



EMPLOYMENT TRIBUNALS

Claimant: Mr C Wilkinson

1st Respondent: Areaworks Group Limited (in voluntary liquidation).

2nd Respondent: Mr L Ramsden

3rd Respondent: Mr P Lawrence

London Central: in person on 9-13 October 2023

Before: Employment Judge Nicolle

Non-legal members: Mr M Ferry and Ms L Jones

Representation:

Claimant: Ms A Dannreuther of counsel

1st Respondent: not represented

2nd Respondent: in person

3rd Respondent: not in attendance

Judgment

1. The claim for ordinary unfair dismissal under section 98 of the Employment Rights Act 1996 (the ERA) succeeds and is the sole liability of R1.
2. The claims against R1 for automatically unfair dismissal under S103 A and S104 of the ERA fail and are dismissed.
3. The claim for wrongful dismissal succeeds and is the sole liability of R1.
4. The claims for detriments on account of having made protected disclosures succeed in part, with the Tribunal finding that disclosure 4 in the Claimant's list of issues constituted a qualifying protected disclosure, and that detriments 5, 6, 7, 9 and 11 succeed and in respect of which the 1st and 3rd Respondents are jointly and severally liable.
5. The claims for direct discrimination under S13 of the Equality Act 2010 (the EQA), indirect discrimination under S19 of the EQA, harassment under S26 of the EQA and victimisation under S27 of the EQA fail and are dismissed.

6. The claims for the failure to pay a bonus, and other deductions from wages, under S23 of the ERA succeed and are a liability of R1 or alternatively constitute a breach of contract.
7. The Tribunal finds that the compensatory award for unfair dismissal should constitute full pay for the first 2 months, on the basis that had a fair procedure been followed the Claimant would have been employed for this time, and that in accordance with *Polkey* thereafter there was an 80% chance that the Claimant would have been fairly dismissed on the grounds of redundancy and therefore the compensatory award after 14 July 2021 is assessed at 20% of the amount claimed.
8. The Tribunal finds that the 1st Respondent made material breaches of the ACAS Code of Conduct and that the compensatory award for unfair dismissal should be increased by 25%.
9. The Tribunal finds that the 1st and 3rd Respondents made material breaches of the ACAS Code of Conduct and that compensation for detriments to which the Claimant was subject as a result of having made a protected disclosure should be increased by 25%.

Reasons

10. Oral reasons were given to the parties on 13 October 2023.

Remedy

11. The Claimant is awarded a basic award of £2448 based on 3 years' continuous employment above the age of 41 i.e. $1.5 \times 3 \times £544$ and which is the sole liability of R1.
12. The Claimant is awarded a compensatory award for ordinary unfair dismissal of £10,036.44 comprising the following elements:
 - a) £6860.58 in respect of his net basic pay for the first 2 months from 14 May 2021 until 13 July 2021, but avoiding any double recovery with the claim for breach of contract.
 - b) £293.52 in respect of his loss of employer pension contributions for the first 2 months from 14 May 2021 until 13 July 2021, but avoiding any double recovery with the claim for breach of contract.
 - c) £2425.44 for the adverse differential in basic salary for the period from 14 July 2021 until 12 July 2022 taking into account the 80%

reduction pursuant to Polkey, but avoiding any double recovery with the claim for breach of contract in the period until 13 July 2021.

- d) £117.15 for the adverse differential in employer pension contributions in the period from 14 July 2021 until 12 July 2022, taking into account the 80% reduction pursuant to Polkey, but avoiding any double recovery with the claim for breach of contract in the period until 13 July 2021.
 - e) £300 for the loss of statutory rights.
 - f) £39.75 for expenses incurred in the arrangement of a courier to return the Claimant's company laptop to the 1st Respondent.
13. With the exception of the expenses incurred in the arrangement of a courier the award is subject to a 25% uplift as a result of the breaches of the ACAS Code of Conduct thereby giving a total compensatory award of £12,495.86 and which is the sole liability of R1.
14. The Claimant is awarded the sum of £10,874.11 for wrongful dismissal which reflects his net loss of basic salary and employer pension contributions for his notice period of 13 weeks and which is the sole liability of R1.
15. For the avoidance of doubt £7339.08 of the compensatory award for unfair dismissal is applicable to the Claimant's 3 month notice period and the claim for wrongful dismissal.
16. The Claimant is awarded £5712.62 as an unauthorised deduction from wages, or alternatively as a breach of contract, comprising the failure to pay him a contractual bonus of £5000, and unpaid wages relating to work undertaken on 24, 25 and 31 March 2021, and which is the sole liability of R1.
17. The Claimant is awarded interest on the award for wrongful dismissal from 14 May 2021 until 19 October 2023, calculated at 8%, and interest is therefore £2585.09 and this sum is the sole liability of R1. Further, on the alternative basis that the failure to pay the Claimant his bonus and wages in the sum of £5712.62 is brought as a breach of contract claim he is awarded interest of £1086.81 and therefore total interest of £3671.90 and which is the sole liability of R1.
18. For the reasons given orally by the Tribunal the Claimant is awarded £15,000 for injury to feelings, and £5000 for aggravated damages, which sum is increased by 25% as a result of the failure by the 1st and 3rd Respondents to comply with the ACAS Code of Conduct giving a total of £25,000 and this sum is the joint and several liability of R1 and R3.

Order

19. For the avoidance of doubt as to the liabilities of R1 and R3, below there are Orders setting out the amount for which those Respondents are liable, whether solely, or jointly and severally.

20. R1 is liable for:

- a) the basic award of £2448;
- b) the compensatory award for ordinary unfair dismissal of £12,495.86 avoiding any double recovery with the period for which the wrongful dismissal award applies;
- c) the wrongful dismissal award of £10,874.11;
- d) the unauthorised deduction from wages/damages for breach of contract of £5712.62;
- e) interest on the wrongful dismissal award of £2585.09; and
- f) interest on the award for breach of contract in respect of the bonus and other wages of £1086.81.

21. Once account is taken of double recovery between the awards for unfair dismissal and wrongful dismissal the total amount for which R1 is liable is £25,412.41.

22. R1 and R3 are jointly and severally liable for:

- a) an award of £15,000 for injury to feelings as result of detriments suffered by the Claimant;
- b) £5000 for aggravated damages.

23. The Tribunal gave oral reasons for its awards for injury to feelings and aggravated damages.

24. This sum of £20,000 is then increased by 25% as a result of breaches by R1 and R3 of the ACAS Code of Conduct giving a total of £25,000 for which R1 and R3 are jointly and severally liable. For the avoidance of doubt the totality of this award relates to detriments suffered prior to the Claimant's dismissal and therefore is not subject to the deduction of income tax and therefore need not be grossed up.

Employment Judge Nicolle

19th October 2023

19 October 2023 and as corrected because of clerical mistakes and accidental slips pursuant to Rule 69 of The Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 on **24 October 2023**

Sent to the parties on:

24/10/2023

For the Tribunal:

Note

Written reasons will not be provided unless a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment Tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-Tribunal-decisions shortly after a copy has been sent to the Claimant(s) and Respondent(s) in a case.