



EMPLOYMENT TRIBUNALS

Claimant

Mr W Lake
(Fourth Claimant)

Respondent

06233341 LIMITED
(Third Respondent)

JUDGMENT

- (1) The Fourth Claimant Mr W Lake's application dated 21 February 2024 for reconsideration of the Tribunal's judgment on remedy dated 6 February 2024 is granted pursuant to rules 70-72 of the Employment Tribunal Rules 2013. The judgment dated 6 February 2024 is **varied** to stand as follows.
- (2) The stay of proceedings in relation to the Mr W Lake's claim against the Third Respondent is lifted and the name of the Third Respondent is amended to **06233341 LIMITED**.
- (3) Mr W Lake was automatically unfairly dismissed by the Third Respondent 06233341 LIMITED pursuant to regulation 7(1) of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE 2006").
- (4) The Third Respondent shall pay Mr W Lake **£27,815.14**, which is comprised of the following sums:
 - a. Basic award of £6,752.34.
 - b. Compensatory award of £12,329.80 (including £500 loss of statutory rights).
 - c. Wrongful Dismissal compensation of £3,176.16.
 - d. Accrued but untaken annual leave pursuant to the Working Time Regulations 1998 (Holiday Pay) of £920.98.
 - e. ACAS uplift on the above pursuant to section 207A TULRCA 1992 at 20% amounting to £4,635.86.

REASONS

Application regarding breach of contract claims

1. By a judgment dated 6 February 2024 the Tribunal made awards for the Fourth Claimant including compensatory awards for unfair dismissal.
2. Notwithstanding that there had been a breach of contract for failure to pay notice pay, no further award was made for this complaint on the basis that this would be overlap with the compensatory awards and be impermissible double recovery. This was done, exercising the discretion of the Tribunal to prefer compensatory awards to the breach of contract damages, based on an understanding that the Claimant could recover ACAS uplifts pursuant to section 207A TULRC(A) 1992) for the compensatory award but not the breach of contract claims.
3. The Fourth Claimant made an application on 21 February 2024 highlighting that Paragraph 1 of Schedule A2 of TULR(C)A 1992 (“the Schedule”) includes claims under the Employment Tribunal Extension of Jurisdiction (England and Wales) Order 1994 (SI 1994/1623) which confers jurisdiction to award damages for breach of contract which arises or is outstanding on termination (i.e. notice pay). Since claims for breach of contract are contained within the Schedule, ACAS uplifts apply equally to such claims and the Tribunal erred in exercising its discretion on this basis.
4. The practical effect in this case is potentially to preclude the claimant from seeking remedies against the Secretary of State under section 182 of the Employment Rights Act 1996.
5. The Tribunal has unanimously accepted the submission that it is in the interests of justice to grant the application for reconsideration (as it did in the case of the First, Second and Third Claimants and substitute the order above. This allows the Fourth Claimant the opportunity to pursue other remedies given that the Third Respondent had been liquidated.

Employment Judge Adkin

Dated: 6 June 2024

Judgment and Reasons sent to the parties on:

12 June 2024

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For the Tribunal Office