACAS Code, if so by how much (up to 25%)?
  - 6.8 Whether the statutory cap applies?
  - 6.9 How much notice pay was the claimant entitled to?
  - 6.10 What, if any, holiday pay was the claimant entitled to?

In relation to other matters set out in the schedule of loss the claimant confirmed at the commencement of the liability hearing that he was not seeking compensation for shortfall in wages during his employment and "wear and tear" on his personal tools, these claims having not been pleaded. The claimant did not pursue his claim for failure to pay pension contributions prior to March 2021, on being informed that the Tribunal had no jurisdiction to consider this claim.

### **FINDINGS OF FACT RELEVANT TO REMEDY**

7. The claimant was employed by the respondent between 9 August 2015 and 1 October 2021. At the date of his dismissal he was earning a monthly salary of £2089.32 gross (£1726.04 net) (pg 198). His weekly pay (calculated as a month's pay x 12/52) was £482.15 gross (£398.30 net), and daily pay (weeks' pay divided by 5) was £96.43 gross (£79.66 net).
8. The claimant had been enrolled in a pension scheme during his employment at Ashcroft Park but he had not been enrolled onto a pension scheme following his transfer to Shurland Park, which is where he worked immediately prior to his dismissal. He therefore did not have any ongoing pension loss.
9. The claimant was provided with a company vehicle.
10. The claimant claimed that he was provided with accommodation in the form of a caravan for which he was not charged. The claimant relied on an Accommodation Agreement (Agreement) dated 1 April 2021 that both he and

Becky Scott (his line manager) had signed on that date (pages 117.1-117.2). The Agreement contained the following: *“Note to Employee: this is a legally binding document. Sign only if you intend that you will be legally bound by it. If you don’t or do not understand any part of this document, or have any questions, ask your employer before signing. You have the right to take independent advice if you wish”*. The terms of the Agreement provided that:

- 10.1 The accommodation was connected to employment as a maintenance manager at Ashcroft Coast.
  - 10.2 The claimant had permission to live in unit number PP228 on Ashcroft Park.
  - 10.3 The accommodation type was a caravan.
  - 10.4 The claimant was required to pay nothing for the use of the caravan.
  - 10.5 The accommodation agreement could be terminated if the contract ended, if the employee ceased to reside at the property, on expiry of not less than four weeks written notice given by either party to the other at any time, or on notice from the employer if the employee is in material breach or persistently in breach of any of the terms of this license.
11. Ms Merrick, on behalf of the respondent, confirmed that the Agreement was the standard agreement sent to site managers to be used if staff were provided with accommodation. The signed Agreement had been sent to her by Ms Scott, but it had gone into her junk email and therefore she was unaware of it until these proceedings.
  12. The respondent disputed that the claimant was entitled to free accommodation. This was because the Agreement had not received head office approval, and the agreement was unusual because the respondent normally charged the employee £150 a month for use of a caravan. The Tribunal notes that the contract does not state that it is conditional on approval by head office, and finds that once it was signed it was a binding agreement. Further, whilst it may be unusual for the employee not to be charged for use of the caravan, the respondent have not suggested that it was unlawfully obtained, merely that they were unaware of the Agreement through no fault of the claimant.
  13. Ms Merrick also claimed that the claimant did not in fact live in the caravan, pointing out that he had provided a different address on his contract, pay slips and claim form. However, Ms Merrick did accept that she was aware that the claimant had stayed on the caravan park during busy periods, further when she had visited the site she had not inspected unit PP228. The Tribunal prefers the claimant’s evidence that he did in fact reside at the caravan. The Tribunal notes that he is now paying for caravan accommodation and that he had to pay for furniture removal following his dismissal.
  14. The Tribunal considers that at some point it was likely that the respondent would have become aware that the claimant was living in free accommodation, contrary to its normal arrangements, and if so would have terminated the Agreement with 4 weeks’ notice. This was likely to come to light because the claimant was no longer working at the Ashcroft Park site, so his continued occupancy of a caravan was likely to be noticed and result in enquiry. The

Tribunal considers that the claimant would have lost his free accommodation from 1 January 2022.

15. The claimant had been paid for outstanding accrued annual leave on the termination of his employment with the respondent, but had been paid the wrong amount. The respondent's standard contract of employment provided an annual holiday entitlement of 28 days, the respondent was unaware that the claimant was employed on a Park Dean Resorts UK contract which entitled him to 35 days. He had remained on this contract following his TUPE transfer to the respondent in December 2018. This respondent accepted that the claimant had been paid the wrong amount.
16. The claimant claimed that he was entitled to payment for untaken holiday in previous holiday years. The Tribunal notes that the claimant's contract of employment specifically provided that he was "not entitled to carry holiday forward". Further, the Tribunal finds that the claimant was not prevented from taking his full holiday entitlement in any leave year. The claimant in evidence accepted that he was aware of his holiday entitlement; he said it was difficult to take time off due to pressure of work but that when he had asked to carry over leave he had been told "either take it or lose it".
17. Following his dismissal the claimant was unemployed for 9 days, of which 4 were weekend days. The Tribunal finds that he was unemployed for 1 week. During this week he had 'bed hopped' and therefore did not incur accommodation costs. He did not receive jobseeker's allowance or income support during this period.
18. On Monday 11 October 2021 the claimant commenced employment with Park Holidays (another caravan park provider). He was paid a monthly salary of £2,125 gross (£1,610.24 net) (pages 193-194). The gross salary was higher than with the respondent but the net salary was lower. This was because the claimant was provided with caravan accommodation for which he was charged £100 per month (pg 193). He was not enrolled in a pension scheme until January 2022.
19. In January 2022 the claimant's monthly pay was increased to £2,166.67 gross (£1,522 net). The February payslip included an adjustment of £41.67 gross which represented a backdated increase for January (page 196). In February 2022 the claimant also received a bonus of £808 gross.
20. Following his dismissal and the consequential loss of his caravan at Ashcroft Park, the claimant incurred costs of moving to the caravan at Park Holidays. Although the claimant did not provide receipts the Tribunal accepts his evidence that the cost of hiring a van was £80 and fuel was £60, and that the claimant paid £200 for storage of his furniture for a week due to being made homeless (this sum being set out in his claim form). These are modest sums.
21. The claimant also claimed an additional ongoing storage, of "about" £100 per month, to store his tools. He did not provide any receipts in support of this claim, and was unclear as to the amount. The Tribunal notes that this sum was not claimed in the claim form. Further, the reason that the claimant had his

tools in storage was that he did not need them because Park Holidays provided him with tools. This meant that he was no longer having to incur the cost of buying and using his own tools (which the claimant had estimated had cost him £2000 during his employment with the respondent).

22. The claimant applied for 4-5 maintenance jobs outside the caravan business. He has been successful and been offered employment with Chilham Care Homes, subject to his being vaccinated for COVID-19. He is due to start at the end of March 2023 on £30,000 per year. The Tribunal finds that the claimant has fully mitigated his losses.

## **LAW AND CONCLUSIONS**

### **Unfair Dismissal**

23. Under section 118 of the Employment Rights Act 1996 (ERA 1996), the award for unfair dismissal comprises a basic award (equivalent to a redundancy payment) and intended to compensate the employee for loss of job security and a compensatory award, intended to compensate the employee for financial loss suffered as the result of the unfair dismissal, subject to the maximum applicable at the time of £89,493 or one year's pay (from 6 April 2021). Under section 123(1) the compensatory award should 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*'.
24. For reasons provided orally at the hearing on 31 January 2023, the Tribunal has already determined that the claimant contributed to his dismissal, and that the basic and compensatory unfair dismissal award is to be reduced by 20%. The compensatory award is to be further reduced on a 'just and equitable' basis, to account for the 25% chance that the claimant would have been dismissed had a fair procedure been followed.

### **Wrongful Dismissal (Notice Pay)**

25. Damages for breach of contract are designed to put the claimant into the position he would have been in had the contract not been breached by the employer. The claimant may claim loss of earnings during the notice period; the amount of notice being determined either by the terms of the contract, or by statute if there is no contractual provision. The claimant may also claim loss of any contractual fringe benefits (e.g. accommodation, company vehicle etc.) and expenses, but only if those expenses would not have been incurred in the event of a lawful dismissal.
26. An employee who has been dismissed without notice is entitled to claim notice pay in full despite having found paid employment during the notice period: **Norton Tool Co Ltd v Tewson** [1972] ICR 501.

### Holiday Pay (Breach of Contract)

27. An employer will be in breach of contract if they fail to pay contractual holiday pay. The aim of damages for breach of contract is to put the claimant in the position they would have been in had a contract been performed in accordance with its terms.

### Failure to Comply with the ACAS Code

28. Under section 207A of Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA 1992) a tribunal may increase or decrease an award by up to 25% where there is a failure to comply with a provision of the ACAS Code of Practice on Discipline and Grievance Procedures (ACAS Code). The awards to which the Code applies includes those for unfair dismissal and breach of contract: TULRCA 1992 section 207A (1) and Schedule A2. Under section 124 of the ERA 1996, the adjustment only applies to the compensatory award for unfair dismissal claims.
29. In **Slade & Anor v Biggs and Ors** [2022] IRLR 216, the EAT has provided guidance as to the level of the uplift, and sets out a four-stage test (at paragraph 77):
1. Is the case such as to make it 'just and equitable' to award any ACAS uplift?
  2. If so, what does the tribunal consider a just and equitable percentage, not exceeding although possibly equaling, 25%? This involves considering 'all the circumstances' including the seriousness and / or motivation for the breach.
  3. Does the uplift overlap, or potentially overlap, with other general awards, such as injury to feelings; and, if so, what in the tribunal's judgment is the appropriate adjustment, if any, to the percentage of those awards in order to avoid double-counting? (Not relevant in this case).
  4. Applying a final sense-check, is the sum of money represented by the application of the percentage uplift arrived at by the tribunal disproportionate in absolute terms and, if so, what further adjustment needs to be made?
30. The purpose of the uplift is not simply to compensate the employee, there is also a punitive element, reflective of the seriousness with which the tribunal views the failure to comply with the ACAS Code: **Acetrip v Dogra** (UKEAT/0016/20) and **Secretary of State v Plaistow** UKEAT/16/20, quoted in **Biggs** at paragraphs 47-48.

## DISCUSSION AND CONCLUSIONS

### ACAS Uplift

31. The Tribunal has found that the respondent had breached multiple paragraphs of the ACAS code, for the reasons provided orally at the liability hearing. In summary, these reasons included that:

- 31.1 The disciplinary process was not conducted fairly, contrary to paragraph 4.
  - 31.2 There was a failure to establish the facts of the case prior to dismissal since there was no proper investigation, contrary to paragraph 5. Ms Knight, the investigator, was the same person who had complained about the claimant's conduct. Further she gathered evidence against the claimant whilst ignoring evidence in his favour (such as the statement by the receptionist).
  - 31.3 Ms Knight conducted the disciplinary hearing, contrary to paragraph 6. The Tribunal found that it would have been practicable for a different General Manager to have conducted the hearing, and noted that the claimant had objected to Ms Knight's involvement in the disciplinary process.
  - 31.4 The claimant was not provided with sufficient information about the alleged misconduct to enable him to prepare to answer the case at the disciplinary meeting, nor had he been provided with copies of any written evidence, including witness statements, against him, contrary to paragraph 9. The claimant had requested this information in advance of the disciplinary meeting.
  - 31.5 The claimant was not provided with a reasonable time to prepare his case, since he was not informed of the full case against him in advance of the meeting, contrary to paragraph 11.
  - 31.6 At the disciplinary meeting, the claimant he did not have a reasonable opportunity to ask questions, present evidence and call relevant witnesses because he had not been informed in advance of the case against him, contrary to paragraph 11.
32. The Tribunal does accept that at the disciplinary meeting Ms Knight went through the evidence that had been gathered against the claimant, albeit he was not provided with a proper opportunity to consider it. The Tribunal also notes that the claimant was provided with the right to appeal and that he did not attend the appeal meeting. The Tribunal has already found that this was unlikely to have remedied the procedural faults of the disciplinary process because the claimant had still not been provided with the investigation evidence against him, albeit that he had been provided with other documentation that he had requested.
33. Taking all these circumstances into account the Tribunal considers that the fundamental lack of fairness of Mrs Knight being both complainant, investigator and dismissing officer together with the failure to provide the claimant with sufficient information of the case against him warrants an uplift at the higher end of the scale. The respondent is a medium size employer, employing 70 permanent and 20-30 seasonal workers, with an HR Manager. It had a disciplinary policy which was also not followed. There was no reasonable explanation for its failure to comply with the basic requirement of the ACAS Code. The Tribunal therefore concludes that this is such a case where it would be 'just and equitable' to award an ACAS uplift, and that taking into account all the circumstances it would be 'just and equitable' to apply an uplift of 20%. Finally, the Tribunal considers the overall sum awarded is not disproportionate in general terms.





### Compensation for Wrongful Dismissal (Notice Pay)

34. The claimant was employed between 9 August 2015 and 1 October 2021. He is entitled to 6 weeks' notice under his contract of employment. His weekly pay was £379.03 net, and therefore is entitled to 6 x £379.03 amounting to **£2,274.18 net**.
35. Had the claimant not been wrongfully dismissed he would have continued to receive the benefit of free accommodation, valued at £150 per month (£34.62 a week). Over the 6-week notice period this would amount to **£207.72 net** (6 x £34.62). He was not entitled to claim the cost of moving or storage under breach of contract since he would have incurred these costs had he not been dismissed.
36. Applying the 20% ACAS uplift the claimant is entitled to a further **£496.38 net** (£2,481.90 x 0.2).
37. Therefore the total award for wrongful dismissal is **£2978.28 net**.

### Compensation for Unfair Dismissal

#### Basic Award

38. The claimant had been employed with the respondent for 6 full years. He was 52 years old at the date of dismissal (date of birth 1 September 1969), and is entitled to 1.5 weeks' gross pay per year of service. The basic award is therefore comes to £4,339.35 gross (9 weeks x £482.15).
39. The Tribunal has found that the claimant is entitled to 20% ACAS uplift, this amounts to £867.87 gross (£4339.35 x 0.2), to provide a total of £4339.35.
40. The Tribunal has found that the claimant contributed towards his dismissal by 20%, this amounts to £1,041.44 gross ((£4339.35 + £867.87) x 0.2).
41. Therefore the total basic award that the claimant is entitled to is **£4,165.78 gross** (£4,339.35 + £867.87 - £1,041.44).

#### Compensatory award - loss of earnings / free accommodation

42. The claimant has received compensation for 6 weeks' notice pay and therefore is only entitled to loss of earnings from 13 November 2021. Following the commencement of employment with Park Holidays, the claimant's monthly gross salary was higher than with the respondent but his net salary was lower. This was because Park Holidays charged £100 a month for accommodation (caravan), resulting in the claimant receiving net pay which was £115.80 less per month than he received with the respondent (£1726.04 earned with the respondent minus £1610.24 earned with Park Holidays). The weekly difference was £26.72. The Tribunal has found that had the claimant not been dismissed he would have continued to receive free accommodation until 1 January 2022. Therefore he is entitled to 7 weeks' loss of earnings of **£187.06 net** (7 x £26.72). From the 1 January 2022 the claimant would have been charged £150 for

accommodation with the respondent and therefore his net pay would have dropped below that for Park Holidays.

Compensatory Award - Cost of Moving Accommodation

43. The Tribunal has found that the claimant incurred costs of moving accommodation amounting to £80 van hire, £60 for petrol and £200 storage cost for the week when he was without accommodation, amounting to a total of **£340**.

Compensatory Award – Ongoing Storage

44. The Tribunal awards no compensation for ongoing storage of the claimant's tools. This is because the cost of storage has not been caused by the dismissal, but by the fact that the claimant does not need access to his tools. Further, and in any event, the cost of storage is likely to be offset by the fact that the claimant is no longer required to buy and use his own tools.

Compensatory Award – Loss of use of Company Vehicle

45. The Tribunal awards no compensation for loss of the use of a company vehicle, since the claimant confirmed in evidence that he had been provided with a company vehicle by Park Holidays.

Compensatory Award - Loss of Statutory Rights.

46. The Tribunal awards the claimant **£450** for loss of statutory rights, this sum not being disputed by the respondent.

Compensatory Award – Adjustments

47. The total compensatory award prior to adjustments is **£977.06** (£187.06 + £340 + £450).
48. The Tribunal has found that the compensatory award is to be reduced on a 'just and equitable' basis, to account for the 25% chance that the claimant would have been dismissed had a fair procedure been followed. The compensatory award will therefore be reduced by **£244.26**, to provide a total of £732.80.
49. The Tribunal has found that the claimant is entitled to a 20% ACAS uplift, this amounts to **£146.56 net** (£732.80 x 0.2), to provide a total of £879.36 net.
50. The Tribunal has found that the claimant contributed towards his dismissal by 20%, this amounts to **£175.87 net** (£879.36 x 0.2), to provide a total of £703.49 net.
51. Therefore the total compensatory award amounts to **£703.49 net**. This is below the statutory cap.

Holiday Pay

52. The claimant was entitled to accrued holiday based on an annual entitlement of 35 days not 28 days. The claimant was dismissed on the 1 October 2021, therefore he is entitled to 9/12<sup>th</sup> of the outstanding 7 days i.e. 5.25 days. This amounts to **£506.26 gross** (5.25 x £96.43).

53. The Tribunal has found that the claimant is entitled to a 20% ACAS uplift, this amounts to **£101.25 gross** ( $£506.97 \times 0.2$ ), to provide a total of **£607.51 gross**.

Employment Judge Hart  
Date: 28 February 2023

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