



EMPLOYMENT TRIBUNALS

Claimant: Mr K Allen
Respondent (1): Taylormade Payroll Solutions Ltd
Respondent (2): Taylormade Resourcing Ltd

HELD in Sheffield ON: 18 May 2023

BEFORE: Employment Judge Brain

REPRESENTATION:

Claimant: In person
Respondent: No attendance or representation – appearances not entered

JUDGMENT

The Judgment of the Employment Tribunal is that:

1. The claimant was in the employment of the second respondent from 18 April 2021. As his complaints relating to matters after that date, those against the first respondent stand dismissed.
2. The claimant's employment was transferred to the first respondent from other employing entities (*the transferor employers*) and then onto the second respondent pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006. The transfer from the first respondent to the second respondent took place on or around 18 April 2019.
3. The claimant has seven years continuity of employment (*the period of employment*) as the whole of his relations with the transferor employers, the first respondent and second respondent were governed by a contract of employment. In the alternative, absences from work not governed by a contract of employment were such that, by arrangement or custom, they are to be included in the period of employment thus preserving the claimant's continuity of employment.

UPON THE CLAIMANT'S COMPLAINTS OF UNFAIR DISMISSAL BROUGHT UNDER THE EMPLOYMENT RIGHTS ACT 1996 ('THE 1996 ACT').

4. On 19 November 2021, the second respondent dismissed the claimant.

5. The claimant's grievance dated 17 July 2021 (*'the grievance'*) contained information such as to vest the grievance with the status of a protected disclosure for the purposes of Part IVA of the 1996 Act (*'the protected disclosure'*).
6. The reason for the claimant's dismissal was that he made the protected disclosure. Accordingly, his unfair dismissal claim brought against the second respondent pursuant to section 103A of the 1996 Act succeeds.
7. Further, the second respondent unfairly dismissed the claimant and his claim brought pursuant to section 94 of the 1996 Act succeeds.

REMEDY UPON THE UNFAIR DISMISSAL COMPLAINTS

7.1 Basic award

The second respondent shall pay to the claimant a basic award in the sum of **£3808**. (*This is reckoned upon the period of employment in paragraph 3 and then by application of the maximum week's pay for post – 6 April 2021 dismissals in the sum of £544*).

7.2 Compensatory award

The second respondent shall pay to the claimant a compensatory award in the sum of **£500** to compensate for the loss to the claimant of his statutory right not to be unfairly dismissed.

UPON THE CLAIMANT'S COMPLAINT BROUGHT UNDER THE EQUALITY ACT 2010 ('THE 2010 ACT').

8. The grievance was a protected act for the purposes of section 27 of the 2010 Act.
9. The claimant's complaint of victimisation brought pursuant to section 39(4) of the 2010 Act succeeds. The second respondent subjected the claimant to detriments by suspending him from employment on 30 June 2021 and in making an unauthorised deduction from his wages, and by dismissing him. The grievance was a material reason for the detriments and the dismissal.

REMEDY UPON THE 2010 ACT COMPLAINTS

10. The second respondent shall pay to the claimant compensation for injury to the claimant's feelings in the sum of **£11000**.
11. The second respondent shall pay to the claimant interest upon the award in paragraph 10 from the date of the suspension to today's date. At the rate of 8% per annum the interest payable to the claimant is in the sum of **£1653.92**.
12. The second respondent shall pay to the claimant compensation for past loss of earnings in the sum of **£23495.09** calculated as follows:

78 weeks loss of earnings in the sum of £532.61 net per week from 19 December 2021 to date -	£41543.58
Less – Universal Credit received by the claimant between February 2022 and May 2023, being 15 months at £685 per month -	£10275.00
Less 2 months unpaid leave taken per year -	£4973.49
Less agency earnings -	£2800.00
Net past loss	£23495.09

13. The second respondent shall pay to the claimant compensation for future loss of earnings in the sum of **£9737.86** calculated as follows:

26 weeks loss of earnings at £532.61 net per week -	£13847.86
Less six months Universal Credit -	£4110.00
Net future loss	£9737.86

14. The second respondent shall pay to the claimant interest on the award in paragraph 12 in the sum of **£1409.70** (*which award is from 20 August 2022 (being the midpoint of the loss) being a period of 39 weeks at 8% per annum*).

GROSSING UP AWARD

15. The total award, exclusive of interest, is £48540.95. The effect of section 401 of the Income Tax (Earnings and Pension) Act 2003 is to tax the excess of the aggregate of the awards over £30000 in the claimant's hands. Accordingly, a grossing up award is made in favour of the claimant in the sum of **£4635.23** to defray the tax liability calculated as follows:

£18540.95 (being the excess over £30,000) divided by 0.8 (to reflect the claimant's marginal tax rate of 20%) -	£4635.23
---	----------

UPON THE DETRIMENT CLAIM BROUGHT UNDER THE 1996 ACT

16. Paragraph 5 is repeated.
17. The claimant was subjected to detriment for having made the protected disclosure by being suspended from work on 30 June 2021 and suffering an unauthorised deduction from wages.
18. No separate remedy is awarded to avoid double recovery upon the award made in paragraph 10.

SUMMARY

19. The second respondent shall pay to the claimant the total of the awards made above in paragraphs 7, 10, 11, 12, 13, 14 and 15 in the sum of **£56239.57**. Payment is to be made on or before 2 June 2023.

Employment Judge Brain

Date: 19 May 2023