



EMPLOYMENT TRIBUNALS

London South Employment Tribunal

Claimant: Steven Hanson

Respondent: Stapletons (Tyre Services) Limited

JUDGMENT

1. This is the Tribunal's **judgment on remedy** following the previous finding that Mr Hanson's dismissal was unfair.
2. Neither party requested a hearing on remedy. The Tribunal did not consider it necessary to convene a hearing and has determined the issue based on the parties' written submissions, documents and schedules of loss.
3. The Respondent shall pay to the claimant the net amounts set out below:
 - a. Basic Award: **£1,096.32**
Loss of Earnings: **£121.30**
Notice Pay: **£3,790.62**
Compensatory Award: **£544**

Total Net Award: £5,552.24
 - b. Applying the relevant UK tax rates, the Tribunal estimates the total gross award owed by the Respondent is **£6,862.93**.
 - c. Therefore, the Tribunal orders that the Respondent, Stapleton Tyre Services Limited, pay the Claimant, Mr Steven Hanson, **the total net sum of £5,552.24** forthwith. The Respondent must gross up this award appropriately, when making payment, to ensure that the Claimant receives the net sum.

Background

4. The Tribunal previously found that Mr Hanson's dismissal by the Respondent for alleged gross misconduct was procedurally unfair under section 98(4) of the Employment Rights Act 1996. As a result, his dismissal was substantively unfair.
5. The Tribunal found that the dismissal process followed by the Respondent, including the investigation and disciplinary hearing, was fundamentally flawed and unfair. In particular, the investigating manager was not sufficiently independent, key evidence was not disclosed to Mr Hanson, and not all grounds of appeal were adequately addressed.
6. However, the Tribunal also concluded that had a fair procedure been followed, Mr Hanson would more likely than not still have been dismissed, but on grounds of misconduct rather than gross misconduct.

Claimant's submissions as to remedy

7. In written submissions on remedy, Mr Hanson argued that the lack of policy and training on password security from the Respondent contributed to the issues with his login being used by others. He had an excellent prior disciplinary record.
8. The allegations amounted to misconduct rather than gross misconduct under the Respondent's policy. At most, a fair process would have led to dismissal with notice rather than summary dismissal.
9. Mr Hanson intended to continue working for the Respondent long-term. He provided a revised schedule of loss claiming total losses of £13,190.05 up to the hearing date, plus notice pay of £3,975 and statutory redundancy of £3,426, totalling £20,591.05.

Respondent's submissions on remedy

10. The Respondent argued in its remedy submissions that no compensation was due to Mr Hanson.
11. On Polkey, the Respondent claimed there was a 100% chance Mr Hanson would still have been dismissed for the same misconduct if a fair process was followed.
12. It also argued for a 100% reduction for Mr Hanson's own contributory conduct.
13. The Respondent stated that in light of these deductions, it would not be just and equitable for Mr Hanson to receive any compensation.

Law on remedy

14. Remedy is governed by the Employment Rights Act 1996 ("ERA 1996") and relevant case law. The basic principles of the law were set out in the submissions made by the Respondent and I do not repeat them here.
15. Section 122(2) ERA 1996 allows the Tribunal to reduce the basic award if it is just and equitable due to the conduct of the claimant before dismissal.
16. Section 123(6) ERA 1996 states that the compensatory award can be reduced to the extent that the dismissal was caused or contributed to by the claimant's own actions.
17. The case of Polkey v AE Dayton Services Ltd [1988] AC 344 established that compensation may be reduced to reflect the chance that the claimant would still have been dismissed even if a fair procedure was followed. The Tribunal must assess the likelihood of dismissal occurring in any event.
18. These reductions require the Tribunal to focus solely on the chance of dismissal and the claimant's own conduct, not on the fairness or unfairness of the actual dismissal.

The Tribunal's findings on remedy

19. I have carefully considered all the material submitted by the parties – both in submissions on remedy and in what was provided for the original liability hearing.
20. I find that Mr Hanson must take responsibility for his own role in the events leading to his dismissal. Irrespective of any training provided by the Respondent, Mr Hanson could and should have ensured that access to his work computer and login details were secure and known only to him. In current times, password security is ingrained in all of us due to the many technologies and logins used daily.
21. It is frankly ridiculous for Mr Hanson to suggest he was unaware of the need to maintain password confidentiality. His failure to guard access is analogous to allowing others routine access to a personal bank account, simply because the bank itself has not provided guidance on password security.

22. Mr Hanson, as an adult user of various technologies, ought to have kept his passwords confidential. His failure to do so contributed to the incidents culminating in dismissal. While the Respondent had failings in its procedures, Mr Hanson also bears responsibility for not ensuring against the password misuse that formed part of the allegations against him.
23. In addition, Mr. Hanson should have taken steps to ensure he was deleting orders appropriately and in line with company policies. As an experienced adult employee, Mr. Hanson had a responsibility to either verify he was following the proper process for order deletions, or to make efforts to ascertain the correct procedures if he was unsure.
24. At the very minimum, an employee in Mr. Hanson's position should have reasonable doubt about deleting orders without taking such steps. Mr. Hanson's apparent willingness to delete orders without checking the appropriateness of doing so demonstrates a lack of diligence.
25. While the Respondent's policies and training may have been flawed, Mr. Hanson also failed to act prudently when taking an action like mass deletion of customer orders. As a manager, he ought to have verified processes were being followed correctly, rather than proceeding in the absence of such assurance.

26. I make the following awards:

Basic

- a. The Claimant's basic award is calculated based on his length of continuous service and weekly pay before dismissal (sections 119-122 of the Employment Rights Act 1996). Mr Hanson had 6 complete years of service. His average net weekly pay in the four months before dismissal was £631.77.
- b. The maximum week's pay for dismissals before 5 April 2023 is capped at £571 (section 227 of the Employment Rights Act 1996). Therefore, Mr Hanson's basic award before deductions is 6 weeks x £571 (capped week's pay) = £3,426 (net).
- c. I have reduced the basic award by 60% to reflect the chance Mr Hanson would still have been dismissed even if a fair procedure was followed, applying the principles in *Polkey v AE Dayton Services Ltd [1988] ICR 142*.
- d. I further reduce the award by 20% for Mr Hanson's contributory fault (section 122(2) of the Employment Rights Act 1996).
- e. Therefore, the basic award after all deductions is **£1,096.32** (net). The Respondent will need to gross up this amount when making payment.

Loss of Earnings

- a. The Claimant's loss of earnings award relates to his lost income for the period between dismissal and starting new employment. Mr Hanson's net weekly income was £631.77. He was unemployed for 3 days before starting his new job.
- b. Therefore, his loss of earnings before deductions is 3/5 of his weekly income = £379.06 (net).
- c. The Tribunal has reduced this award by 60% based on the chance Mr Hanson would still have been dismissed if a fair procedure was followed (Polkey principles).
- d. The award is further reduced by 20% for Mr Hanson's contributory conduct (section 123(6) of the Employment Rights Act 1996).
- e. After these deductions, the Tribunal awards **£121.30** (net) for Mr Hanson's loss of earnings. Again the Respondent will need to gross up the amount in payment.

Notice Pay

- a. Mr Hanson was entitled to 6 weeks' notice pay under his contract. His average net weekly income before dismissal was £631.77.
- b. Therefore, Mr Hanson's contractual notice pay is 6 weeks x £631.77 = £3,790.62 (net).
- c. As the Tribunal found Mr Hanson would likely have been dismissed with notice following a fair process, no deduction is made for Polkey.
- d. The Tribunal also found Mr Hanson's contributory conduct should not reduce his entitlement to notice pay.
- e. Therefore, the full notice pay of **£3,790.62** (net) is awarded. The Respondent will need to gross up this amount when making payment.

Compensatory Award

- f. The compensatory award covers Mr Hanson's financial losses caused by dismissal. This includes £500 for immediate losses such as statutory rights, plus £1,200 for future additional travel costs over 6 months. In total, Mr Hanson's compensatory award before deductions is £1,700 (net).
- g. The Tribunal has applied a 60% reduction to reflect Mr Hanson's chance of dismissal following a fair process under Polkey principles.
- h. A further 20% deduction is applied for Mr Hanson's contributory conduct (section 123(6) of the Employment Rights Act 1996).
- i. After these reductions, the Tribunal awards a compensatory amount of **£544** (net) for Mr Hanson's losses. The Respondent will need to gross up the payment.

Judge M Aspinall
13th November 2023