



EMPLOYMENT TRIBUNALS

Claimant: Mark Sturgess

Respondent: Cambridge Country Club Ltd

Heard at: Watford by video **On:** 20 February 2024

Before: Employment Judge K Hunt

Representation

Claimant: Ms Webber - Counsel

Respondent: Ms Veimou

JUDGMENT on Remedy having been delivered orally 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

Introduction

1. The claimant's claims for wrongful dismissal, unfair dismissal and holiday pay having been successful, a hearing to deal with remedy was listed on 20 February 2024. In its reserved judgment on liability, the tribunal also determined that a 20% increase to the compensatory award for unfair dismissal should be applied, due to the Respondent's failure to comply with the ACAS Code and further that a 40 % reduction should be applied to the basic and compensatory award for unfair dismissal, due to the claimant's contributory conduct.

Procedure

2. I had a small bundle of documents and was provided with an updated schedule of loss by Ms Webber on behalf of the claimant and an updated counter schedule of loss by Ms Veimou on behalf of the respondent. It was agreed by both parties that they relied on the bank statements in the Bundle as evidence of the claimant's earnings in his employment with the respondent and on pay slips in the bundle with respect to his earnings in subsequent employment in mitigation of his losses.
3. At the outset of the hearing the heads of damage were discussed and identified as: i) damages for wrongful dismissal claiming 12 weeks'

statutory notice pay, ii) a basic and compensatory award for unfair dismissal subject to a 20% uplift to the compensatory award for failure to comply with the ACAS code and subject to a 40% reduction to both the basic and compensatory award for contributory conduct and iii) holiday pay agreed as 20 days.

4. It was agreed that there was no dispute on mitigation and no need for witness evidence and the claimant was not called to give evidence. At the outset of the hearing, I also discussed the availability of the remedies of reinstatement and re-engagement and the claimant confirmed that he was seeking neither remedy and compensation only.
5. Taking account of the claimant's schedule and the respondent's counter schedule, the 4 key points in issue between the parties, were identified and agreed as follows:
 - a) a difference in the calculation of a week's net pay – claimant's schedule at £652.99 and respondent at £632.39
 - b) a difference in the method of calculation of the claimant's losses for unfair dismissal and the order of applying adjustments and the statutory cap
 - c) a difference in dealing with the issue of any doubling up of damages for wrongful dismissal and unfair dismissal
 - d) claimant additionally claiming as part of the compensatory award for unfair dismissal, an additional sum for loss of long notice
6. I heard submissions from Ms Webber on behalf of the claimant and from Ms Veimou on behalf of the respondent.

Law

7. The provisions dealing with awards for unfair dismissal are dealt with at s.112 to s 126 of the Employment Rights act 1996 ("ERA 1996"). The award of compensation under sections 118 to 126 ERA 1996, consist of a basic award and compensatory award.
8. s.123 ERA 1996 provides that:

".....the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer."
9. s. 124 (1ZA) ERA 1996 sets out the limit of the compensatory award as the lesser of the relevant prescribed figure of £105,707 or '52 multiplied by a week's pay of the person concerned'.
10. s.124 (5) ERA 1996 further provides that:

"The limit imposed by this section applies to the amount which the employment tribunal would, apart from this section, award in respect of the subject matter of the complaint after taking into account -

 - (a)
 - (b) any reduction in the amount of the award required by any enactment or rule of law."

11. Digital Equipment Co Ltd v Clements [1997] EWCA Civ 2899; [1998] ICR 258 is authority for the importance of applying adjustments in the correct order.

Conclusions

12. The first issue between the parties was the difference in the figure used for a week's net pay. As the claimant had not been provided with itemised pay slips during his employment, both parties had taken the agreed gross figure for a week's pay from which they calculated a net figure. Both parties in their submissions agreed the figure used was approximate. Ms Webber explained that the claimant's schedule was based on applying a flat 20% reduction to the whole figure, without the benefit of applying the tax relief for any personal allowance, as a reasonable approach. Ms Veimou for the respondent explained that they had used an online salary calculator, she was unable to confirm how calculations had been made and also confirmed that it was an approximate calculation of take home pay and she believed would apply current tax rates and reliefs.
13. On balance, in circumstances where both figures were approximate, I accepted the claimant's figure for net pay as a reasonable approach and just and equitable in circumstances where neither party were able to provide exact figures, due to the lack of any itemised pay slips because the claimant was not on PAYE at the time.
14. The second area of disagreement was in the approach to the calculation of losses flowing from the unfair dismissal and the application of adjustments relating to the ACAS uplift and to contributory conduct and the application of the statutory cap. In her submissions Ms Webber argued that the claimant was entitled to claim all losses flowing from his dismissal up to the date of the hearing, noting that the claimant had significantly mitigated his losses and was not claiming any future loss. The claimant's schedule set out his loss of earnings and pension, ignoring the first 12 weeks after termination (for which period damages for wrongful dismissal were claimed) and then claiming 77 weeks from week 13 up to the date of the hearing, less income earned in mitigation; the adjustments were then applied in the following order – acas uplift of 20% to the compensatory award only, then a deduction of 40% applied to the basic and compensatory award for contributory conduct. The final figure being far less than the statutory cap, there was no need to apply the same.
15. The respondent's schedule, in this regard, calculated the claimant's net losses (earnings and pension) from the date of termination for 52 weeks' up to 7 June 2023. Ms Veimou confirmed in her submission that this calculation was by way of applying the statutory cap of 52 weeks' pay (or the prescribed figure whichever is the lower) in claims for unfair dismissal. The sums earned in mitigation were then deducted, and the acas uplift of 20% applied (originally to both the basic and compensatory award though I noted it did not apply to the former), then a deduction of 40% was applied to both the basic and compensatory award.
16. In considering the respective schedules, submissions and taking account of s.123 ERA 1996 regarding the claimant's entitlement to losses flowing from the dismissal, and s.124(5) regarding the application of the statutory cap

and the case of Digital Equipment (outlined above), setting out the correct approach to applying adjustments, I considered and accepted Ms Webber's submissions that the claimant is entitled to his losses to the date of the remedy hearing subject to appropriate adjustments as applied and conclude that the respondent's approach in capping the claimant's losses at 52 weeks from the date of dismissal and then applying adjustments is not just and equitable nor the correct approach based on the law and authorities.

17. On the issue of damages for wrongful dismissal, the respondent submits that there should be no additional award as compensation for the notice period of 12 weeks and in their submission, such compensation is included or covered as per their schedule in the 52 weeks' loss of earnings/compensatory award for unfair dismissal and to award further damages for notice pay would be a doubling up. Ms Webber submits that the claimant having succeeded in his claim for wrongful dismissal is entitled to seek damages and that there is no doubling up on the basis that damages for wrongful dismissal are claimed for the period of 12 weeks following termination and the losses flowing from the unfair dismissal are claimed from the 13th week up to the date of the remedy hearing. In considering the submissions and law and authorities, I considered that the claimant is entitled to an award of damages for wrongful dismissal and note that there is no doubling up having calculated a loss of 77 weeks starting after the 12 week notice period set out in the claimant's schedule of loss and as per the submissions above. I conclude the claimant is entitled to damages of 12 weeks' notice pay and no doubling up has occurred.
18. On the final issue, Ms Webber submits that given the claimant's length of service and long notice period, having been unfairly dismissed and taking account of the particular industry and the lack of such long term roles for professional golfers, as indicated by the role he first secured being a fixed term and now working on a self employed basis, it is unlikely that he will again secure such long term employment and length of service. I accept Ms Webber's submissions in this regard, and award the sum claimed.
19. There was no dispute on the holiday pay, aside a correction on Ms Webber's part to the Schedule, which had been based on a net figure and was recalculated at a gross figure to allow for deductions of tax and national insurance contributions. In conclusion, the sums awarded and calculations of the same for wrongful dismissal of **£9,794.76 gross** (subject to deductions), holiday pay of **£3,264.92 gross** (subject to deductions) and unfair dismissal of **£6,676.13** were determined and delivered orally at the hearing, and as set out in the judgment dated 20 February 2024.

Employment Judge K Hunt

Date: 20 March 2024

REASONS SENT TO THE PARTIES ON

3 April 2024

FOR THE TRIBUNAL OFFICE