



EMPLOYMENT TRIBUNALS

Claimant

Mr A Cox

v

Respondent

Park Lane Windows Ltd

Heard at: Cambridge ET

On: 1st December 2023

Before: Employment Judge Conley
Mr C Davie
Mr S Holford

Appearances

For the Claimant: Mr Nadin, solicitor

For the Respondent: Mr Ramsbottom, representative

JUDGMENT

The respondent is ordered to pay compensation to the claimant as follows:

1. For wrongful dismissal, £8,640.00 gross - tax and NI to be deducted at source;
2. For unfair dismissal, £15,691.00, comprising £12,512.00 for the Basic Award and £3,179.00 for the Compensatory Award.

Payment to be made within 28 days of receipt of this Judgment

REASONS

1. We have now considered the respective positions and Schedules of Loss submitted on behalf of the claimant and respondent in this matter. There is now agreement between the parties in relation to the method of calculation of the basic awards and compensatory awards, save in relation to a period of 2.2 weeks when the claimant was unemployed after the expiry of his notice period.

2. We have concluded that the claimant, a man of 47 years of age who had effectively spent his entire career with a single employer, cannot be criticised for taking 14 weeks as opposed to 12 weeks in order to find suitable alternative employment, having submitted his resignation, particularly as the resignation came in the weeks before Christmas when

there is inevitably a slowdown in the recruitment of personnel to management positions. Whilst we note the respondent's submission that the recruitment process resumes in earnest in the new year, we also recognise that there will be a lead time before recruitment may take place, and that this was not necessarily delayed by the claimant. We also note that the bundle includes evidence of various positions that the claimant applied for having tendered his resignation. Accordingly, we are minded to award the sum requested by the claimant in his schedule of loss.

3. We must therefore concentrate that our minds upon the question of any uplift or deductions to the award on the grounds of (A) Breaches of the ACAS Code, (B) Polkey and (C) Contributory conduct.

A. Breaches of the ACAS code.

4. In the course of our Reasons and findings in respect of liability we made our views clear in relation to the conduct of the respondent's grievance procedure. We need not repeat the findings made here other than to remind ourselves that we identified very significant failures in the way in which the process was undertaken.

5. We recognise that 25% uplifts are generally reserved to cases where there has been a complete failure to conduct any sort of procedure, and we understand why, in the circumstances, the respondent submits (having made appropriate concessions as they do) that a 15% uplift might be considered more appropriate given that there was at least some attempt to comply with the code, all be it one, that was flawed.

6. However, we also note that where, as here, the respondent has initiated a process only for the Managing Director to completely undermine it by sending an email, the effect of which would have been to destroy any confidence that the claimant had in the process, the situation is almost as bad as if there had been no process at all. Our conclusion therefore, is that an uplift in the region of 20% is entirely appropriate.

B. Polkey

7. Although we note that in the case of this claim that there had been accumulation of issues relating to the claimant's performance and conduct, the fact remains that he was being urged by Mr Daly to stay in post and suffer no reduction in his pay and benefits as an alternative to resignation and/or the pursuit of the grievance procedure, For these reasons, we conclude that while some employers might have considered taking steps towards dismissal, this was not in the contemplation of the respondent and we conclude that the claimant would not have been dismissed by the respondent in the short to medium term. Accordingly we make no reduction for Polkey.

C. Contributory conduct.

8. As discussed with the advocates in the course of submissions, whilst we recognise that the investigation into the so-called 'Graveyard of Windows' raised a suspicion and perhaps a case to answer in relation to the negligence on the part of the claimant, we simply did not hear enough evidence on this issue for us to be able to make any findings of fact as to where blame lies, whether wholly or even partly at the door of the claimant.

9. We are aware that this issue is being litigated elsewhere, and we consider that the Employment Tribunal is not the correct arena for these sorts of findings to be made. We are therefore not minded to make any adjustment for that particular reason.

10. However, we are of the view that the decision of the claimant to seek to raise what were purported to be Public Interest Disclosures as part of the grievance process which could have had grave and far reaching consequences for the respondent (in particular the allegations of breaches of the FENSA code which could have been very damaging for the respondent's business) was an example of serious contributory conduct on his part.

11. Accordingly we have decided to make a reduction to the award. We consider that the fairest and most equitable way of disposing of this matter is, to conclude that the ACAS uplifts and the contributory conduct findings that we have made balance each other out.

12. At the conclusion of the hearing, the representatives of the parties were invited to agree the net and gross figures based upon the findings that the Tribunal made. I am obliged to Mr Nadin and Mr Ramsbottom for their work on this.

13. The agreed figures are as follows. The net award for wrongful dismissal will be £6,720.36, which equates to £8,640.00. For unfair dismissal, the Basic Award is £12,512.00 and the Compensatory Award is to be £3,179.95. The Tribunal orders the respondent to pay these sums to the claimant within 28 days of this Judgment.

Employment Judge Conley

Date: 22 December 2023

Sent to the parties on: 16 January 2024

For the Tribunal Office