



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M Llanos  
**Respondent:** Fairview Grocers Limited  
**Heard at:** East London Hearing Centre  
**On:** 30 January 2023  
**Before:** Employment Judge M Yale  
**Members:** Ms A Berry  
Mr D Hurrell

**Representation:**

For the Claimant: Unrepresented  
For the Respondent: Ms A Kaur-Singh (Solicitor)

**JUDGMENT** having been sent to the parties on 9 February 2024 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013.

## REASONS

**The Claims:**

- 1 On 6, 7 and 8 September 2023 the Tribunal determined liability in this case. The claimant's claim for unfair dismissal succeeded, albeit the basic and compensatory awards were both to be reduced by 60%. His claim for unlawful deductions from wages, in the form of unpaid holiday pay also succeeded, as did his claim for the respondent failing to provide written particulars of employment. We also found a failure on the part of the respondent to follow the ACAS Codes of Practice on Disciplinary and Grievance Procedures.
- 2 The claimant's other claims were dismissed.
- 3 On 30 January 2023, the Tribunal determined remedy. The findings are unanimous.

**The Law:**

4 Section 119 of the Employment Rights Act 1996 reads as follows:

***Basic award.***

- (1) *Subject to the provisions of this section, sections 120 to 122 and section 126, the amount of the basic award shall be calculated by –*
  - (a) *determining the period, ending with the effective date of termination, during which the employee has been continuously employed,*
  - (b) *reckoning backwards from the end of that period the number of years of employment falling within that period, and*
  - (c) *allowing the appropriate amount for each of those years of employment.*
- (2) *In subsection (1)(c) “the appropriate amount” means –*
  - (a) *one and a half weeks’ pay for a year of employment in which the employee was not below the age of forty-one,*
  - (b) *one week’s pay for a year of employment (not within paragraph (a)) in which he was not below the age of twenty-two, and*
  - (c) *half a week’s pay for a year of employment not within paragraph (a) or (b).*
- (3) *Where twenty years of employment have been reckoned under subsection (1), no account shall be taken under that subsection of any year of employment earlier than those twenty years.*

5 Section 112(2) of the Employment Rights Act 1996 reads as follows:

- (2) *Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly.*

6 Section 123(1) of the Employment Rights Act 1996 reads as follows:

- (1) *Subject to the provisions of this section and sections 124, 124A and 126, 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.*

7 Section 123(6) of the Employment Rights Act 1996 reads as follows:

- (6) *Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.*

8 Section 13(1) of the Employment Rights Act 1996 reads as follows:

**Right not to suffer unauthorised deductions.**

- (1) An employer shall not make a deduction from wages of a worker employed by him unless –
- (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or
  - (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

9 Section 1 of the Employment Rights Act 1996 requires an employer to provide to the employee certain written particulars. Section 38(4) of the Employment Act 2002 sets the minimum that must be paid, if there is a failure, at two weeks' wages and the higher amount, to be awarded if just and equitable, at four weeks' pay.

**Basic Award:**

10 The Basic Award is the same as that for redundancy, so we calculated the Basic Award for Unfair Dismissal using the redundancy calculator tool on the Government website. The claimant has limited his claim to the period he was registered for PAYE, namely 1<sup>st</sup> October 2015 to 6<sup>th</sup> August 2019. In fact, that should be 9<sup>th</sup> August 2019. Therefore, he had 5 full years' service. He was 52 at the date his employment was terminated. We have used the figure for the national minimum wage at the date of the claimant's dismissal, which means he was paid £311.85 gross per week.

11 On that basis, the Basic Award is £2,338.88. The tribunal previously determined that figure should be reduced by 60% for contributory fault and therefore the sum to be awarded is £935.55.

**Compensatory Award:**

12 The claimant now accepts his employment ended on 9<sup>th</sup> August 2021 and he secured a higher paying job, which commenced on 23<sup>rd</sup> August 2021. The compensatory award is therefore limited to 2 weeks and amounts to complete loss of wages from the respondent for that period.

13 Two weeks' pay at £266.55 per week, net, is £533.10. We add £500 for loss of Statutory Rights. The total is then £1,033.10. Again, that sum is to be reduced by 60% in accordance with the principle in *Polkey*, bringing that element of the award to £413.24.

14 There was a failure to follow the ACAS Codes of Practice on Disciplinary and Grievance Procedures and we apply an uplift of 25%. We have taken into account the resources of the respondent but there was wholesale disregard of the Codes of Practice.

The claimant was not properly informed of the issue, no meeting was called, he was therefore not accompanied to any meeting, he was dismissed in his absence and there was no right of appeal. The sum ordered to be paid is £103.31.

15 The total compensatory award is therefore £516.55.

**Holiday Pay:**

16 The claimant was entitled to 5.6 weeks' paid holiday a year. The respondent accepted in evidence in the liability hearing that the claimant was only allowed 3 weeks. He was not called to give evidence today. It was put to the claimant today that the claimant had a total of 4 weeks holiday, three weeks for the Jewish holiday and an extra week in August. The respondent tried to provide further evidence during submissions but there was no application to reopen the respondent's case. Therefore, we rely on the evidence given in the liability hearing.

17 The claimant says he took four weeks' holiday, two weeks in 2020 and two weeks in 2021. The claimant has particularised the dates on which he says he took holiday, which, in our view supports his credibility. We would have expected the respondent to keep records of when his employees were on leave, which he failed to do, or, at least, has failed to produce such records. In the circumstances, we find on the balance of probabilities that the claimant took a total of 4 weeks paid leave, as set out in his Schedule of Loss.

18 We can only go back two years from the presentation of the claim, 30<sup>th</sup> November 2021. Therefore, the earliest date from which he can be compensated is 30<sup>th</sup> November 2019. There is no evidence of any contractual term in relation to the leave year, so the leave year is calculated on the anniversary of the claimant's start date. According to the PAYE documentation, that was 1<sup>st</sup> October 2015.

19 Therefore, the holiday periods for which the claimant can be compensated are as follows:

- a. 30 November 2019 to 30 September 2020: During that period, the claimant was entitled to 4.67 weeks, he took 2 weeks, therefore 2.67 weeks was owing, equating to £814.88.
- b. 1 October 2020 to 9 August 2021: During that period, the claimant was entitled to 4.8 weeks, he took 2 weeks, therefore 2.8 weeks were owing, 1.65 weeks before the increase in national minimum wage and 1.15 weeks afterwards, equating to £862.21.

20 Therefore, the total award for unauthorised deductions from pay, namely holiday pay, is £1,677.09 gross.

**Failing to provide Employment Particulars:**

21 We accept the failure to provide employment particulars was because the respondent was unaware of the need to provide them. We have taken into account that this was a small business only employing a very small number of staff.

22 In those circumstances, we see no reason to depart from the standard award. For failing to provide employment particulars we award 2 weeks' pay, which is £623.70.

**Total:**

23 The respondent is ordered to pay the claimant the total sum of £3,752.89

**Employment Judge M Yale  
Date: 4 March 2024**