



Case Number: 2200702/2023

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

and

Respondent

Mr K Fieldhouse

Fyfe Mcdade Ltd

CORRECTED JUDGMENT OF THE EMPLOYMENT TRIBUNAL

SITTING AT: London Central

ON: 27-29 September 2023

BEFORE: Employment Judge A M Snelson

MEMBERS: Ms O Stennett
Ms J Marshall

On hearing the Claimant in person and Mr P Maratos, consultant, on behalf of the Respondent, the Tribunal unanimously determines that:

- (1) By consent, the Claimant's complaint of unfair dismissal is well-founded in that the disciplinary procedure applied by the Respondent was unreasonable.
- (2) Pursuant to the Employment Rights Act 1996 ('ERA 1996'), s122(2), the Tribunal would reduce any basic award by 50% on account of the Claimant's conduct before the dismissal.
- (3) Pursuant to ERA 1996, s123(1) and the *Polkey* principle¹, the Tribunal would limit any compensatory award in respect of loss of earnings to the period of two weeks commencing on the date of dismissal.
- (4) Pursuant to ERA 1996, s123(6), the Tribunal would (further) reduce any compensatory award by 50% on account of the Claimant's conduct before the dismissal.
- (5) Pursuant to the Trade Union & Labour Relations (Consolidation) Act 1992, s207A(2)², the Tribunal would increase any compensatory award by 20%.
- (6) Pursuant to the Employment Act 2002, s38(3)³, the Tribunal would increase any compensatory award by two weeks' pay.⁴
- (7) The Claimant's complaint of wrongful dismissal is dismissed.
- (8) The Claimant's claim for equal pay based on 'like work' (Equality Act 2010

¹ *Polkey v AE Dayton Services Ltd* [1987] IRLR 50 HL

² Increase of awards on account of employer's failure to comply with a relevant Code of Practice

³ Increase of awards on account of employer's failure to provide a statement of terms & conditions

⁴ The statutory cap at £544 applies.

- (9) ('the 2010 Act')⁵ s65(1)(a) is dismissed.
 The Tribunal having given an oral judgment on the above matters, compensation is awarded for unfair dismissal in the following sums, agreed as figures.

A Basic Award

Two weeks' pay (cap £544) x 50%: £ 544.00

B Compensatory Award

Two weeks' net basic pay: £ 558.00

Commission lost: £1,584.00

£2,142.00

Add: 20% (para (5)): £ 428.40

Add: two weeks' pay (para (6)): £1,088.00

£1,516.40

£3,658.40

Less: 50% (para (4)): £1,829. 20

£1,829.20

Total (A + B): £2,373.20

- (10) The recoupment provisions do not apply.
- (11) The claim based on 'work of equal value' (the 2010 Act, s65(1)(c)), stayed at the start of the hearing, is struck out as having no reasonable prospect of success, the Tribunal having held in its oral judgment (in respect of the 'like work' claim) that the Respondent has established a good defence of material factor (the 2010 Act, s69) and has shown that the difference between the pay of the Claimant and his comparator was not connected in any way to the difference in sex between them.

EMPLOYMENT JUDGE – Snelson
 17/11/2023 - Corrected

Judgment sent to the parties on : 17/11/2023

⁵ The equal pay claims were formulated as complaints of sex discrimination but, by consent, treated as equal pay claims.