



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr J Akhtar

v

ESG Security Limited

Heard at: **Birmingham** On: **25 and 26 May 2023**
(conducted in public on
the Cloud Video
Platform)

Before: **Employment Judge Kenward (sitting alone)**

Appearances

For the Claimant: **Mr M Mohzam, Solicitor**

For the Respondent: **Mr Z Iqbal (Senior Operations Manager)**
assisted by Ms V Hall (Front of House Administrator / HR)

FURTHER JUDGMENT ON REMEDY

1. Further to the Judgment given at the hearing on 26 May 2023 upholding the Claimant's complaints of unfair dismissal (on the basis of the Claimant's resignation having amounted to a constructive dismissal) and wrongful dismissal (on the basis of the Claimant's resignation having amounted to a constructive dismissal without notice and / or notice pay), the Tribunal has assessed the further sums due to the Claimant in respect of notice pay and the compensatory award for unfair dismissal as follows:
 - (1) the Claimant is entitled to a compensatory award consisting of a non-prescribed element only in respect of loss of pension rights in the form of employer's pension contributions for the period between 7 June and 11 July 2022 inclusive, with the amount due assessed by the Tribunal to be £68.40.
 - (2) the Claimant is entitled to notice pay for 10 weeks from 7 June 2022 to 15 August 2022 inclusive less any deductible benefits or earnings from alternative employment received for this period, with the amount due assessed by the Tribunal to be £1,197.28 net.
2. It follows that, by reason of the Judgment given at the hearing on 26 May 2023 the Respondent is ordered to pay to the Claimant the total amount of £5,892.18 which comprises the following sums:
 - (1) a basic award for unfair dismissal in the sum of £4,560.00;
 - (2) a compensatory award for unfair dismissal consisting of a non-prescribed element only in respect of loss of pension rights in the form of employer's



pension contributions for the period between 7 June and 11 July 2022 inclusive, in the sum of £68.40;

(3) notice pay in the sum of £1,197.28 net

(4) the sum of £66.50 gross in respect of unlawful deductions from wages;

3. For the purposes of the Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996, the prescribed element of any award is nil.

FURTHER REASONS

1. The Tribunal has already given oral reasons for the Judgment on liability and remedy given at the hearing on 26 May 2023 at which it also gave directions for further information to be provided by the parties for the purposes of calculating the amount of the compensatory award and the amount due as notice pay.
2. Both parties having had the opportunity to provide further information and having provided limited further information, the Tribunal has had to calculate the sums which remained to be assessed on the basis of the material before the Tribunal.
3. In relation to calculating net notice pay for 10 weeks, the information provided was too limited for the purposes of enabling the Tribunal to calculate the Claimant's net pay whilst employed by the Respondent through taking his net pay over a representative reference period. However, on the basis that he was contractually entitled to be paid for 12 hours per day Mondays to Thursdays over the period in issue, it would follow that there were 40 working days and his pay would have been $£9.50 \times 12 \times 40$ which would have been £4,560.00. His weekly gross pay would have been $12 \times £9.50 \times 4$ which is £456.00. If that is divided by 7 and multiplied by 365 his annual pay was £23,777.14.
4. Using an online tax calculator for annual gross earnings of £23,777 in 2022/23, the Claimant would have earned take home pay £20,054 (after deductions of £2,241 income tax and £1,482 in national insurance making a total of £3,723) which is approximately 84.34% of pay. This equates to £384.59 per week. The deductions amount to 15.66%. The Tribunal notes that this is fairly similar to the net weekly figure derived from the June payslip and, in the circumstances, the Tribunal was content to proceed on the basis that the Claimant's net weekly figure for the period from June 2022 was £384.59 which would be £3,845.90 for the 10-week notice period.
5. Credit has to be given for any state benefits or any net pay from his new employment received by the Claimant in this period. The Claimant's pay slips



for July and August from his new job do not provide a precise figure for pay up to 15 August so it has been necessary to apportion the pay earned in August of £2,290.84 (net of national insurance only as no tax was paid) between the periods up to the date and after that date so that the figure of £1,108.47 net was treated as having been earned up to 15 August. Pay earned in July net of national insurance (as the tax paid in July was refunded in August) was £1,540.15. This means that the sum to be deducted from the figure for notice pay is £2,648.62. Accordingly, £1,197.28 is payable as notice pay.

6. The element of the compensatory award which was still to be assessed was that in respect of employer's pension contributions for the period following dismissal until the Claimant obtained new employment, so the period from 7 June to 11 July 2022 inclusive. The burden of proof is on the Claimant to prove his loss. The Respondent has confirmed the percentage figure for employer's pension contributions to be 3%. The Claimant was directed to confirm if the percentage figure for employer's pension contributions is agreed or, if not, the basis for not agreeing it. No basis for not agreeing it was subsequently put forward, so the Tribunal has accepted the percentage figure of 3% for employer's pension contributions. On the basis of the Claimant working 4 days a week and there being 20 working days between 7 June and 11 July inclusive, the Claimant would have earned £2,280 of which 3% would be £68.40.
7. Having regard to the sums previously assessed as payable, the total amount which the Respondent is ordered to pay to the Claimant is £5,892.18.

Employment Judge Kenward

Dated 1 August 2023