



EMPLOYMENT TRIBUNALS

Claimant: Mr T Myles

Respondent: Leadec Limited

Heard at: Liverpool

On: 14 December 2023
10 January 2024
(in chambers)

Before: Employment Judge Ainscough
Mr A Egerton
Mr R Cunningham

REPRESENTATION:

Claimant: Ms Kponou - Solicitor
Respondent: Mr Dennis - Counsel

JUDGMENT

1. The claimant's application dated 3 April 2023 for reconsideration of paragraph 102 of the remedy judgment is withdrawn.
2. The claimant's application dated 3 April 2023 for reconsideration of the calculation of actual pension loss and future pension loss is refused.
3. The respondent's application dated 4 April 2023 and 22 June 2023 for reconsideration of the calculation of future wage loss is successful.
4. The claimant's application dated 24 October 2023 for reconsideration of the calculation of future wage loss is refused.

REASONS

Calculation of pension loss 21 December 2020 – 1 March 2024

1. At paragraph 102 the Tribunal determined:

“From 21 December 2020 to January 2024 the claimant should have been enrolled in the auto-enrolment scheme whilst performing the handyman role. Therefore, the claimant’s loss for this period will be the difference between those contributions paid into the auto enrolment scheme and the contributions that would have been made by the respondent.”

The claimant applied for reconsideration of this paragraph because he did not meet the earnings threshold for auto-enrolment into a pension scheme during this period.

2. However, when performing the calculation of pension loss for this period, the Tribunal determined that the claimant’s earnings had not met the threshold for auto-enrolment into a pension scheme. The claimant conceded this finding and withdrew his application for reconsideration on this point.
3. The Tribunal, of its own initiative notes that paragraphs 102 and 103 of the remedy judgment incorrectly refer to January 2024 and should in fact state March 2024 in both instances. The amended judgment will reflect this change.

Calculation of actual and future pension loss

4. In preparation for the final hearing the claimant submitted a Schedule of Loss. The calculation of the claimant’s pension loss was as follows:

“Following the Presidential guidance for long-term defined contributions pension loss:

£27092 net earnings + 3% of £35152 gross earnings = £28146.56 x multiplicand of 14.54”

5. The claimant applied a multiplicand to the periods of actual and future pension loss. During submissions the claimant urged the Tribunal to follow the Principles for Compensating Pension Loss.
6. The respondent’s counter schedule calculated the claimant’s actual and future pension loss with the contribution method. The contribution method provides for the addition of contributions that would have been made by the respondent had the claimant remained in employment and the deduction of any contributions received in new employment to reach the pension loss figure.
7. The Tribunal awarded £7256.03 for loss of pension. Paragraphs 101 – 106 of the remedy judgment set out the Tribunal’s conclusions on the rationale for the calculation.
8. At paragraph 104 the Tribunal determined that it would use the contribution method to calculate the claimant’s pension loss.
9. The claimant’s application for reconsideration on this point states that in so doing, the Tribunal has departed from the Principles for Compensating Pension Loss and has failed to explain the rationale for doing so.
10. The Tribunal did not depart from the Principles. The Simplicity Principle provides that the complex multiplicand approach should only be adopted if

unavoidable. The example given in such circumstances is a defined benefit scheme and a longer period of unemployment. The claimant was a member of a defined contribution scheme and the Tribunal determined that the claimant would be capable of obtaining full time employment on 1 March 2024.

11. Paragraphs 4.17 and 4.18 of the Principles set out the contribution method applied by the Tribunal. Paragraph 4.21 states:

“In cases where a claimant has incurred occupational pension loss following their unlawful dismissal from employment in which they are a member of a DC Scheme compensation will be assessed using the contributions method.”

12. Paragraph 4.24 states a Tribunal should take greater care when calculating a longer period of loss to ensure the compensation figure will reflect possible future pay rises. The example given is a scenario in which the Tribunal had knowledge of a future pay rise.
13. This Tribunal did not have any knowledge of a future pay rise had the claimant remained in the employment of the respondent. In fact, the respondent’s witness provided evidence that by the date of the remedy hearing the respondent had been restructured and those performing in the claimant’s previous role had suffered a reduction in weekly hours and rate of pay.
14. The Tribunal also determined at page 18 of the calculation that the calculation had not been adjusted for increases in pay had the claimant remained in employment with the respondent or for increases in the national minimum wage and therefore no credit had been accounted for in the calculation for accelerated receipt.
15. Paragraph 4.31 of the Principles provides an example of a scenario in which a claimant has suffered a career-long loss as a member of a defined contribution scheme. The scenario details a claimant who was in receipt of a 15% contribution in his old job but only in receipt of a 3% contribution in his new job. In light of the disparity between the rates of contribution, the Principles suggest the use of the complex multiplicand method.
16. The Tribunal has determined that the claimant would have been a member of an auto-enrolment defined contribution scheme to which the respondent would have made a 3% contribution had the claimant remained in employment with the respondent. The Tribunal has also determined that the claimant will be a member of an auto-enrolment defined contribution scheme to which a new employer will make a 3% contribution once he obtains a national minimum wage job.
17. There is no disparity between the contribution rates that justifies the use of the complex multiplicand method.
18. The claimant also applied for reconsideration of the calculation of the future pension loss figure for the period 1 March 2024 – 7 June 2033. In that calculation the Tribunal gave credit for contributions the claimant will receive

in new employment during that period. The claimant states that the Tribunal has erred because it has calculated that the claimant will receive contributions from the first day of his new employment. It is the claimant's position that he will not receive contributions until he reaches the earnings threshold of £6240 and the calculation should be adjusted to reflect this fact.

19. The Tribunal has determined that the claimant will earn in excess of £6240 per annum from 1 March 2024. The claimant will therefore, be in receipt of contributions from the outset of his new employment.

Future wage loss calculation

20. The Tribunal determined the figure for future wage loss prior to adjustments as £60,757.80. This sum was based on using the net weekly wage figure of £316 from 1 March 2024 – 7 June 2033. The respondent applied for a reconsideration of this calculation on the basis that the Tribunal had erred in using the figure of £316 for the net weekly wage instead of £361 as a result of a typographical error and had erred in deducting national insurance from the claimant's net weekly wage after the claimant had attained the age of 67.
21. By letter of 9 June 2023 the Tribunal accepted the typographical error and that the future loss figure should be recalculated.
22. Similarly, by letter of 16 October 2023 the Tribunal accepted that the claimant would not be liable for national insurance payments on reaching the age of 67 and the future loss figure should be recalculated as £31,067.
23. On 24 October 2023 the claimant applied for a reconsideration of the calculation of the future loss figure on the basis that the Tribunal had erred in deducting national insurance from the net weekly wage the claimant would have earned had he remained in employment with the respondent after attaining the age of 67.
24. The respondent's national insurance point was made in addition to an application to amend the application for reconsideration dated 22 June 2023. The application was granted by the Tribunal on 14 August 2023 on the basis that the amended grounds had been included in the respondent's appeal to the Employment Appeals Tribunal and it would be in accordance with the overriding objective to provide the Tribunal's conclusions on those grounds during the reconsideration process.
25. The Tribunal determined that given the timing and manner of the amendment to the application for reconsideration, it would be in the interests of justice to consider the respondent's national insurance point.
26. The Tribunal determined that it would not be in the interests of justice to consider the claimant's national insurance point as it had been made over six months after the time limit for applications for reconsideration and only in response to the Tribunal's determination that the future loss calculation should be recalculated.

27. In accepting the respondent's application for reconsideration of the future wage loss figure, the impact on the other figures in the remedy judgment are as follows:
- a) Summary – prior to adjustments: future wage loss = £35,680.80
 - b) ACAS uplift – future wage loss = £35,680.80 x 20% = £42,816.96
 - c) Grossing up – future wage loss = £42,816.96/0.8 = £53,521.20
 - d) Total award = £217,136.23
28. At the end of the hearing the claimant withdrew his application to vary the case management order made by the Tribunal on 14 August 2023 to refuse the claimant's application to amend the claim.
29. The other issues on which the parties made applications for reconsideration have been dealt with by way of correspondence from the Tribunal on 9 June 2023, 14 August 2023, 26 September 2023, 16 October 2023.

Employment Judge Ainscough
Date: 2 February 2024

JUDGMENT AND REASONS SENT TO THE PARTIES ON
12 February 2024

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