

Basic Award

3. It was agreed upon by parties that the claimant's gross weekly wage exceeds the statutory cap. I find that to be the case. The applicable statutory cap for the years 2021/2022 £544.00. Further, I calculate that the appropriate multiplier is as agreed between the parties at namely 25.5. Accordingly, I find that the basic award due and payable to the claimant to be the sum of £13,872.00. as at the date of the remedy hearing.

Net Weekly Wage

4. The parties were unable to agree what this figure was. The claimant had provided the figures arrived from a snapshot average of six months pay and arrived at a figure of £794.93. including his employees pension contribution of 12.5%. The respondent's position is that the claimant's snapshot is unreliable mainly because it covers a period in which the claimant received a number of exception payments.
5. The respondent submitted that it was prepared to accept (but not agree) that the claimant's employee pension contributions should be taxed as income. Given the unpredictable nature of the claimant's earnings, I find that the interests of justness and equity would be best served by reliance on the claimant's wage slip of January 2023 and did so on the basis that it was the most reliable and contemporaneous document to use. Further, I find that the claimant should receive credit for the pension contributions which should be subject to deductions for tax in the same way as salary. In submissions, Mr Hurd sought to rely on the claimant's wage slip dated 20th November 2021 (page 46 of the bundle). His reason doing so in preference to the January 2023 payslip which I prefer in this judgment was unclear. However, in having considered the issue carefully, I find that the claimant's payslip for January 2023 is reliable and representative of the claimant's earnings, as it reflect the claimant's 37.5 hour working week and the 25% shift uplift he received for working unsociable hours. In this month, the claimant was paid £2597.99; this figure multiplied by 12 months and divided by 52 weeks gives rise to a figure of £599.54. The claimant's pension contribution was £508.16. Applying the same formula to this figure gives rise to a figure of £117.27 gross or £93.81 net of 20% tax. Accordingly, I find that the claimant's net weekly pay to have been £599.54. plus £93.81 which equals £693.35.

Mitigation

6. The effective date of termination (EDT) of the claimant's employment was found to be 17 February 2022. In the 55 weeks from the ETD to 10 March 2023 being the first day of the liability hearing, I record and do find that the claimant's case is best summarised as follows:
 - 6.1 As soon as he was able to, the claimant entered into a period of self-employment.

- 6.2 There was a period in which his mental health had deteriorated and that prevented him from entering the job market earlier. Having heard evidence from the claimant and considered submissions on behalf of the respondent, I find that the period in which the claimant was able to start work after the subsidence of the mental health episode I have described to be in mid-September 2022.
7. The claimant relies on his earnings of £6,762.45. as evidence of his attempt to mitigate loss. The respondent submitted that the claimant had failed to adequately mitigate loss. In submission, Mr Hurd correctly stated that it was for the respondent to prove to the tribunal that the claimant has failed to mitigate from mid-September 2022 onwards. Specifically, the respondent claims that the claimant should have reduced or eliminated his losses by finding alternative work that paid as much as the respondent did. In this regard, the respondent puts it case on a number of bases. First, the respondent says that the claimant was unreasonable to have waited for the outcome of his appeal before looking for a suitable role. In evidence, the claimant stated that he was certain that his appeal would have been successful, thereby obviating the need for him to find alternative work. I do not find that the claimant was unreasonable in doing what he did. Further, I find on the balance of probabilities that the claimant's account of his inability to locate alternative work in the period running 10/03/2022 to mid-September 2022 has been credible.
8. Second, the respondent submits that the claimant did not have to wait for the the Health and Care Professionals Council ("HCPC"), the claimant's regulator, to resolve its investigation into his conduct. The claimant's case here is that no sensible or responsible employer would employ him as a paramedic while he had the stigma of an ongoing investigation into his practice arising from his dismissal for gross misconduct which itself was based on the respondent's finding of violent conduct by the claimant on a patient.
9. In support of its case in this regard, the respondent relies on the witness evidence of Mrs Ladbrooke in which she asserted that it was the claimant's report to HCPC which was deemed by that regulator to be a neutral act and a prospective employer would see it as such.
10. I find that the respondent has failed to discharge the evidential burden that the law places upon it in order support its submission. Specifically, I find that much of what Mrs Ladbrooke has to say here is speculative opinion. Accordingly, I find that the claimant took adequate steps to mitigate loss in relation to the period between the effective date of termination and 10th March 2022. It follows that I reject the respondent's submissions in this regard. In reaching this finding, I have considered and I accept that there is a national shortage of paramedics, and that in respect of non-medical work, that the respondent has failed to provide sufficient evidence that would show that the claimant would have earned more money than he did earn.

Future Loss

11. Here we are talking about the period running from the 10th March 2023. The arguments made in respect of past loss and mitigation are similar and the same as those in respect of past loss. However, the respondent submits that the claimant should be able to find jobs paying at a similar level and was able to provide evidence of a number of medical jobs which the claimant was qualified to apply for. The respondent submitted that he should be able to find a suitable role within a month of the remedy hearing and could rely on the favourable finding of my liability judgement to explain why it was so certain that the claimant would be exonerated by HCPC.
12. In evidence, the claimant gave a number of reasons as to why he would not apply for the jobs identified by the respondent. These can be summarised as follows:
 - 12.1 He has received information from a friend that one of the roles was not a good job or role for him.
 - 12.2 That he had not considered applying for the roles until the issue of his HCPC registration had been resolved for the reason he expected that any job applications made prior to this date would be unsuccessful.
 - 12.3 The non-medical jobs were unlikely to pay more than he was currently paid.
 - 12.4 That a number of medical jobs were either desk bound and not front line jobs which is what the claimant was doing when he was employed by the respondent.
13. It follows that the claimant seeks future losses until his retirement age of 67. He is currently 60.
14. While I accept that HCPC is not bound in any way by my findings in the liability judgement I accept in part what the respondent has to say about the claimant's future employment prospects. Through Mrs Ladbrooke, the respondent asserts that it is possible for the claimant to find work with a favourable judgement but with an outstanding HCPC resolution. Again, I find this to be no more than speculation. However, I consider it more likely that the claimant will be able to fully mitigate his losses once HCPC have determined an outcome and I accept that the outcome will be one that exonerates the claimant.
15. I consider that 12 months from 10 March 2023 is a reasonable period to consider when HCPC will have dealt with the claimant's matter. It follows that I find and award the claimant a sum for future loss of earnings equivalent to 26 weeks net salary or £12,306.58 inclusive of pension loss and deduction for mitigation.

Schedule of Loss

Claimant's date of birth:	31/01/1963
Date started employment:	07/11/2004
Effective date of termination:	17/02/2022
Period of continuous service:	17 Years
Age at effective date of termination:	59
Date new equivalent job expected to start:	21/12/2023
Remedy hearing date:	21/03/2023
Date by employer should no longer be liable:	21/09/2023
Statutory notice period (weeks):	12 Weeks
Net weekly pay edt:	£693.35
Gross weekly pay edt:	£1,073.05.
Gross annual pay edt:	£48,783.72.
Basic Award:	25.5 x £544.00.
Total Basic Award:	£13,872.00.
Compensatory Award (immediate loss)	56.7 weeks x £693.35
Loss of earnings:	£39,312.94.
Plus loss of statutory rights	
Less overpayment of	£7,642.87.
Less sums that should have been obtained through mitigation	£12,006.05.
Total compensation (immediate loss)	£19,014.02.
Compensatory award (future loss)	26.3 weeks x £693.35.
Loss of future earnings:	£18,235.10.
Less mitigation:	26 weeks x £228.02. £5,928.52.

Total compensation (future loss)	£12,306.58.
Adjustments to total compensatory award	
Plus failure by employer to follow statutory procedures at 10%	£3,222.06.
Compensatory award before adjustments	£32,220.60.
Total adjustments to the Compensatory award	£3,222.06.
Compensatory award after adjustments	£35,442.66.
Summary Totals	
Basic award	£13,872.00.
Compensation award including Statutory rights	£35,442.66.
Total	£49,314.66.

16. Accordingly I order the respondent to pay the claimant the sum of £49,314.66 within 28 days of this judgement being sent to the parties.

Employment Judge Forde

Date: 2 May 2023

Sent to the parties on: 7.5.2023

GDJ
For the Tribunal Office