



Claimant: Mr G Davis

Respondent: Johnson's Leisure Limited

HELD AT: London South by CVP

ON: 14 December 2023

BEFORE: Employment Judge Fearon

REPRESENTATION:

Claimant: Mr Arnold, lay representative

Respondent: No attendance

JUDGMENT

1. The respondent's response is struck out under Employment Tribunal Rule 37(1)(c) because the respondent has not complied with the Tribunal Order made on 22 June 2023 and under Employment Tribunal Rule 37(1)(d) because the response and defence to the claim has not been actively pursued.
2. The claim for wrongful dismissal (non-payment of notice pay) is well founded and the Respondent is ordered to pay the claimant the gross sum of £475.
3. The Respondent has made an unlawful deduction from the claimant's wages in respect of his wages and is ordered to pay the claimant the gross sum of £285.
4. The claimant is awarded the sum of £20,887.30. inclusive of interest, as compensation for protected disclosure detriment.

REASONS

Introduction

1. The claimant was employed by the respondent as a project painter, from 20 June 2022 until 27 June 2022. Early conciliation started on 5 July 2022 and ended on 15 August 2022. The claim form was presented on 12 September 2022.
2. The claimant alleges that on his first day of work with the respondent he witnessed, and was subjected to, criminal behaviour by colleagues. He says he reported this to the respondent, making protected disclosures, and was subjected to detriments and dismissed because of this. He says he was not paid any wages or notice pay.
3. The respondent in the ET3 stated that it dismissed the claimant for reasons unrelated to the disclosures.

The Issues for the Tribunal to decide

4. At the outset I discussed with the claimant the issues in the case.
5. Firstly, the preliminary issue of the claimant's application to strike out the respondent's response to the claim.
6. The issues in the substantive claim were:

1.Unfair dismissal

1.1 Was the claimant dismissed?

1.2 Was the reason or principal reason for dismissal that the claimant made a protected disclosure? If so, the claimant will be regarded as unfairly dismissed.

2.Remedy for unfair dismissal

2.1 If there is a compensatory award, how much should it be? The Tribunal will decide:

2.1.1 What financial losses has the dismissal caused the claimant?

2.1.2 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?

2.1.3 If not, for what period of loss should the claimant be compensated?

2.1.4 Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?

2.1.5 If so, should the claimant's compensation be reduced? By how much?

2.1.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

2.1.7 Did the respondent or the claimant unreasonably fail to comply with it by failing to investigate the claimant's grievance?

2.1.8 If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?

2.1.9 If the claimant was unfairly dismissed, did he cause or contribute to dismissal by blameworthy conduct?

2.1.10 If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?
2.1.11 Does the statutory cap of fifty-two weeks' pay or £93,878 apply?

2.2 What basic award is payable to the claimant, if any?

2.3 Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?

3. Wrongful dismissal / Notice pay

3.1 What was the claimant's notice period?

3.2 Was the claimant paid for that notice period?

4. Protected disclosure

4.1 Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:

4.1.1 The claimant says he made disclosures on these occasions:

4.1.1.1 On 23 June 2022 the claimant says he sent an email to admin (acknowledged by Mr Richard Smith) in which he disclosed

4.1.1.1.1 That TL had bought and used cocaine;

4.1.1.1.2 That TL had taken money from him to buy cocaine;

4.1.1.1.3 That company expenses money had been stolen from him;

4.1.1.1.4 That he had been assaulted by colleagues and criminally bullied by TL.

4.1.2 Did he disclose information?

4.1.3 Did he believe the disclosure of information was made in the public interest?

4.1.4 Was that belief reasonable?

4.1.5 Did he believe it tended to show that:

4.1.5.1 a criminal offence had been, was being or was likely to be committed;

4.1.5.2 a person had failed, was failing or was likely to fail to comply with any legal obligation (failure to maintain safe working environment in the course of employment);

4.1.5.3 the health or safety of any individual had been, was being or was likely to be endangered;

4.1.6 Was that belief reasonable?

4.2 If the claimant made a qualifying disclosure, it was a protected disclosure because it was made to the claimant's employer.

5. Detriment (Employment Rights Act 1996 section 48)

5.1 Did the respondent do the following things:

5.1.1 Not pay the claimant notice pay?

5.1.2 Dismiss him?

5.2 By doing so, did it subject the claimant to detriment?

5.3 If so, was it done on the ground that he made a protected disclosure?

6. Remedy for Protected Disclosure Detriment

- 6.1 What financial losses has the detrimental treatment caused the claimant?
- 6.2 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
- 6.3 If not, for what period of loss should the claimant be compensated?
- 6.4 What injury to feelings has the detrimental treatment caused the claimant and how much compensation should be awarded for that?
- 6.5 Has the detrimental treatment caused the claimant personal injury and how much compensation should be awarded for that?
- 6.6 Is it just and equitable to award the claimant other compensation?
- 6.7 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
- 6.8 Did the respondent or the claimant unreasonably fail to comply with it?
- 6.9 If so, is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?
- 6.10 Did the claimant cause or contribute to the detrimental treatment by their own actions and if so, would it be just and equitable to reduce the claimant's compensation? By what proportion?
- 6.11 Was the protected disclosure made in good faith?
- 6.12 If not, is it just and equitable to reduce the claimant's compensation? By what proportion, up to 25%?

7. Unauthorised deductions

- 7.1 Did the respondent make unauthorised deductions from the claimant's wages and if so, how much was deducted?

Procedure/attendance

7. The respondent did not participate in the hearing. The Tribunal checked and was satisfied that the respondent had been sent written notification of the hearing to the email address provided in the respondent's ET3 response form. The clerk also contacted the respondent by telephone on the morning of the hearing; the respondent advised the clerk that Mr Richard Smith was in a meeting all morning and therefore would not be attending the hearing. The Claimant was prepared for the hearing and was in attendance. He was ready to deal with the substantive claim and with his application to strike out the response.

Strike out application

8. On 21 September 2021, the claimant made an application to strike out the respondent's response to the claim further to Rule 37 of The Employment Tribunals Rules of Procedure 2013 on the following grounds:

8.1 Rule 37 (1) (b) that the manner in which the proceedings have been conducted by or on behalf of the respondent has been unreasonable. The

claimant submitted that the respondent did not attend the Preliminary Hearing of 22 June 2023 despite the Tribunal issuing proper notice of hearing to the respondent on 20 December 2022 and the claimant's representative putting the respondent on notice of that hearing by email dated 21 June 2023, enclosing a draft agenda and draft list of issues for the preliminary hearing. The claimant submitted the respondent has unreasonably failed to comply with Case Management Orders or respond to his representative's emails to progress the claim, including emails providing the Schedule of Loss and seeking clarification on the respondent's position on Judicial Mediation.

8.2 Rule 37 (1) (c) for non-compliance with any of the Tribunal Rules or with an order of the Tribunal. The claimant submitted that the respondent failed to comply with the Tribunal's case management orders and failed to deal with disclosure of documents despite several requests for the respondent to do so.

8.3 Rule 37 (1) (d) that the response has not been actively pursued. The claimant submits that all of the above, with no attendance at the preliminary hearing and the lack of responses to email requests from the claimant generally, indicated that the claimant's claim was not being actively defended by the respondent.

9. The Claimant therefore sought a Strike out order in relation to the respondent's defence and sought default judgment based on the Schedule of Loss provided to the respondent.
10. Rule 37(2) provides that a claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.
11. Rule 37(3) provides that where a response is struck out, the effect shall be as if no response had been presented, as set out in rule 21.
12. On 25 September 2023, the claimant's representative emailed the respondent at the email address provided in the respondent's ET3, setting out the grounds for the claimant's strike out application submitted to the Tribunal. The respondent did not reply to the claimant nor make any written submissions to the Tribunal regarding the claimant's application. On 30 November 2023, the claimant emailed the Tribunal to follow up about his application being dealt with, copying in the respondent. The respondent did not respond to this correspondence.
13. By correspondence dated 9 November 2023 a Strike Out Warning was sent to the respondent stating:

"On the application of the claimant and having considered any representations made by the parties,

Employment Judge Fowell is considering striking out [the response] because

•you have not complied with the Order of the Tribunal dated 27 June 2023 with regard to the exchange of documents, and/or

•it has not been actively pursued.

If you wish to object to this proposal, you should give your reasons in writing or request a hearing at which you can make them by 23 November 2023.”

14. The respondent did not make any written submissions to the Tribunal nor request a hearing by the stated date of 23 November 2023, nor indeed thereafter.
15. On 27 November 2023, the claimant emailed the Tribunal, copying in the respondent, asking about his application being dealt with.
16. In correspondence to the parties dated 11 December 2023, the Tribunal stated

“The respondent having failed to show cause why the claim should not be struck out by 23 November 2023, as ordered, the strike out matter will either be determined in its absence, or the respondent will only be entitled to take part in this hearing to the extent permitted by the Employment Judge who hears the case... Given that the respondent has not complied with the tribunal's orders or actively pursued the defence of these proceedings, the second day of hearing, 15 December 2023 has been vacated.”

17. Taking account of all the above, I am satisfied the respondent had sufficient notice of the claimant's strike out application, including from the claimant's correspondence, the specific Strike Out Warning from the Tribunal dated 9 November 2023 and the Tribunal's correspondence dated 11 December 2023.
18. The strike out warning set out two grounds. Dealing firstly with Rule 37 (1) (c) and specifically that the respondent had not complied with the Order of the Tribunal dated 27 June 2023 with regard to the exchange of documents. It is clear from the correspondence submitted by the claimant that the respondent failed to comply with the order for disclosure of documents. The Tribunal sent the case management order to the respondent. The claimant emailed the respondent on 27 July 2023 requesting documents, which was a further reminder to the respondent of the need to deal with disclosure by 10 August 2023. The respondent failed to provide disclosure by 10 August 2023 as ordered and indeed failed to provide any disclosure thereafter.
19. The second ground in the strike out warning was further to rule 37 (1) (d) that the response had not been actively pursued. The respondent filed its response in the ET3 form on 21 October 2022, setting out fully at section 2 the respondent's contact details and a preference to be contacted by email. After the ET3 was filed the respondent did not engage with the proceedings. The respondent did not attend the case management hearing on 22 June 2023, even though notice of the hearing had been sent to the respondent. The case management order made following that hearing clearly sets out that the respondent was contacted on the morning of the hearing and Mr Smith of the respondent confirmed he would not be in attendance. He did not indicate anyone else from the respondent would attend instead of him, and the hearing in the circumstances, as the order sets out, proceeded in the respondent's absence. In the claimant's representative's email of 27 July 2023, the claimant requested documents, referred to the CMO, raised the possibility of Judicial Mediation again and confirmed the claimant's representative

would prepare the final hearing bundle. The respondent did not engage on any of those issues. The respondent did not engage with the claimant's strike out application, the Strike Out Warning or the follow up email from the Tribunal dated 11 December 2023. The respondent failed to attend the final hearing and had been given the opportunity to do so, with the Tribunal contacting the respondent on the morning of the final hearing. No explanation has been given by the respondent for this persistent lack of engagement.

20. I take account of the overriding objective in relation to rule 37 (1) (c) and find that the respondent's non-compliance with the Tribunal order was significant causing prejudice to the claimant in him not being able to fully prepare to deal with all issues in the claim in the circumstances of a lack of disclosure by the respondent.
21. The respondent has failed to engage in these proceedings and has not actively pursued its defence of the claim since submitting the ET3 on 21 October 2022, a period of nearly 14 months prior to the final hearing. From the respondent's response to the Tribunal when contacted, in confirming it would not attend the final hearing, the respondent has shown further unwillingness to actively pursue its defence to the claim.
22. In all the circumstances I consider that it is proportionate, further to the overriding objective and in the interests of justice to strike out the respondent's response to the claim for failing to comply with the Order of the Tribunal dated 27 June 2023 with regard to the exchange of documents and because the defence to the claim has not been actively pursued. I accordingly strike out the respondent's response.
23. I proceed to deal with the claim hearing oral evidence from the claimant.

Evidence

24. I considered the bundle of evidence provided by the claimant, the claimant's witness statement dated 13 December 2023 and the claimant's updated schedule of loss. I heard sworn evidence from the claimant.

Findings of Fact

25. On 14 June 2022 the respondent offered the claimant employment with them as a Projects Painter on a full-time basis commencing on 20 June 2022. This offer of employment was not for a fixed term contract or made conditional on the timescales of a specific project. The claimant accepted the offer of employment and started work for the respondent on 20 June 2022.
26. On 21 June 2022 the claimant was part of a team working on a project which required an overnight stay. The team comprised the claimant, a colleague named Dell, 2 other employees and the Team Leader Kevin ("TL"). TL borrowed £70 from the claimant and did not say what he needed the money for. A short time thereafter, TL bought some cocaine whilst in the respondent's work van. TL took cocaine whilst in the work van. The team went to a pub and on the way back to the hotel TL took more cocaine in the work van.

27. TL, on the journey back to the hotel, became verbally aggressive to the claimant. The team members went to one of the hotel rooms where TL took more cocaine. TL told the claimant he had to prove his worth as a “rookie” by having a fight with one of the other team members. During this time, TL was filming on his phone and a team member threw the claimant at the bed in the room and held the claimant around his neck until the claimant passed out. The claimant eventually managed to leave and got to his own hotel room, he then decided to try and drive home, arriving home at around 5:30am. The claimant took the work van to the respondent's depot at about 6:30am. On returning home he messaged his manger about the night's events and later spoke to him about it on the phone. After that the claimant went to bed, then later that day his partner took him to A&E where his injuries were checked and confirmed. The A&E report records the claimant was attacked by a colleague the night before and had been choked by the colleague until he passed out, that he was picked up and thrown on to the bed which snapped, causing him severe neck and back pain.
28. On 23 June 2022 the claimant emailed the respondent to make a formal complaint about the events of 21 June 2022. He told the respondent about the assault by team members, the team leader buying and using cocaine, using cash he borrowed from the claimant, the team leader taking the claimant's food allowance and generally bullying him. The claimant reported the incident to the police and provided the respondent with a copy of his email to the police.
29. The claimant reported all these matters to the respondent because he had witnessed and been subjected to criminal activity and was concerned for his own health and safety and the health and safety of co-workers. The claimant believed the disclosure of information was made in the public interest and his belief was reasonable.
30. The respondent did not reply to the claimant's email to address the issues raised, nor did the respondent invite the claimant to a meeting to discuss the issues raised. No investigation or grievance meeting was held and no disciplinary meeting was held.
31. On 27 June 2022, Mr Richard Smith of the respondent wrote to the claimant confirming that his employment with the respondent was terminated on that date, due to the Projects Team being disbanded with immediate effect. He confirmed the claimant was entitled to one week's notice but would not be required to work that notice and instead would be paid in lieu of notice. The letter enclosed a memo “To all Projects Staff” confirming an emergency board meeting had been held on 24 June 2022 at which the Board had decided to disband the Projects Department with immediate effect. The letter to the claimant said the catalyst for the meeting “was the events last week at Three-Legged Cross”, ie the events the claimant had reported about criminal activity including drugs and assault.
32. The respondent terminated the claimant's employment on 27 June 2022 without notice. The claimant was not paid the wages he was due nor his notice pay. The claimant was due £285 in wages for the period he was employed by the

respondent. The respondent confirmed the claimant's entitlement to notice pay in writing in their letter of 27 June 2022.

33. The claimant as well as being physically injured in the assault felt humiliated, he also felt scared and vulnerable about being involved in anymore project work away from home for the respondent.
34. The claimant was signed off work by his GP from 30 June 2022 to 28 July 2022 with lower back pain and anxiety. The lower back pain was exacerbated by the material incident on 21 June 2022. The claimant's pre-existing anxiety was exacerbated by the material incidents on 21 June 2022 and as a result of his complaints about the incident not having been dealt with by the respondent and by his dismissal from employment with the respondent after reporting the criminal activity and the injuries inflicted on him by work colleagues.
35. Thereafter, the claimant was signed off work with anxiety and lower back pain until 29 April 2023, as is clear from the fit notes in evidence. He was referred to the community mental health team because of his worsened anxiety and depression following the incident. He had several sessions of physiotherapy for the back pain. He was referred for counselling.
36. The claimant was advised by the GP not to return to work until he could manage his panic and anxiety attacks. In October 2023, the claimant tried to return to employment, feeling safe to do so as he was working with his father-in-law. He worked for a few weeks in this role but had to give up work when his father-in-law left the role, because due to his ongoing anxiety and panic attacks, he felt unable to continue without his father-in-law working with him.
37. Whilst off work the claimant was paid Universal Credit totalling £737.96.
38. On feeling able to better manage his anxiety and being certified fit to return to work after 29 April 2023, the claimant in the Spring of 2023, began to explore opportunities for returning to work.

Law

39. Section 94 of the Employment Rights Act 1996 confers on employees the right not to be unfairly dismissed. Enforcement of the right is by way of complaint to the Tribunal under section 111. The employee must show that he was dismissed by the respondent under section 95. Section 98 of the 1996 Act deals with the fairness of dismissals. Firstly, the employer must show that it had a potentially fair reason for the dismissal within section 98(2). Secondly, if the respondent shows that it had a potentially fair reason for the dismissal, the Tribunal must consider, without there being any burden of proof on either party, whether the respondent acted fairly or unfairly in dismissing for that reason.
40. S47B(1) ERA provides that a worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.
41. S43B ERA provides (1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following— (a)

that a criminal offence has been committed, is being committed or is likely to be committed, (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject, (c) that a miscarriage of justice has occurred, is occurring or is likely to occur, (d) that the health or safety of any individual has been, is being or is likely to be endangered, (e) that the environment has been, is being or is likely to be damaged, or (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

42. Further to the Employment Rights Act 1996 section 48 the claimant must prove (on the balance of probabilities) that he made a protected disclosure, that he suffered a detriment, and that the detriment was inflicted by the respondent. At that point, the burden of proof moves to the respondent to demonstrate the reason for its conduct.
43. An ex-employee is entitled to present a claim to the Employment Tribunal for breach of contract, provided that the sum claimed is outstanding on the termination of employment, further to article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 (“the Order”).
44. The right not to suffer an unauthorised deduction is contained in section 13(1) of the ERA: “An employer shall not make a deduction from wages of a worker employed by him unless— (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker’s contract, or (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.”
45. Section 23 ERA gives a worker the right to complain to an Employment Tribunal of an unauthorised deduction from wages.
46. Section 13(3) deems a deduction to have been made on any occasion on which the total amount of wages paid by an employer is less than the amount properly payable by him. That requires consideration of contractual, statutory and common law entitlements. Such a deduction is unlawful unless it is made with authority under section 13(1) or exempt under section 14.

Discussions and conclusions

Unfair dismissal

47. The claimant was dismissed by the respondent by letter dated 27 June 2022. The claimant was offered employment on 14 June 2022 and started his employment with the respondent on 20 June 2022. At no time was the claimant told the employment was for a fixed term, dependent on project work or at risk of being terminated early due to existing performance issues arising with the projects team. He reported to the respondent by phone on 22 June 2022 about the behaviours and criminal activity of his colleagues which had taken place on 21 June 2022, including TL buying and taking cocaine, TL taking the claimant’s food allowance money, TL being verbally aggressive to the claimant and the claimant’s colleague

physically assaulting him. The claimant reported this orally and then raised a formal written complaint with full details set out by email dated 23 June 2022. The respondent did not act upon the complaints made in any way, there was no response to the email, no investigation meeting, no grievance meeting and no disciplinary hearing.

48. I find that the claimant was dismissed because he made a protected disclosure and was therefore unfairly dismissed.

Protected Disclosure

49. The claimant on 23 June 2022 sent an email to the respondent in which he disclosed that his team leader, TL, had bought cocaine with money he asked the claimant to lend him and he then used cocaine in the presence of the team. He disclosed that company expense money had been taken from him and that he had been bullied by TL and physically assaulted by his colleagues. The claimant was concerned for his own safety and that of colleagues and believed these disclosures made to his employer were in the public interest and that the information he disclosed showed a criminal offence had been committed, that his health and safety had been put at risk, that the health and safety of his colleagues was at risk and that his team leader and colleagues had failed to maintain a safe working environment in the course of employment. He clearly believed in the circumstances that criminal activity had taken place, his own health and safety and that of his colleagues was endangered and likely to be endangered again. I find in all the circumstances his belief was reasonable. The qualifying disclosures were protected disclosures, having been made to the claimant's employer.

Detriment (Employment Rights Act 1996 section 48)

50. The respondent subjected the claimant to a detriment in dismissing the claimant and not paying him notice pay because he made a protected disclosure in the terms as set out above.

Unauthorised deductions

51. The Respondent has made an unlawful deduction from the claimant's wages in the gross sum of £285 in respect of wages due to him for the period of his employment.

Wrongful dismissal

52. It is clear from the respondent's letter dated 27 June 2022 that the claimant was entitled to one week's notice pay and the respondent agreed to pay that in lieu of the claimant working his notice period. The respondent failed to pay the claimant's notice pay.

53. The claim for wrongful dismissal (non-payment of notice pay) is well founded and the respondent must pay the claimant the gross sum of £475.

Remedy

54. The respondent offered the claimant a job with them on 14 June 2022 to start on 20 June 2022. The job offer was made and accepted without any limitation in respect of a fixed term or being linked to a specific project. The respondent did not indicate to the claimant his job was at risk for general departmental performance issues prior to the contents of their letter dated 24 June 2022. The meeting held on 24 June 2022 was immediately precipitated by the events the claimant had reported. I therefore find that the claimant's employment with the respondent would have continued and would not in any event have terminated in July 2022.
55. The claimant was subjected to very unpleasant behaviour by colleagues on the night of 21 June 2022 and was injured as a result of the behaviour of his colleagues. On the same date he witnessed the illegal activities of his colleagues. He took himself out of the situation as soon as he was able to and the following morning reported the incident and behaviours to the respondent. The claimant did not engage in illegal activities himself and did not escalate the conflict caused by his colleagues. I find there is no blameworthy conduct on the claimant's part.
56. The claimant reported events of the night of 21 June 2022 to the respondent both orally and in writing. The respondent failed to follow up the claimant's report and the grievance he raised: they did not respond to the claimant's email, nor hold a meeting with him, nor hold an investigation, grievance or disciplinary hearing. The respondent failed to follow the ACAS Code of Practice on Disciplinary and Grievance Procedures and therefore an uplift of 25% is applied to the compensatory award.
57. During a telephone conversation on 22 June 2022, the claimant's manager told the claimant that his job was still open to him but the claimant felt scared and vulnerable about further work away with the projects team. He reported the incident formally in writing on 23 June 2023 and at the time was in shock after the incident. He was dismissed on 27 June 2022. Despite being shaken and unsure if he could cope with the job in those early days after a very unpleasant ordeal, the claimant felt shocked, hurt and betrayed by the respondent dismissing him after him reporting the issue and the respondent not coming back to him to discuss it at all. The claimant suffered panic attacks and was worried how he would cope if another job. He accepts he had pre-existing issues with his mental health but from the evidence this incident clearly significantly exacerbated those issues. These factors are all taken in to consideration in relation to the award for injury to feelings.
58. The claimant was unemployed from the termination of his employment by the respondent on 27 June 2022 and was signed off sick by the GP until 29 April 2022, due to anxiety and back pain exacerbated by the material incident on 21 June 2022. The claimant tried to return to work in October 2022 and worked for a brief period with his father-in-law but was unable to continue due to his mental health difficulties. The claimant sought to return to work after the end of April 2023 from which time he was confirmed fit to return to work. The respondent has not proved that the claimant failed to mitigate his losses.

Calculation of award

Age at dismissal: 28

Commencement of employment: 20/6/2022

Gross weekly pay - £475

Net weekly pay: £400.36

Compensation for past loss of earnings:

39 weeks x £400.36 net pay = £15,614.04

(Less 1 week awarded for notice pay £400.36)

(Less Universal Credit payments received £737.96)

Compensation for past losses = £14,475.72

Add uplift of 25% for breaches of the ACAS Code of Practice in respect of grievance procedure = £3,618.93

Total Compensation for past losses = £18,094.65

Injury to Feelings

The sum of £2,000 is awarded for injury to feelings.

Add uplift of 25% for breaches of the ACAS Code of Practice in respect of grievance procedure = £500

Total compensation for injury to feelings = £2,500

Interest

The Tribunal awarded interest under regulation 2 the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 on compensation for injury to feelings as follows:

Interest at 8% from 27 June 2023 to 14 December 2023

535 days x 0.08 x 1/365 x £2500 = **£292.65**

Recoupment

The Employment Protection (Recoupment of Benefits) Regulations 1996, SI 1996 No 2349, apply. In accordance with those Regulations:

(a) the total monetary award made to the claimant (in this Judgment) is £21,647.30;

(b) the amount of the prescribed element is £18,832.61;

(c) the dates of the period to which the prescribed element is attributable are 27 June 2022 to 29 April 2023.

Employment Judge Fearon

Dated 13 February 2024

JUDGMENT AND WRITTEN REASONS SENT TO THE PARTIES ON
27 February 2024

FOR THE TRIBUNAL OFFICE

Notes

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/>