



EMPLOYMENT TRIBUNALS

Claimant: Miss Tanya Boyd

Respondent: Sin Bar Ltd

Remedy Hearing

Heard at: Bury St Edmunds

On: 2 June 2023

Before: Employment Judge Boyes (Sitting Alone)

Representation

Claimant: In Person

Respondent: Ms. Crawshay-Williams, counsel

JUDGMENT

1. The respondent shall pay compensation to the claimant for unfair dismissal of £7500 made up as follows:
 - a. A basic award of £1000
 - b. A compensatory award of £6500
2. The respondent has failed to pay the claimant's holiday entitlement and is ordered to pay the admitted gross sum of £637.55.

Calculation of Award

Gross Weekly pay: £125

Dates of employment: June 2010 – 28.11.2018 (8 years)

Age at time of dismissal: 36 years (DOB: 30 December 1981)

Unfair dismissal

1. BASIC AWARD

8 Week's pay x £125 = £1000

Total Basic Award: £1000 [A]

2. COMPENSATORY AWARD

Immediate Loss (loss of wages to date of remedy judgment) [Prescribed amount]

Wage of £125 per week from 1 April 2019 to 31 April 2022: 161 weeks x 125

= £20,125

17.4 weeks of SSP at £92.05 (2018/2019 rate) = £1601.67

Total = £21,726.67

Less benefits other than JSA/ESA/UC/IS

LESS benefits other than JSA/ESA/UC/IS- *Payment by the Respondent of SSP from 1/04/2019-30/5/2019

10 weeks at £94.25 (2019/2020 rate) = £942.50

***The claimant's employment ended on the 28 November 2018. The claimant was paid Statutory Sick Pay subsequent to the date of termination of her employment. The Tribunal considered that it was just and equitable in all the circumstances for the Claimant's compensatory award to be reduced by the Statutory Sick Pay paid to the claimant subsequent 1/4/2019.*

The above calculation deducts Statutory Sick Pay for a different period to that which was referred to in oral reasons. This is because had the claimant remained in employment between 29 November 2018 and 31 March 2019 she would have received Statutory Sick Pay during this period (but not full pay). This amendment to the sums makes no difference to the overall compensatory award due to the application of the Statutory Cap.

Total Prescribed Element is £20,784.17

Non-Prescribed element (other losses)

(a) Loss of statutory rights - £500

(b) Failure to provide written particulars of employment - £250

Total Non-prescribed Element= £750

Total Compensatory Award = £21,534.17

The Statutory Cap applicable in this case is 52 weeks' pay = £6500

Total Compensatory award (after application of Statutory Cap)-£6500 [B]

As the compensatory award is reduced because it exceeds the statutory limit, the prescribed element must be reduced, for recoupment purposes only, by the same proportionate amount as per Regulation 4(2) Employment Protection (Recoupment of Jobseekers Allowance & Income Support) Regulations 1996 (see calculation below).

Statutory Cap applied proportionately to prescribed element:

$$20,784.17 \times 6,500 / 20,784.17 = £6500$$

Holiday pay

Daily rate: £41.67

Holiday days owed: 15.3

$$41.67 \times 15.3 = £637.55$$

Total Holiday Pay £637.55 [C]

Grand total A + B + C = £8137.55

Recoupment

Regulation 4(3) of The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 apply and attention is drawn to both the following paragraph and the Annex to this judgment requires that the written judgment should include four specific particulars:

(a) The monetary award: £7,500

(b) The amount of the Prescribed Element: £6,500.

[Due to the way in which the award is reduced proportionately down to the Statutory Cap the Prescribed Element in effect includes a proportion of the non-prescribed element (which is £750) in this particular case)

(c) The dates of the period to which the Prescribed Element relates: 28 November 2018 to 31 April 2022 (Benefit: Universal Credit)

(d) The amount, if any, by which the monetary award exceeds the Prescribed Element: £1637.55

Employment Judge Boyes

Date: 10 July 2023

Judgment Sent to The Parties On

10/7/2023

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FOR EMPLOYMENT TRIBUNALS

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ANNEX TO THE JUDGMENT

Recoupment of Jobseeker's Allowance, income-related Employment and Support Allowance, Universal Credit and Income Support

The Tribunal has awarded compensation to the claimant but not all of it should be paid immediately. This is because the Department for Work and Pensions (DWP) has the right to recover (recoup) any Jobseeker's Allowance, income-related Employment and Support Allowance, Universal Credit or Income Support which it paid to the claimant after dismissal. This will be done by way of a Recoupment Notice which will be sent to the respondent usually within 21 days after the Tribunal's judgment was sent to the parties.

The Tribunal's judgment should state the total monetary award made to the claimant and an amount called the Prescribed Element. Only the Prescribed

Element is affected by the Recoupment Notice and that part of the Tribunal's award should not be paid until the recoupment Notice has been received.

The difference between the monetary award and the prescribed element is payable by the respondent to the claimant immediately.

When the DWP sends the Recoupment Notice, the respondent must pay the amount specified in the Notice by the department. This amount can never be more than the Prescribed Element of any monetary award. If the amount is less than the Prescribed Element, the respondent must pay the balance to the claimant. If the Department informs the respondent that it does not intend to issue a Recoupment Notice, the respondent must immediately pay the whole of the Prescribed Element to the claimant.

The claimant will receive a copy of the Recoupment Notice from the DWP. If the claimant disputes the amount in the Recoupment Notice, the claimant must inform the DWP in writing within 21 days. The Tribunal has no power to resolve such disputes which must be resolved directly between the claimant and the DWP.