



EMPLOYMENT TRIBUNALS

Claimant: Mr Satpal Singh
Respondent: Beauty Base Ltd
Heard at: East London Hearing Centre
On: 07 August 2023
Before: Employment Judge P Housego
Members: Miss M Daniels
Ms R Hewitt

Representation

Claimant: In person
Respondent: Ernestine Afriye

JUDGMENT

1. The Respondent is ordered to pay to the Claimant compensation of £18,081.01.
2. The Recoupment Regulations apply to this award.
3. The Respondent is ordered to pay to the Claimant £3,280 as a preparation time order.

REASONS

1. This remedy judgment follows the liability judgment from January 2023.
2. The Claimant was dismissed on 01 April 2020. This was at the start of the first lockdown. Very sensibly, the Respondent did not challenge the extent of the Claimant's attempts to get alternative employment given the effect of Covid-19 at the time.
3. Between September and December 2020, the Claimant obtained work at Argos 10 hours a week and did overtime as much as possible. He earned £3,128.29 doing so, net.

4. On 19 July 2021 the Claimant obtained full time work with EE, at a salary larger than he was earning at the Respondent. His loss stopped at that point. That is more than a year later, but the cap is on a year's salary, not for a calendar year. The Tribunal's calculation did not exceed that cap because the £3,128.29 reduced the loss sustained by the Claimant.

5. The calculation of the Tribunal's award is set out in the Schedule. It has been prepared using the employmentclaimstoolkit software.

6. The figure is shown in full, but the recoupment regulations apply, and the Respondent will have to pay some of that money to the state. This is something the Department of Work and Pensions will calculate. The Respondent must then pay the rest to the Claimant.

7. The preparation time order is not subject to the recoupment regulations and should be paid immediately.

8. By way of explanation, the whole period between dismissal on 01 April 2020 and start of new employment on 19 July 2021 is compensatable. From that is deducted the notice payment which was paid in lieu of notice, and the earnings at Argos. To it is added the 3% of salary that would have been paid in pension contributions. Ms Afriye did not dispute this head of loss.

9. Ms Afriye asked that there be no payment for loss of statutory industrial rights, because Mr Singh has now been employed by EE for over two years and now again has such rights. The Tribunal thought this an interesting argument but did not accept it. The figure is not one that is loss based. It would be odd if a claimant who got a job the day after dismissal could get that award 1 year and 364 days after dismissal but not the following day.

10. Mr Singh asked for an uplift for breach of the ACAS code. He did not specify in what way he said the Code had not been followed. This was to misunderstand the uplift provisions. The Respondent did follow the procedure in the Code. It did not do so fairly, which was why the Claimant won his case, but because it followed the Code's procedure no uplift can be made.

11. Mr Singh asked for a preparation time order for 300 hours at £41 an hour. He said that the Respondent had behaved unreasonably in its conduct of the proceedings in four ways:

- a. They unreasonably refused to accept video evidence in the format he delivered it to them, until the Tribunal required them to do so.
- b. The Respondent's witness statement were delivered late and only after the Tribunal made orders requiring the Respondent to do so.
- c. The witness statements were not signed or dated.
- d. The Respondent provided misleading evidence about the leaver's reports in their human resources records.

- e. The Tribunal had made findings about the witness statements in its judgment, and the way that evidence had been given was unreasonable conduct by the Respondent.

12. Mr Singh said that he had spent 300 hours preparing for the case, and that he should be awarded the £41 an hour for that time.

13. Ms Afriye said that it was not unusual for witness statements to be prepared for witnesses. She said that even if an order was made the matters complained of would not have resulted in costs of that order. She referred to Cooper v Weatherwise 1993 Cooper & Anor v Weatherwise (Roofing & Walling) Ltd [1992] UKEAT 562_92_0710 (7 October 1992) and said that the matters complained of did not result in an adjournment so that a preparation time order was not appropriate.

14. Ms Afriye said that witness statements when tendered do not have to be signed: they are often adopted by the witness at the hearing.

15. Rule 76 states:

“When a costs order or a preparation time order may or shall be made

- 76.- (1) A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that—
- (a) a party (or that party’s representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; or
 - (b) any claim or response had no reasonable prospect of success; or
 - (c) a hearing has been postponed or adjourned on the application of a party made less than 7 days before the date on which the relevant hearing begins.
- (2) A Tribunal may also make such an order where a party has been in breach of any order or practice direction or where a hearing has been postponed or adjourned on the application of a party.
- (3) Where in proceedings for unfair dismissal a final hearing is postponed or adjourned, the Tribunal shall order the respondent to pay the costs incurred as a result of the postponement or adjournment if –
- (a) the claimant has expressed a wish to be reinstated or re-engaged which has been communicated to the respondent not less than 7 days before the hearing; and
 - (b) the postponement or adjournment of that hearing has been caused by the respondent’s failure, without a special reason, to adduce reasonable evidence as to the availability of the job from which the claimant was dismissed or of comparable or suitable employment.
- (4) A Tribunal may make a costs order of the kind described in rule 75(1)(b) where a party has paid a Tribunal fee in respect of a claim, employer’s contract claim or application and that claim, counterclaim or application is decided in whole, or in part, in favour of that party.
- (5) A Tribunal may make a costs order of the kind described in rule 75(1)(c) on the application of a party or the witness in question, or on its own initiative, where a witness has attended or has been ordered to attend to give oral evidence at a hearing.”

16. Ms Afriye's opposition to an order because there was no adjournment is not sustainable because that was not the basis of the application. It was that the conduct of the case by the Respondent was abusive or otherwise was unreasonable.

17. The Tribunal's findings about the witness statements are set out in the liability judgment. It was plain that the witness statements had been written for the witnesses, not that they had been prepared for the witnesses after the witnesses had been interviewed about what they knew. This is wholly unreasonable conduct by the Respondent. The Claimant could see this from the documents he was sent: he knew the people whose witness statements they purported to be, and that was why he wanted signed and dated copies before the hearing. The Tribunal thinks it more likely than not that the first the witnesses saw of their witness statements was the day of the hearing, or soon before. Both said that they had written their own witness statements and had not seen the witness statements of others. Plainly this was false evidence as much of the two witness statements was identical and was phrased in a way that made it exceedingly unlikely that either of them had written their own witness statement.

18. The Tribunal did not need to consider the other reasons put forward by the Claimant given this egregious behaviour by the Respondent (which must have known of this) and its witnesses. A preparation time order is warranted.

19. The amount of a preparation time order is not limited to the amount of time a claimant has spent dealing with the unreasonableness that caused the order to be made. If a Respondent behaves in a way that warrants a preparation time order the Tribunal assesses all the time spent by the successful claimant in prosecuting the claim.

20. The Tribunal was impressed by the amount of work the Claimant had put into the preparation of his case. The judgment commented favourably on his presentation of the case. The Claimant will have spent many hours reviewing primary information like text messages, dealing with the Respondent and the Tribunal and in preparation for the hearing. The Tribunal is not critical of the Claimant for not providing a timesheet, but that does mean that the figure is an estimate. However, 300 hours at £41 an hour is £12,300. It is 7 ½ weeks work. This seems excessive.

21. Rule 78 states that:

“The amount of a preparation time order

- 79.(1) The Tribunal shall decide the number of hours in respect of which a preparation time order should be made, on the basis of –
- (a) information provided by the receiving party on time spent falling within rule 75(2) above; and
 - (b) the Tribunal's own assessment of what it considers to be a reasonable and proportionate amount of time to spend on such preparatory work, with reference to such matters as the complexity of the proceedings, the number of witnesses and documentation required.
- (2) The hourly rate is £33 and increases on 6 April each year by £1.
- (3) The amount of a preparation time order shall be the product of the number of hours assessed under paragraph (1) and the rate under paragraph (2).”

22. The Tribunal decided to specify a costs preparation order amount of £3,280, which is two whole weeks work at 40 hours a week, at the current rate of £41 an hour.

Schedule – calculation of award

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| IN THE EMPLOYMENT TRIBUNALS CASE NO: 3201895/2020 BETWEEN Satpal Singh v Beauty Base Ltd CLAIMANT'S AWARD | |
| | |
| 1. Details | |
| Date of birth of claimant | 10/07/2001 |
| Date started employment | 07/11/2017 |
| Effective Date of Termination | 01/04/2020 |
| Period of continuous service (years) | 2 |
| Age at Effective Date of Termination | 18 |
| Date new equivalent job started or expected to start | 19/07/2021 |
| Remedy hearing date | 07/08/2023 |
| Date by which employer should no longer be liable | 19/07/2021 |
| Statutory notice period (weeks) | 2 |
| Net weekly pay at EDT | 315.00 |
| Gross weekly pay at EDT | 360.00 |
| Gross annual pay at EDT | 18,720.00 |
| | |
| 2. Basic award | |
| Basic award Number of qualifying weeks (1) x Gross weekly pay (360.00) | 360.00 |
| Total basic award | 360.00 |
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| 3. Compensatory award (immediate loss) | |

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| Loss of net earnings Number of weeks (67.7) x Net weekly pay (315.00) | 21,325.50 |
| Plus loss of statutory rights | 500.00 |
| Less payment in lieu | -1,365.00 |
| Plus loss of pension | 748.80 |
| Pension loss | 748.80 |
| Loss of occupational pension | 748.80 |
| Less sums obtained, or should have been obtained, through mitigation | -3,128.29 |
| Earnings | 3,128.29 |
| Argos (01/09/2020 to 01/12/2020) | 3,128.29 |
| Total compensation (immediate loss) | 18,081.01 |
| 4. Adjustments to total compensatory award | |
| Compensatory award before adjustments | 18,081.01 |
| Total adjustments to the compensatory award | 0.00 |
| Compensatory award after adjustments | 18,081.01 |
| 5. Summary totals | |
| Basic award | 360.00 |
| Compensation award including statutory rights | 18,081.01 |
| Total | 18,441.01 |
| 6. Grossing up | |
| Tax free allowance (£30,000 - any redundancy pay) | 30,000.00 |
| Basic + additional awards | 360.00 |
| Balance of tax free allowance | 29,640.00 |
| Compensatory award + wrongful dismissal | 18,081.01 |
| Figure to be grossed up | 0.00 |

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| GROSSED UP TOTAL | 18,441.01 |
| AFTER COMPENSATION CAP OF £18,720.00 (GROSS ANNUAL PAY) | 18,441.01 |

Schedule – recoupment

Prescribed period

02/04/2020 to 07/08/2023

Total award £18,441.01

Prescribed element £16,832.21

Balance £1,608.80

Compensation cap not applied.

Employment Judge P Housego

07 August 2023