



EMPLOYMENT TRIBUNALS

Claimant: Mr R Bedford-Smith

Respondent: SER (Staffing) Limited

Heard at: Manchester

On: 17 January 2024

Before: Employment Judge Slater
(sitting alone)

REPRESENTATION:

Claimant: In person

Respondent: Mr Fakunle, Senior Litigation Consultant

JUDGMENT having been sent to the parties on 23 January 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. This was a remedy hearing to determine the remedy for a complaint of unfair dismissal which I found to be well founded, in a judgment on liability sent to the parties on 28 October 2023.

2. I have realised, when providing these written reasons, that, at the remedy hearing, I incorrectly considered whether to award compensation for wrongful dismissal i.e. breach of contract. This was incorrect since, as I noted in paragraph 1 of the reasons to my judgment on liability, the claimant clarified that he was not making a separate complaint of breach of contract. He made only a complaint of constructive unfair dismissal. The claimant's schedule of loss and the respondent's counter schedule of loss, however, both referred to a claim for contractual notice pay, or compensation for wrongful dismissal. Since I did not, in my judgment on remedy, award any damages for breach of contract, I do not consider it necessary to reconsider the judgment on remedy on my own initiative. These written reasons set out the reasons for making the order to pay compensation for unfair dismissal.

3. The claimant's gross weekly pay was in excess of the statutory cap which, at the relevant time of the effective date of termination of 17 August 2021, was £544 per

week, so that is the figure to be used in calculating the basic award. The claimant had eight years' service and his age at the effective date of termination was 40. The parties were agreed, on the basis of that information, that the basic award payable to the claimant is 8 x £544 which is £4,352.

4. The parties also agreed that the claimant's net weekly pay with the respondent was £476.40 and that employer's pension contributions were 4% of gross salary, being £99.40 per month or a weekly equivalent of £22.94.

5. After the claimant's resignation, the claimant was hopeful of getting work with his friend of around ten years, Mike Constantino, who had set up his own business. The business, which when incorporated on 24 November 2021 became RMP Light and Power Limited, was in its early stages. Mr Constantino helped advise the claimant around the time of his resignation and with the Tribunal process in its early stages. He was named as the claimant's representative on the claim form.

6. I accept the claimant's evidence that he was not employed by RMP Light and Power Limited or by Mr Constantino until 1 March 2022, and he did not receive any pay from Mr Constantino or the company until 23 February 2022, that payment being an advance of wages for work done from 1 March 2022.

7. The claimant became a director of RMP Light and Power Limited on 13 December 2021 and ceased to be a director on 31 March 2023, although he continued in employment with that company until August 2023.

8. The respondent has relied heavily on a LinkedIn entry written by the claimant in which the claimant describes himself as the Northern Regional Director of RMP from August 2021 as proving that the claimant was either employed by or self-employed immediately after resigning from the respondent. I accept the claimant's oral evidence, which is consistent with all the documentary evidence other than the LinkedIn entries, that he was not employed or receiving self-employed income from RMP until the first payment on 23 February 2022.

9. I accept the claimant's explanation for the LinkedIn entries. This was to help him and Mr Constantino with credibility for the business of RMP and giving it access to all of the claimant's around 6,000 LinkedIn contacts and to avoid gaps in the claimant's LinkedIn employment history.

10. The respondent made unsupported allegations on behalf of the respondent that the claimant had income that was not shown on the bank account for which statements had been disclosed. I find that all the claimant's income was shown on the statements. This is supported by HMRC records.

11. The first receipt of income after the claimant's resignation was 23 February 2022. The statements showed loan payments by the claimant to Mr Constantino and subsequent repayment of this loan with an additional amount of around £3,000. I accept the claimant's evidence that the additional payment was in gratitude for the claimant's assistance in keeping Mr Constantino's business going by making the loan, and for the claimant to be able to take his family to Disney World on holiday. The claimant's bank statement shows a payment which indicates that he took this holiday.

12. I find that the claimant was consistently looking for work from his resignation until he started with RMP on 1 March 2022. Although he hoped to work with Mr Constantino, there were no guarantees that this would happen, so he continued his job search until he started with RMP.

13. The respondent provides no evidence to suggest that the claimant has not taken reasonable steps to mitigate his loss. The fact that the claimant received Jobseeker's Allowance supports my finding that the claimant was carrying out a job search throughout the period until he began with RMP. Jobseeker's Allowance is not paid unless the recipient satisfies the job centre that they are making substantial efforts to find other employment.

14. I do not consider that the claimant's directorship with RMP from December 2021 proves that he was receiving any income from RMP at that time or that he was not hunting for other work or was not available for other work. I accept that the claimant attended occasional meetings with Mr Constantino, but this activity did not impede his job search and was not remunerated.

15. I reject the suggestion made by the respondent in cross examination of the claimant that the email from Mr Constantino to the claimant of 11 October 2021 was not genuine in its content. However I have no need to rely on it to reach my relevant findings of fact.

16. Once the claimant started work with RMP his income was comparable to that with the respondent and the claimant claims no loss during his employment with RMP.

17. The claimant in his Schedule of Loss claimed loss of earnings for the period after he ceased working for RMP and before finding new employment. The reason for leaving RMP does not (on the claimant's evidence) have anything to do with his constructive dismissal from the respondent. I do not consider, therefore, that there is any basis to award the claimant compensation for any loss of earnings after he started working for RMP on 1 March 2022.

18. I conclude that the claimant should be compensated in full for loss of earnings and employer's pension contributions for the period 18 August 2021 until 28 February 2022 inclusive, a period of 28 weeks – the period of his unemployment.

19. The respondent did not, in cross examination of the claimant, challenge the claim for job hunting expenses of £90, so I conclude that these should be included in the compensatory award.

20. The claimant sought £500 for loss of statutory rights and I award the amount sought, although I note the respondent in fact suggested a higher figure in its counter Schedule of Loss.

21. I take no account of Jobseeker's Allowance received when calculating the compensatory award since the Recoupment Regulations apply and Jobseeker's Allowance paid to the claimant will be repaid to the state by this mechanism.

22. I make no Polkey or contributory fault deductions from compensation. Although Mr Fakunle suggested I should consider these, he gave no reasoned basis as to why

such deductions could be applicable. I consider that any such deduction would be inconsistent with the reasons I gave for my decision on liability.

23. The calculation of compensation for unfair dismissal is as follows:

Basic Award: 8 x £544 giving a total of £4,352.00.

24. The compensatory award is calculated as follows:

Loss of earnings – 28 x £476.40	£13,339.20
Employer's Pension Contributions – 28 x £22.94	£642.32
Job hunting expenses	£90.00
Loss of statutory rights	£500.00

25. Adding those constituent parts together, the total compensatory award is £14,571.50. Adding this to the basic award, the total compensation for unfair dismissal is £18,923.52.

Employment Judge Slater
Date: 24 January 2024

JUDGMENT AND REASONS SENT TO THE PARTIES ON
29 January 2024

FOR THE TRIBUNAL OFFICE

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.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>