



THE EMPLOYMENT TRIBUNAL

SITTING: at London South (by CVP)

BEFORE: Employment Judge Tueje

BETWEEN:

WAYNE MCCARTHY

Claimant

-and-

**LONDON GENERAL TRANSPORT SERVICES LIMITED
(T/A GO-AHEAD LONDON)**

Respondent

ON: 17th January 2024.

Appearances:

For the Claimant: Mr McCarthy in person

For the Respondent: Mr C Ludlow (Counsel)

JUDGMENT ON REMEDY

1. Following a hearing on liability on 3rd to 4th August 2023 and 30th November to 1st December 2023, the Tribunal determined Mr McCarthy's complaints of unfair dismissal and wrongful dismissal were well-founded.
2. The remedy hearing was listed at 10.00am on 17th January 2024, at around midday on the day of the hearing, Mr McCarthy requested permission to rely on an updated schedule of loss. That request was refused for the reasons stated at paragraphs 8 to 9 below.
3. Having regard to section 116 of the Employment Rights Act 1996 in exercising its discretion, the Tribunal makes no order under section 113 or 114 of the 1996 Act.
4. The Tribunal awards Mr McCarthy compensation of £4,150.60 calculated as follows.

5. The Tribunal having determined that Mr McCarthy was unfairly dismissed, makes a basic award of £2,601.00, representing four weeks gross pay, being the amount claimed in Mr McCarthy's schedule of loss.
6. Mr McCarthy's ET1 claim form included a complaint of wrongful dismissal, which complaint succeeded. Accordingly, the Tribunal awards compensation of £1,549.60, representing four weeks net pay.
7. The award at paragraph 5 above is made even though wrongful dismissal was not included in Mr McCarthy's schedule of loss. But as accepted by the Respondent, the award for wrongful dismissal flows from the Tribunal's finding in respect of that complaint.

Reasons for Refusing Permission to rely on an Amended Schedule of Loss

8. In my judgment, granting Mr McCarthy's request would be contrary to the overriding objective for the following reasons:
 - 8.1 The Respondent would have to deal with late evidence without sufficient opportunity to consider it, and without sufficient opportunity to adduce evidence in response. This would amount to an unfair advantage meaning the parties were not on an equal footing as regards dealing with the evidence being relied on at the hearing.
 - 8.2 Alternatively, there was a real risk that if Mr McCarthy was allowed to rely on an updated schedule of loss, the Respondent would require time to deal with the contents and/or adduce evidence, which would be likely to necessitate an adjournment. That would cause further delay to the final conclusion of the case which was first heard on 3rd August 2023.
 - 8.3 The Respondent had instructed counsel, its solicitor was also in attendance. Therefore, the Respondent would incur considerable cost as a result of any adjournment, which costs would be disproportionate to the amount currently in dispute.
 - 8.4 Mr McCarthy's request was a late request, made some hours after the hearing had begun. The delayed start was due to Mr McCarthy filing late documents that morning, and time had already been spent dealing with these, which would be compounded if another late document was introduced.
 - 8.5 Balanced against the above considerations, Mr McCarthy had not provided an adequate explanation as to why he had not submitted the updated schedule of loss when he sent in other evidence (see paragraph 8.4 above) in the morning of 17th January 2024.
9. Accordingly, having regard to the overriding objective at rule 2 the Tribunal refuses Mr McCarthy's request to rely on an updated schedule of loss.

CASE NUMBER 2303556/2022

Employment Judge Tueje

Dated: 8th March 2024