



## EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4104291/2023

Employment Judge A Jones

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**Mr D Lambert**

**Claimant**  
**Represented by:**  
**Mr T Lambert (father)**

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**Land & Utilities Ltd**

**First Respondent**  
**Represented by:**  
**Mr D Maguire, solicitor**

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### JUDGMENT

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The respondent's application for reconsideration of the judgment of 27 December 2023 is granted to the extent that the compensation awarded to the claimant is revised to the sum of £11,225.88.

### REASONS

#### Background

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1. The Tribunal issued a judgment dated 27 December 2023 on 3 January 2024. The respondent made an application for a reconsideration of that judgment by letter dated 15 January. The respondent expanded upon the basis of the application in a letter dated 25 January. The application was made on the basis that the respondent had discovered that subsequent employment of the claimant by another company had been terminated

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around 23 November. It was said that the claimant's evidence on this point had been misleading as he had said he was 'laid off'. It was said that this should have impacted upon the Tribunal's assessment of the credibility and reliability of the claimant's evidence in total and that the finding of unfair dismissal should be set aside. As an alternative position, it was said that the award of compensation should be revisited on the basis of the intervening act of the claimant's absence from work with the new employer (and subsequent dismissal).

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2. The claimant was asked to comment on the evidence which was provided by the respondent and written comments were received.

3. The Tribunal wrote to parties on 1 February asking them to confirm whether the application for reconsideration should be considered on the basis of written submissions or at a hearing. Parties were informed that should they be content to have the matter dealt with on the basis of written submissions, then any further submissions on which they wished to rely should be provided within 7 days.

4. No further correspondence was received from either party and therefore the Tribunal wrote to parties on 12 February indicating that the application would be considered on the written submissions which had already been provided.

### **Discussion and decision**

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5. In the first instance, the Tribunal did not accept that the new information would justify the setting aside of the decision that the claimant had been unfairly dismissed. The Tribunal noted that the claimant had said that he had been 'laid off' in relation to his previous employment. He was not cross examined on that point. The respondent's position appears to be that the claimant ought to have provided all payslips and any correspondence in relation to that employment. However, no order was made in that regard, and there was no objection made that the claimant had failed to provide information in relation his efforts to mitigate his losses.

6. In addition, the Tribunal takes into account that the claimant was not professionally represented and was represented by his father. The Tribunal is mindful that while the phrase 'laid off' has a specific meaning in an employment law context, it can have various meanings in normal parlance. The use of the terminology by the claimant was not explored further either by the respondent or the Tribunal. The Tribunal accepts that while it would have been helpful to have the full picture of the way in which the claimant's most recent employment had terminated at the time of the hearing, it does not impact on its overall assessment of the claimant's credibility and reliability in relation to his dismissal by the respondent.
7. However, the Tribunal is of the view that the information does have a bearing on the compensation which ought to have been awarded to the claimant. In particular, the Tribunal accepts the respondent's argument that the termination of the claimant's employment with Landscape Design Ltd (for reasons other than redundancy) was an intervening act which is relevant to consider in relation to the overall compensation to be awarded to the claimant.
8. In particular, the termination of the claimant's employment by Landscape Design Ltd, following a period of sick leave of the claimant should result in reassessment of the claimant's losses to the date of the hearing and impact upon the extent to which it would be just and equitable to award any future loss.
9. The Tribunal is of the view that the claimant's losses should be reassessed on the following basis. His net weekly earnings with the respondent were £439.56. Between 15 March and 23 November 2023 when the claimant was dismissed from his new employment, he would have had an income of 36 weeks at £439.56 which would be a net income of £15,824.16. The Tribunal assesses his income during that period as being £8149.72 (on the basis of the payslips provided and an estimated £439.56 weekly average wage with Landscape Designs Ltd). Therefore, to 23 November had losses of £7,674.44. The Tribunal is of the also of the view that given the intervening

event of his dismissal from Landscape Design Ltd, it would not be just and equitable to make an award in respect of future losses.

10. The total compensation payable to the claimant by the respondent is therefore as follows:

5	Basic award	£1142.00
	Compensatory award	£7674.44
	10% uplift	£767.44
	Loss of statutory rights	£500.00
	Failure to provide s.1 statement	<u>£1142.00</u>
10	Total payable	<b>£11,225.88</b>

A Jones

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**Employment Judge  
4 March 2024**

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**Date sent to parties**

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**Dated** 04/03/2024