



EMPLOYMENT TRIBUNALS

Claimant: Mr Karl Ramsden

Respondent: Ron Chalker ("The Potato Man") Limited (In Voluntary Liquidation)

HELD AT: Manchester

ON: 15 April 2024

BEFORE: Employment Judge Holmes
Ms A Ashworth
Ms P Owen

REPRESENTATION:

Claimant: Kevin Ramsden, Brother
Respondent: No appearance or representation

JUDGMENT

It is the judgment of the Tribunal that:

- 1.The respondent was unfairly dismissed.
2. The claimant is entitled to compensation, as follows:

A.Basic Award

The claimant was employed by the respondent for 31 years, and was aged 65 at the date of his dismissal. His gross weekly wage was £380, so his entitlement to a basic award is:

30 x £380 = **£11,400**

which sum the respondent is ordered to pay him.

B.Compensatory Award

The claimant was dismissed for redundancy , but unfairly. Had the respondent carried out a fair redundancy process, his employment would still have terminated, but some four weeks would have elapsed for that process to have been carried out.

The Tribunal accordingly awards 4 weeks pay as loss of earnings. As the claimant by this time was only in receipt of SSP at the weekly rate of £99.35 the awards is :

$$4 \times £99.35 = £397.40$$

The claimant has also sought the sum of £350 in respect of loss of statutory rights. The Tribunal also awards this sum. The total compensatory award is thus:

$$£397.40 + £350 = \qquad \qquad \qquad \mathbf{£747.40}$$

which sum the respondent is also ordered to pay the claimant.

3. The Recoupments provisions do not apply.

4. The claimant's other claims for a redundancy payment, and of disability discrimination, are dismissed upon withdrawal by him.

REASONS

1. By a claim form presented to the Tribunal on 15 November 2022 the claimant brings claims of unfair dismissal, for a redundancy payment, and of disability discrimination. The claims are set out in very general terms in the claim form, the claimant being unrepresented. The claimant attached to the claim form a copy of his letter , dated 27 September 2022 appealing his dismissal, which had been carried out the day before.

2. The respondent responded, being represented by Peninsula UK, on 17 January 2023. The respondent admitted dismissal, but contended that it was for the potentially fair reason of capability, and denied disability discrimination.

3. There were two preliminary hearings held, one on 27 February 2023, and the other on 15 May 2023. Disability was not conceded.

4. On 10 November 2023 the respondent company entered voluntary liquidation. Despite this, its representative did not notify the Tribunal of this fact, and only came off the record as acting for the respondent by email to the Tribunal on 13 February 2024.

5. There was no attendance by or representation on behalf of the respondent at the hearing. Consequently, no witness statements from the respondent were provided to the Tribunal, and the bundle that the respondent was ordered to prepare and send to the Tribunal was also not before it, until produced by Mr Kevin Ramsden.

6. The Employment Judge explained the position to the claimant and his brother. He explained how the absence of the respondent to advance a potentially fair reason for the dismissal would mean that the claimant would be bound to succeed in this claim. The disability discrimination claims, however, were not as straightforward, as the claimant would still have establish that he had a disability at the material times, and the Tribunal would need to hear and read his evidence on this issue.

7. Further, the Employment Judge had detected some inconsistency in the claims. It seemed that the claimant's primary case was that he was dismissed because he was redundant, and that the reason given, his long – term sickness absence, was not the real reason. The claim of disability discrimination, the Employment Judge considered, was very much in the alternative, and was advanced in the event that the respondent's case on the reason for dismissal not being for redundancy was accepted.

8. Mr Kevin Ramsden agreed this was the case, redundancy was the claimant's primary claim.

9. The Employment Judge also pointed out that if the claimant's claim of disability discrimination succeeded, whilst the claimant could recover for injury to feelings and some financial loss (although precisely what was open to debate), he would not necessarily recover the redundancy payment he was seeking.

10. The Employment Judge also informed the claimant of the possibility of the discrimination claims being advanced against Mr Jonathan Chalker personally, although the unfair dismissal and redundancy claims could not be. This would, however, require an application to amend the claims to add him as a respondent, and the hearing would have to be postponed for this to be done.

11. The Tribunal invited the claimant and his brother to discuss how they wished to proceed, which they did. They did not want to apply to add Mr Chalker as a respondent, and did not want to pursue the disability discrimination claims. The claimant did wish to pursue the unfair dismissal claim, however.

12. The Tribunal accordingly has determined that claim. The dismissal is admitted, but the respondent advanced the argument that it was fair. The burden of showing a potentially fair reason rests upon the respondent (s.98(1) of the Employment Rights Act 1996). Failure to do so results in a finding that the dismissal was unfair. The respondent has not attended to give any evidence of its reasons for dismissal, and has not even served any witness statements containing such evidence. In the circumstances it has failed to discharge the burden of proof upon it of showing a potentially fair reason, so the Tribunal finds that the dismissal was unfair.

Remedy.

13. The claimant is entitled to a remedy. This is in two parts, the basic and the compensatory awards. Starting with the former, this is calculated in the same way as a statutory redundancy payment. The claimant was employed by the respondent for 31 years, and was aged 65 at the date of termination. His weekly wage was £380 gross.

14. His entitlement is therefore:

30 x £380 = **£11,400**

which sum the respondent is ordered to pay him.

15. Turning to the compensatory award, as its name suggests, this is made to compensate the claimant for any financial losses which flow from the discrimination. In assessing what this should be the Tribunal has to consider that the position would have been had a fair procedure been followed. Our view is that the claimant would have been dismissed in any event either for health reasons, or as redundant.

16. That means that the Tribunal can only make an award in respect of the period which it would have taken the respondent to carry out a fair redundancy process. Whilst the Tribunal has, in the format provided by the respondent, seen some extracts from its Company Handbook, they do not relate to redundancies, so the Tribunal cannot see what procedure (if any) was laid down for a redundancy exercise.

17. Doing the best it can, and drawing from its experience, the Tribunal considers that a fair redundancy procedure would have taken a further 4 weeks, and will award the claimant the pay that he lost during that period. He was paid, of course, notice pay, but that would still have been the case had a fair procedure been followed. It would, of course, have been paid 4 weeks later, so there is still this period of initial loss.

18. The claimant, however, at this stage was off work sick. He was paid, it was confirmed, only SSP. That, therefore is the basis upon which this period must be assessed. The weekly figure of £99.35 was, the Tribunal's research suggests, the applicable figure at the time, and the claimant agreed it was. The award will therefore be $4 \times £99.35 = £397.40$.

19. Additionally, the claimant has sought in his schedule of loss, an award for loss of statutory rights. This is a conventional head of award in unfair dismissal cases. The claimant has sought just under a week's pay, in the sum of £350, and the Tribunal sees no reason not to make such an award, and does so.

20. The claimant withdrew his remaining claims and they are dismissed upon his withdrawal.

Employment Judge Holmes

Dated: 15 April 2024

JUDGMENT SENT TO THE PARTIES ON

29 April 2024

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

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NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990 ARTICLE 12

Case number: **2408869/2022**

Name of case: **Mr K Ramsden v Ron Chalker ('The Potato Man') Ltd
(in Voluntary Liquidation)**

Interest is payable when an Employment Tribunal makes an award or determination requiring one party to proceedings to pay a sum of money to another party, apart from sums representing costs or expenses.

No interest is payable if the sum is paid in full within 14 days after the date the Tribunal sent the written record of the decision to the parties. The date the Tribunal sent the written record of the decision to the parties is called **the relevant decision day**.

Interest starts to accrue from the day immediately after the relevant decision day. That is called **the calculation day**.

The rate of interest payable is the rate specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as **the stipulated rate of interest**.

The Secretary of the Tribunal is required to give you notice of **the relevant decision day**, **the calculation day**, and **the stipulated rate of interest** in your case. They are as follows:

the relevant decision day in this case is: 29 April 2024

the calculation day in this case is: 30 April 2024

the stipulated rate of interest is: **8% per annum.**

For the Employment Tribunal Office