



EMPLOYMENT TRIBUNALS

Claimant

Respondent

v

Mr Thorpe

Burrano Limited

UPON APPLICATION made by the Respondent's letter dated 8 November 2022 and the Claimant's letter dated 16 November 2022 to reconsider the judgment dated 3 November 2022 under rule 71 of the Employment Tribunals Rules of Procedure 2013

JUDGMENT

1. The Respondent applied for a reconsideration in an application dated 8 November 2022. Unfortunately, this did not come to my attention until 15 March 2023, when it became apparent that there was correspondence which I had not seen at the time it arrived.
2. In response to that application, the Claimant also made an application for reconsideration, dated 16 November 2022. This was brought to my attention in December 2022.
3. I am not aware that the Tribunal has received any response from the Respondent in respect of the Claimant's application.
4. I would like to apologise to both parties for the delay and any confusion which has arisen and will respond to both applications in this judgment.

General

5. The Claimant asserts that submissions in relation to remedy were not made by either party at the hearing in July 2022. Both parties were aware that the matter was listed for the purposes of both remedy and reconsideration at that time. Skeleton arguments on behalf of both parties were received by the Tribunal which referred to and addressed issues of remedy. The Claimant's schedule of loss was also referred to. I am therefore satisfied that both parties had knowledge of the purpose of the hearing and the opportunity to orally address any issues which they considered appropriate.

6. I note that neither party is applying for a further hearing on the issue of remedy generally and therefore do not consider that the judgment on remedy requires to be reconsidered generally.

Respondent's application

7. The Respondent's application sets out that a basic award was made in the Judgment of 3 November 2022 in the sum of £4,842. It is asserted by the Respondent that under s.122(4)(b) ERA, that the amount of the statutory redundancy pay made to the Claimant should be set off against this sum.
8. The Claimant is aware of this application. His representative wrote to the Tribunal on 16 November 2022 making reference to the Respondent's application, but not making any submission either to support or object to it.
9. I therefore consider that both parties have had ample opportunity to express their views on the Respondent's application and I am able to decide this matter without recourse to a further oral hearing.
10. It is correct to say that s. 122(4) (b) states that:-

(4)The amount of the basic award shall be reduced or further reduced by the amount of—

(a)any redundancy payment awarded by the tribunal under Part XI in respect of the same dismissal, or

(b)any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy (whether in pursuance of Part XI or otherwise).

11. On the basis that the basic award was made in respect of a dismissal for redundancy and that the Claimant does not dispute that a redundancy payment was made to this amount, it is correct to say that this amount ought to have been set off under the statutory provisions. I can see no objection by the Claimant to suggest that this would be inappropriate and therefore I will amend the sum award to deduct the **£4,842**.

Claimant's application

12. I note that the Claimant's application was received by the Tribunal on 16 November 2022. It refers to the fact that it has been served on the Respondent's representative. I am informed that no response from the Respondent has been received by the Tribunal. I therefore consider it appropriate to proceed to consider that Claimant's application as follows:-

13. I have referred once again to the evidence and submissions placed before me at the hearing on 4 July 2022. I note that the Claimant's application for reconsideration on that occasion was supplemented by counsel's written submission, as well as her oral submissions. At paragraph 2.8 of her skeleton argument counsel refers to net figures and not gross figures, as now asserted. These were the figures which the Claimant placed before me and which were accepted. I appreciate and understand that the Claimant now realises that this was erroneous and that an application to reconsider has been made.
14. The Judgment of 3 November 2022 followed on from the finding of unlawful deduction of wages and held that the Claimant ought to have been paid his full salary for the period between 17 April 2020 and 31 October 2020, a period of 28 weeks.
15. I note that under s.62 ITEPA 2003 the sums will be taxable.
16. With reference to the payslips (B001) and the Claimant's Schedule of Loss (A036) I note that the Claimant's full weekly gross salary (not including car allowance) was £2,431.35. The amount payable under the furlough scheme was £2500 gross per month (£576.92 per week, not including car allowance). This amounts to a loss of £1,854.43 gross per week.
17. As I set out at paragraphs 31 to 33 of my Judgment (3 November 2022), the Claimant did not suffer any unlawful deduction of wages prior to 17 April 2020. Hence any recoupment by the Respondent of any overpayment during that period can be ignored for the purposes of calculating the amount due to the Claimant. The only compensation I have awarded reflects the fact that the Claimant did not agree to being placed on furlough and therefore he ought to have been paid full pay, not furlough pay during that period.
18. Equally, the calculation does not take account of the ongoing car allowance which was paid to the Claimant, as this was not an unlawful deduction. I therefore do not agree with the calculations made by the Claimant in the application, although I accept that an award of gross is required.
19. I have considered B003 to B009 and note that the Claimant was paid £2500 each month gross. The calculation is therefore a loss of £1,854.43 per week

(see paragraph 16 above) x 28 weeks. A total award of **£51,924.04**.

20. In respect of the compensatory award. The Claimant seeks to challenge the use of the figure £353.77. This figure was the amount set out by the Claimant in their Schedule of Loss (A036) and no alteration was made to this during the course of the hearing in July 2022.

21. Upon undertaking the calculation myself, it would appear correct to say that the sum of the payslips between 25/4/20 and 25/10/20 (B03 to B09) is £9488.75. This is pay for a period of 28 weeks; an average of £338.88. This includes the payment of car allowance.

22. The net full pay set out on B001 is £1,413.33.

23. The net loss is therefore £1,074.55 per week. I awarded a loss for 4 weeks, hence a total of **£4,298.20** is the appropriate total.

24. In conclusion, I vary my judgment of 3 November 2022 to the following:-

- a. Unlawful deduction of wages **£51,924.04**
- b. Basic award **£4,842**
Less statutory redundancy payment made (£4842)
- c. Compensatory award **£4,298.20**
- d. Loss of statutory rights **£400**

Employment Judge Cowen

Date: 29 March 2023

Sent to the parties on: 30/3/2023

NG
For the Tribunal Office

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