



EMPLOYMENT TRIBUNALS

Claimant: Mr G Marsh

Respondent: Openreach Limited

Heard at: Manchester Employment Tribunal

On: 27 and 28 February 2024

Before: Employment Judge Cookson
Mr B Rowen
Mr A Gill

Representation

Claimant: Mr A Marshall (Counsel)

Respondent: Miss M Martin (Counsel)

The respondent has requested written reasons of this decision which will be provided in due course.

This judgment has been delayed because further information was ordered to be provided by the parties.

REMEDY JUDGMENT

The unanimous decision of the tribunal is:

1. It is ordered that the claimant be re-engaged pursuant to s.115 of the Employment Rights Act 1996 ('ERA').
2. Any compensation paid to the claimant is subject to a 10% deduction for contributory fault.
3. As determined at the hearing, the terms on which the claimant will be re-engaged are as follows:
 - a. The identity of the employer: Openreach Limited (s.115(2)(a) ERA).

- b. The nature of employment: an engineer allocated to hoist driver duties located at a depot in the North Manchester area.
 - c. Remuneration: at an annual gross figure of £31,612 (claimant's pay at time of dismissal) plus any uplifts, to take account any annual increases to pay and any other uplifts that would have been applied to the claimant had he not been unfairly dismissed (s.115(2)(c) ERA).
 - d. Amount payable to the claimant for the period between date of termination and date of re-engagement (s.115(2)(d) ERA):
 - i. The net sum from: gross pay of £93,093.49, (which reflects increases to pay during the affected period) minus 10% for contributory fault.
 - ii. The respondent will be responsible for grossing up the figure for the purpose of making any necessary deductions (tax, pension contributions etc).
 - e. The claimant be reinstated to the BT Retirement Saving Scheme ("BTRSS") as if he had not been dismissed. The respondent shall make whatever employer contributions are necessary to give effect to this order (s.115(2)(e) ERA).
 - f. The claimant be reinstated to yoursave share scheme as if he had not been dismissed. The respondent shall make whatever employer contributions are necessary to give effect to this order (s.115(2)(e) ERA).
 - g. The claimant to be instated to the directsave share scheme as if he had not been dismissed. The respondent shall make whatever employer contributions are necessary to give effect to this order (s.115(2)(e) ERA).
 - h. The claimant be reinstated to the BT Retirement Saving Scheme ("BTRSS") as if he had not been dismissed. The respondent shall make whatever employer contributions are necessary to give effect to this order (s.115(2)(e) ERA).
 - i. The claimant to be allowed the reasonable adjustment of the provision of the 4 x 4 vehicle which had previously been allocated to him as a reasonable adjustment and as recommended by Occupational Health.
 - j. This order must be complied with by 29 April 2024 (s.115(2)(f) ERA). Should the respondent comply with this order by an earlier date, then the figure at para 3(d)(ii) should be reduced accordingly.
4. The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 (as amended) apply to this award (see annex for further details). For the purposes of those Regulations:
- a. The monetary award is: £83,784.14
 - b. The prescribed element is: £78,355.94.
 - c. The prescribed period is: 27 July 2021 to 28 February 2024

d. The monetary award exceeds the prescribed element by : £5,428.20.

Employment Judge Cookson
10 April 2024

Judgment sent to the parties on:
17 April 2024

For the Tribunal:

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Note

Reasons for the judgment were given orally at the hearing. Written reasons will not be provided unless a party asked for them at the hearing or a party makes a written request within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions

Judgments (apart from judgments under rule 52) 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/>

ANNEX RECOUPMENT

Recoupment of Jobseeker's Allowance, income-related Employment and Support

Allowance, Universal Credit and Income Support

The Tribunal has awarded compensation to the Claimant but not all of it should be paid immediately. This is because the Department for Work and Pensions (DWP) has the right to recover (recoup) any Jobseeker's Allowance, income-related Employment and Support Allowance, Universal Credit or Income Support which it paid to the Claimant after dismissal. This will be done by way of a Recoupment Notice which will be sent to the Respondent usually within 21 days after the Tribunal's judgment is sent to the parties.

The Tribunal's judgment states the total monetary award made to the Claimant and an amount called the prescribed element. Only the prescribed element is affected by the Recoupment Notice and that part of the Tribunal's award should not be paid until the Recoupment Notice has been received.

The difference between the monetary award and the prescribed element is payable by the Respondent to the claimant immediately.

When the DWP sends the Recoupment Notice, the Respondent must pay the amount specified in the Notice by the Department. This amount can never be more than the prescribed element of any monetary award. If the amount is less than the prescribed element, the Respondent must pay the balance to the Claimant. If the Department informs the Respondent that it does not intend to issue a Recoupment Notice, the Respondent must immediately pay the whole of the prescribed element to the claimant.

The Claimant will receive a copy of the Recoupment Notice from the DWP. If the Claimant disputes the amount in the Recoupment Notice, the Claimant must inform the DWP in writing within 21 days. The Tribunal has no power to resolve such disputes, which must be resolved directly between the Claimant and the DWP.