



EMPLOYMENT TRIBUNALS

Claimant: Mr C Ali
Respondent: G4S Secure Solutions (UK) Limited
Heard on: 3 & 4 August 2023 by video
Before: Employment Judge Pritchard
Members: Mr W Dixon
Ms H Bharadia

Representation

Claimant: In person
Respondent: Mr J Searle, counsel

REMEDY JUDGMENT

It is the unanimous decision of the Tribunal that the Respondent is ordered to pay to the Claimant compensation for unfair dismissal as follows:

1 Basic award:	£ 3,228.00
2 Compensatory award:	
a. Prescribed element:	£ 13,004.84
b. Non-prescribed element:	£ 400.00
Grand total:	<u>£ 16,632.84</u>

The period of the prescribed element is from 12 February 2021 to 13 August 2021.

The excess of the grand total over the prescribed element: £3,628.00

REASONS

1. This remedy hearing followed a finding that the Claimant had been unfairly dismissed, reserved judgment with reasons having been sent to the parties on 16 March 2023.

2. The Claimant sought re-employment (re-instatement or re-engagement), alternatively compensation as set out in his schedule of loss. The Respondent submitted that remedy should be limited to monetary compensation.
3. The Tribunal heard evidence from the Claimant under oath and the Tribunal was provided with a number of documents, mostly contained in two bundles. At the conclusion of the hearing, the parties made oral submissions, Mr Searle amplifying his written submissions.
4. In his schedule of loss, the Claimant seeks loss of wages and 2% pension contributions from the date of dismissal to the date of this remedy hearing and beyond.
5. In his schedule of loss, the Claimant also sought compensation for unpaid wages and holiday pay. The Tribunal explained that compensation for those claims had been agreed and dealt with at the substantive hearing as set out in the liability judgment. They would not be considered further.
6. The Claimant's date of birth is 1 December 1976. He commenced employment with the Respondent on 12 February 2017. The Effective Date of Termination (EDT) of his employment was on 11 February 2021 by which time the Claimant was 45 years of age and had completed four years continuous employment. At the time of his dismissal, his wages were, as set out in paragraph 9 of the Tribunal's liability judgment: *"He worked 5 shifts of 12 hour duration each week and was paid at the hourly rate of £10.20"*. His weekly gross pay was therefore £612.00 at the EDT. Since his dismissal, the Claimant has been in receipt of Universal Credit.
7. In mid 2021, the Respondent's contract for the provision of security guards at the place where the Claimant worked in Great West Road ended. The employment of employees working there transferred (presumably under the Transfer of Undertakings Regulations 2006) to the new provider.
8. The Claimant told the Tribunal that the new provider increased the hourly rate for its security guards to £11.50 in January 2022.
9. As a result of being the victim to an assault in December 2018, the Claimant suffered from psychological symptoms including stress and depression. Because of the covid pandemic, in about March/April 2020 the Claimant was advised by his doctor's surgery that, as vulnerable person, he should avoid going to work. However, he continued to work. In June 2020 he was diagnosed as suffering from PTSD. As set out in paragraph 12 of the Tribunal's liability judgment, *"the Claimant had a number of sickness absences during 2020, some certificated, some but not all of those absences because of stress and depression"*.
10. Shortly before the EDT, but after the Claimant had been given notice of termination of his employment, he was certificated as unfit to work by his GP. This certificate, issued on 3 February 2021, shows that the Claimant was unfit for work and suffering from low mood, neck pain which is under investigation, stress and depression. This certificate shows a reason for the depression: *"depression due to work issues and dismissal"*.

11. Notwithstanding the termination of his employment, the Claimant continued to obtain certificates effective until 4 September 2023 showing that he remained continuously unfit for work. Those certificates refer to stress, anxiety, depression, back and neck pain. The subsequent certificates make no mention of work issues or dismissal.
12. The Claimant completed a course of CBT sessions by Ealing IAPT in about July 2021.
13. The Claimant underwent further treatment with Ealing IAPT. The Clinical Psychologist responsible for the Claimant's treatment wrote to the Claimant on 3 August 2022 and stated "*You explained that it was the loss of your work which triggered that depressed affect [sic] and we agreed that the depression was being maintained through inactivity and reduced opportunity for positive reinforcement*".
14. A letter from the Claimant's GP dated 15 April 2023 was shown to the Tribunal. The GP repeats a previous report of July 2022. It refers to the psychological problems from which the Claimant suffered following the assault in 2018, the treatment he had undergone, and the medication prescribed. The GP provided an update as at April 2023. The GP does not attribute the Claimant's psychological difficulties to his dismissal; the thrust of the GP's letter is that the assault of 2018 was the cause of the Claimant's psychological symptoms.
15. A letter dated 8 March 2023 from the CBT Therapist advises that the focus of the therapy sessions was "*to address the symptoms of anxiety associated with PTSD and social phobia following an assault in 2018*".
16. As recorded in the Tribunal's liability judgment at paragraph 41, "*Mr Dezeure informed the Claimant that if he regained his licence after the termination of his employment, then the Respondent would welcome his application to re-join the company*". Although the Claimant regained his licence in December 2021, he did not contact the Respondent with a view to re-joining the company. As set out in the medical certificates referred to above, the Claimant remained too unwell to work.
17. Having been referred to a number of documents by the Respondent, the Tribunal is satisfied that there are (and the likelihood is that there were during the period from EDT to today's date) a great number of vacancies for security guards, many of them to work within a 10 mile radius of the Claimant's home.
18. The Claimant has not applied for any employment with any employer since his dismissal, now some two and a half years ago. The Tribunal accepts, as stated in his schedule of loss and evidenced in the medical certificates, that his medical condition has prevented him from doing so.
19. Under section 113 of the Employment Rights Act 1996 that the Tribunal may make an order for reinstatement or re-engagement as the Tribunal may decide.
20. Section 116 provides, among other things:
 - (1) In exercising its discretion under section 113 the tribunal shall first consider whether to make an order for reinstatement and in so doing shall take into account—

- (a) whether the complainant wishes to be reinstated,
 - (b) whether it is practicable for the employer to comply with an order for reinstatement, and
 - (c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his reinstatement.
- (2) If the tribunal decides not to make an order for reinstatement it shall then consider whether to make an order for re-engagement and, if so, on what terms.
- (3) In so doing the tribunal shall take into account—
- (a) any wish expressed by the complainant as to the nature of the order to be made,
 - (b) whether it is practicable for the employer (or a successor or an associated employer) to comply with an order for re-engagement, and
 - (c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his re-engagement and (if so) on what terms.
- (4) Except in a case where the tribunal takes into account contributory fault under subsection (3)(c) it shall, if it orders re-engagement, do so on terms which are, so far as is reasonably practicable, as favourable as an order for reinstatement.
21. The Respondent no longer employs security guards at the place where the Claimant worked. Therefore, it simply would not be practicable for the Respondent to comply with an order for reinstatement. An order for reinstatement will not be made.
22. The Claimant has not specified the nature of any re-engagement order he wishes to be made. Although, following the liability judgment, the Respondent referred the Claimant to a number of vacancies within its organisation, the Claimant did not pursue them. He did complain to the Respondent that any job offer should be made on a reduced shift basis to accommodate his health issues but the notion that the Claimant could return to work at all is contrary to the view of his GP as evidenced by the certificates which stated, and which continue to state, that the Claimant is not fit for work at all.
23. The term “practicable” means not merely “possible” but “capable of being carried into effect with success”. In assessing practicability, the matter is to be judged as at the time the order is made. An employee's fitness for the role will be a factor to consider in determining practicability. In British Telecommunications plc v Thompson UKEAT/0883/95, (1997) Times, 28 January, the EAT expressed surprise that the tribunal had ordered re-engagement of an employee with a stress-related illness into a highly stressful role. The EAT stated that in that case the fact that the Tribunal was unable to specify a date for re-engagement betrayed the real reason why re-engagement was not practicable. Also see McGarry v British Railways Board EAT 63/91 in which re-engagement was said to have been manifestly impracticable where the claimant has suffered recurrent periods of sickness making him unfit for work and it was doubtful that he would be fit to return.

24. In light of the above, the Tribunal concludes that it would not be practicable for the Respondent to comply with an order for re-engagement. An order for re-engagement will not be made.
25. If no order is made for reinstatement or re-engagement, section 112(4) of the Employment Rights Act 1996 requires the Tribunal to turn its attention to the question of compensation.
26. Section 118 provides that where a Tribunal makes an award for unfair dismissal the award shall consist of a basic award and a compensatory award.
27. Section 119 provides that the amount of the basic award shall be calculated by:
- 27.1. Determining the period, ending with the effective date of termination, during which the employee has been continuously employed;
 - 27.2. Reckoning backwards from the end of that period the number of years employment falling within that period; and
 - 27.3. Allowing the appropriate amount for each of those years of employment
28. The appropriate amount means:
- 28.1. One and a half weeks' pay for a year of employment in which the employee was not below the age of forty-one, ...
29. For the purpose of calculating the basic award the amount of a week's pay shall not exceed the maximum amount prescribed. As at the EDT, the maximum amount on a week's pay for the purposes of calculating a basic award was £538.00.
30. The Tribunal calculates the Basic Award as follows:
- $$4 \times 1.5 \times \text{£}538.00 = \text{£}3,228.00$$
31. Section 123 provides that the amount of the compensatory award shall be such amount as the Tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the Claimant in consequence of the dismissal in so far as that loss is attributable to the action taken by the employer.
32. The compensatory award is limited to proven financial loss – economic loss – flowing from the unfair dismissal. Non-economic loss, such as injury to feelings, is precluded; Dunnachie v Kingston Upon Hull City Council [2004] ICR 1052 HL. It is the employee's duty to provide evidence of his loss; see, for example, Adda International Ltd v Curcio 1976 IRLR 425 EAT.
33. In determining immediate loss, i.e. from the EDT to the date of the remedy hearing, the Tribunal must adopt a "but for" approach: Seafield Holdings v Drewett 2006 ICR 1413.
34. In the Tribunal's view, but for the dismissal the Claimant would have remained employed by the Respondent until transferred to the new provider along with his colleagues, albeit perhaps taking some sickness absence.

35. The Tribunal must consider the extent to which the Claimant's losses are attributable to the dismissal. The Claimant himself told the Tribunal that the dismissal "triggered" his symptoms. In the Tribunal's view, the dismissal initially re-triggered the Claimant's psychological symptoms such that the dismissal can be said to be causative of his immediate post dismissal symptoms and hence inability to find work. This conclusion is supported by the first certificate which mentions the dismissal.
36. However, subsequent medical certificates do not state a cause. The letter of 8 March 2023 from the Claimant's therapist states that the focus of the CBT sessions, which ended after the Claimant's dismissal, was to address the symptoms associated with the assault in 2018.
37. The Tribunal finds that, on the balance of probabilities and doing the best it can on the evidence available, after six months the dismissal was no longer causative of the Claimant's ongoing psychological symptoms and, thus, his inability to work and mitigate his losses. By that time, it was the assault of 2018 which was causative.
38. The Tribunal will therefore award six months' loss of wages. This assumes that the Claimant would have remained working during that period and that any modest sickness absence would be covered by the two weeks' company sick pay referred to in his contract of employment.
- 38.1. Weekly gross wage = £612.00.
38.2. Annual gross salary 52 x £612.00 = £31,824.00.
38.3. Personal allowance £12,570.00.
38.4. £31,824.00 - £12,570.00 = £19,254.00 subject to income tax at 20%.
38.5. £19,254.00 x 20% = £3,850.80.
38.6. National insurance, say, £2,600.00.
38.7. Total deductions £6,450.80
38.8. £31,824.00 - £6,450.80 = £25,373.20 net annual salary.
38.9. 6 months loss of wages = £12,686.60.
39. The Claimant also claims 2% employer's pension contribution which will be awarded.
- 39.1. £31,824.00 x 2% = £636.48.
39.2. 6 months loss of pension contributions: £318.24
40. Total immediate loss = £12,686.60 + £318.24 = £13,004.84
41. If a Claimant is in receipt of certain benefits, including Universal Credit, compensation for immediate loss of earnings (i.e. from dismissal to date of hearing when the Tribunal decides on compensation), is subject to the provisions of the Employment Protection (Recoupment of Benefits) Regulations 1996. This element of the compensatory award is subject to recoupment.
42. It is commonplace for Tribunals also to award a nominal sum for loss of statutory rights, namely the loss of the right to claim unfair dismissal until employed by a new employer for the statutory qualifying period. The Tribunal awards £400.00.

43. The Tribunal makes no award for any further or future loss.

44. Notwithstanding the Respondent's submissions, the Tribunal is unable to conclude that the Claimant unreasonably failed to mitigate his losses. He has simply been too unwell to seek fresh employment.

Notes

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Employment Judge Pritchard
Date: 04 August 2023