



EMPLOYMENT TRIBUNALS

Claimant

Mr E Hrabal

Respondent

v
Great British Confectionary Group
Limited

Heard at: Cambridge

On: 4 and 5 May 2023

Before: Employment Judge Brown

Appearances

For the Claimant: Mr H Dhorajiwala, Counsel

For the Respondent: Did not attend.

RECONSIDERATION JUDGMENT

Upon the application of the Claimant, and on the Employment Judge's own initiative, the Judgment dated the 11 July 2023 is reconsidered and varied as follows: -

1. The Tribunal makes the following awards against the Respondent in favour of the Claimant in respect of his unfair dismissal and which totals **£15,242.92** and is made up as follows:
 - (a) A basic award of **£7616.00**; and
 - (b) A compensatory award of **£7,626.92**.
 - (c) The sum at (b) above includes a sum of **£500.00** for loss of statutory rights.
2. The Tribunal declares that the Claimant's complaints that the Respondent made unauthorised deductions from his wage's contrary to s.13 of the Employment Rights Act 1992 is well-founded and succeeds and orders the Respondent to pay the sum of **£276.92**. This is a gross sum and is subject to income tax and national insurance deductions by the Respondent.
3. The complaint under section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULCRA) is well founded and succeeds and;

- 3.1 The Respondent is ordered to pay a protective award to the Claimant who was dismissed as redundant;
- 3.2 The protected period began on the 14 January 2022 and was for a period of 90 days. The reference period for which the award should be made in relation to the Claimant for a period of 73 days is increased to 90 days;
- 3.3 The Respondent is ordered to pay to the Claimant gross pay of **£9,000.00**.
4. The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 do not apply to this Judgment.

REASONS

Applications for Reconsideration

5. Following the hearing on the 4 and 5 May 2023, when I gave oral Judgment in favour of the Claimant, and prior to the promulgation of the Judgment, I wrote to both parties and asked them for submissions on the issue of the award of an amount for loss of statutory rights, stating that I was reconsidering my own award of compensation, and I also asked them to confirm if the recoupment provisions applied to any award as I had omitted both of these matters from my oral Judgment.
6. The Claimant made representations, by way of their letter dated the 24 May 2023, that an award for loss of statutory rights should be in the sum of £500.00 and that the recoupment provisions did not apply.
7. The Claimant also asked me to reconsider my award of 73 days of loss of earnings for the protective award for the complaint under section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULCRA) and submitted the award should be for a period 90 days with no credit being given for any earnings received in that period and attached payslips showing no wages had been paid to the Claimant from the 16 January 2022 onwards. They also requested written reasons stating that they wished to apply for costs against the Respondent.
8. The Respondent, by way of a letter dated the 25 May 2023, stated that they could not comment on the issue of an award for loss of statutory rights due to being absent from the hearing, but also confirmed the recoupment provisions did not apply.
9. The Respondent stated the Claimant had received full payment for January 2022 by way of payment on the 24 January 2022. They also attached the Claimant's P45 stating there had been a break in the Claimant's employment and the P45 showed a leaving date of 06 March 2019. They also applied for written reasons.

10. By way of reply on the 1 June 2023 the Claimant reasserted that it was not correct that he was paid in full for January 2022 referring once again to the payslip for January 2022 where it clearly set out the payment was for wages earned from the 13 December 2021 to the 16 January 2022.
11. The Claimant disputed the miscellaneous payment of £150.00 was wages and pointed out that the Respondent had said in any event that it was for expenses.
12. The Claimant asserted that the holiday pay related to holiday taken in December 2021.
13. The Claimant stated that the assertion by the Respondent that 'there appeared to be a break in the Claimants contract of employment' by reference to the attached P45 should be ignored. It was asserted the Claimant had never seen this P45 before and must have been issued in error, and that whilst the Respondent had changed its name three times during the Claimants employment his continuity of employment remained at all times. It was stated the Tribunal had made its award based on a start date of the 3 December 2007 and the Respondent had never disputed the Claimants start date prior to the end of the hearing and that it was misconceived to do so now.
14. I concluded in my oral Judgment on the 5 May 2023 that the protected period started on the 14 January 2022. The Claimant then pointed out that in error it was stated in the written Judgment that it started on the 31 January 2022 and asked that it be amended to the 14 January 2022.

Reconsideration of my own volition on an award for loss of statutory rights

15. Having considered the Claimants application I award the sum of **£500.00** by way of my reconsideration of my Judgment wherein I omitted to make an award for the loss of statutory rights.
16. In making this award I had regard to the recent case of **Shittu v South London & Maudsley NHS Foundation Trust [2022] EAT 18** and **Wilson v William Grant and Sons Distillers Ltd ET/4102506/2020** where the amount awarded for this head of loss was £500.00.

Reconsideration upon application by the Claimant of the Protective Award

17. As set out above and in particular by way of a letter to the tribunal on the 24 of May 2023 the Claimant stated his wages for January 2022 were clearly set out in his wage slip. The process date of the attached wage slip was the 24 of January 2022. However, he said he did not receive wages beyond the 16 of January 2022. The Respondents disputed this saying he did receive pay for the whole of January 2022.
18. However the Claimants then stated in reply on the 1 June 2023 that as I had found that the date of dismissal was the 19 of January 2022 and as the Claimant had received no wages after that date then no credit should be given against

the protective award made of 90 days gross pay for any earnings from the Respondent as none were ever received for that in the period of 90 days.

19. I in fact found the Claimant was dismissed on the 24 January 2022 but this made no difference to this point being made by the Claimant as they were stating he received no pay after the 16 January 2022 and whether he was dismissed on the 19 or the 24 January 2022 made no difference to the point in issue. They pointed out the wage slip attached clearly stated that the pay related to 13 of December to the 16 of January 2022. The sum of £150.00 received after that date was for expenses and holiday pay for December 2021.
20. Further and in the alternative they said that no credit should be given at all as the award is punitive as per **Suzie Radin** and should be awarded on a just and equitable basis in all the circumstances having regard to the seriousness of the employers default under s. 189 of TULCRA and that the Claimant should receive the maximum of 90 days gross pay. They went on to say that it would be in the interests of justice to vary the judgement.
21. Having reviewed the evidence that no pay was received after the 16 January, and having regard to my Judgment where I stated that the protected period began on the 14 January 2022, and not the 31 January 2022 as stated in error in my original Judgment, this meant at most that the Claimant received only two days' pay in the protected period and which started on the 14 January 2022.
22. Upon reconsideration and taking into account that the compensation is punitive, and having regard to my findings that the conduct of the Respondent, in trying to evade its responsibilities under s.188 of TULCRA, was deliberate, upon reconsideration I find as the Claimant only received 2 days' pay in the protected period and not 17 days' pay, and overall taking into account the seriousness of the Respondents default I find there should be no credit given for those 2 days' pay received by the Claimant in the protected period and I award the sum of £9,000.00 as a protective award.

Employment Judge Brown

Date: ...10 August 2023.....

Sent to the parties on: .30 August 2023..

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For the Tribunal Office