



EMPLOYMENT TRIBUNALS

Claimant

(1) Mr S Haxhiu
(2) Mr A Bejaj

v

Respondent

Amulet (Churchill Security Solutions) Limited

Heard at: Watford Tribunal **On:** 22 January 2024

Before: Employment Judge Cowen

Appearances

For the Claimant: Mr Bejaj (in person) and Mr Rommer (representative)

For the Respondent: Mr Scuplak (consultant)

Interpreter: Ms Zymbori (Albanian)

RESERVED JUDGMENT

Background

1. The Tribunal apologises to all parties for the delay in providing this judgment to you.
2. By a judgment of 20 July 2023, sent to the parties on 4 October 2023, the Respondent was ordered to pay the First Claimant compensation for unfair dismissal, less 60% contributory fault and the Second Claimant compensation for unfair dismissal, less 75% contributory fault. The date for a remedy hearing was set as 22 January 2024.
3. A bundle of documents was agreed and provided to the Tribunal for today's hearing. Both the Claimants provided witness statements and gave oral evidence of their losses and attempts to mitigate their loss. Mr Haxhiu was assisted by the interpreter, throughout the hearing. The Respondent provided a witness statement of Tracey Cheung, who also gave oral evidence.
4. In relation to the First Claimant, the parties agreed the basic award amounts and the figures associated with compensatory loss. They did not agree the extent of

mitigation/time period of the loss. The figure for pension loss was agreed.

5. In relation to the Second Claimant, the parties agreed that based on 12 weeks of gross average earnings, the appropriate sum is £508.62 per week. The sum of net pay was also agreed as £409.42 per week in 2021/22 and £416.34 in 2022/23. The parties remained in dispute over the net rate of pay in 2020/21 and the period of time of loss.

Findings of Fact and Evidence

General points

6. The point at which the Claimants were dismissed was during a period of Covid 19 lockdown for many businesses. England endured a period of lockdown from 5 November 2020 to 2 December 2020. However, there were strict measures in place to prevent large crowds from mixing. On 6 January 2021, England entered a third period of lockdown which was gradually eased, leading to schools reopening on 8 March 2021 and outdoor venues opening on 12 April 2021. It was not until July 2021 that nightclubs were allowed to re-open.
7. Security jobs continued during this period due to the large number of buildings being left empty for long periods of time.
8. Furthermore, the means of accessing jobs became increasingly internet based. Those with limited internet/computer skills therefore were at a disadvantage in attempting to find work.
9. In order to find work in the security industry an employment history is required, along with a licence to usually provide a reference from previous employers. Both Claimants felt that the Respondent would not provide a favourable reference and therefore chose to attempt, at least initially, to find work without reference to the Respondent.

First Claimant

10. The First Claimant received Universal Credit from 5 February 2021 to 5 September 2023. He applied for a number of security jobs, but was not successful. He also applied for jobs as a carer but had no experience of this type of work and was not successful.
11. The First Claimant had a valid security licence during his search for employment, however, he physically lost the badge when he accidentally left it on a bus in November 2022.
12. He used the services of the job centre in order to find work. He could not make applications from home as he had no internet connection at home. He also struggled due to a lack of computer skills. Some of the period of the First Claimant's unemployment was during the Covid 19 lockdown of January 2021. The First Claimant found it difficult to obtain alternative employment due to these restrictions and due to his limited English. He was assisted by staff from the job centre to make applications online.

13. He did not ask the Respondent for a reference, as he was fearful that this would hinder his applications. In January 2022 he started to offer the Respondent as a referee to see if this would assist his search, but it did not.
14. The First Claimant went out at night to ask at the doors of clubs for work as a licensed security person, but did not find work in this way.
15. The First Claimant also struggled with his mental health as a result of his dismissal and unemployment. He did not attend his GP or other medical practitioner for assistance. He was offered help by the Shaw Trust to find work and would walk to their offices to meet with them. He was offered a trial shift as a milkman, but was not paid and was not offered the job.
16. In May 2023 the First Claimant found work via word of mouth, from a friend. He started working as driver for a Lexus garage. This job has a higher salary than he earned with the Respondent
17. In total the First Claimant was unemployed for 28 months after his dismissal. He spent approximately £50-80 in expenses of trying to find employment.

Second Claimant

18. The Second Claimant was upset and embarrassed to tell friends and family that he had been dismissed. He asked Ms Cheung in HR if she could find him other work. As that was not possible, he had to apply for Universal Credit.
19. The Second Claimant received Universal Credit between January 2021 and January 2024 . In May 2021 after a further Covid lockdown he started to attend the job centre to look for work. He continued to apply for security jobs, but during 2021 his first aid certificate expired and he did not have a door supervisor licence. The Claimant said he found it difficult to obtain work, partly due to the continued restrictions due to Covid 19 and partly due to not having 10 years of employment history which could be verified. A former employee of the Respondent who promised to provide him with a reference failed to do so and he felt this hampered his job search.
20. He told the Tribunal that in May 2023 he was told of a course to learn to install solar panels for housing. He believed there would be guaranteed work at the end of this course, but he did not carry it out.
21. The Second Claimant disputed that he told the Employment Judge at the Preliminary Hearing that he was unable to find work due to his commitment to caring for a child with a disability.
22. The Second Claimant's evidence in relation to work carried out since his dismissal was vague and is contradicted by his own documentary evidence. He asserted that he had applied for many jobs, some in other industries, but was unable to provide any evidence of doing so. The letter from North Middlesex Hospital from a visit on 17 April 2023 records that he was working as a storeman on a building site.

23. His evidence that during the Covid 19 lockdowns of 2021, a person required a letter in order to be able to leave their house, which meant he was not able to look for work, was not accepted. Nor was his evidence in relation to his failure to register with recruitment agencies such as Indeed.

Respondent's Evidence

24. The evidence of Tracey Cheung, Head of Human Resources, indicated that the renewal of security licences changed in 2021, such that a course had to be completed in order to renew the licence.
25. The Tribunal did not accept Ms Cheung's evidence that the company would not record in a reference for the Claimants that they had been dismissed. Ms Cheung acknowledged that it was reasonable for the Claimants to believe that mention would be made of the dismissal in any reference and the Tribunal also considered this reasonable.

The Law

26. S.118 ERA sets out that where a claim of unfair dismissal is upheld, an award shall be made consisting of basic and compensatory award.
27. The basic award is calculated based on a week's pay for each completed year of employment. A multiplier is added depending on the age of the Claimant at the time of the dismissal. Where the Claimant is between the age of 22 and 41, he will receive one week's pay per year. Where the Claimant is over 41 years old, he will receive 1.5 week's pay for each year.
28. S.122(2) sets out "*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*". This allows the percentage awarded as contributory fault to be deducted from the basic award.
29. Compensatory loss is awarded according to the actual losses suffered by the Claimant as a result of his dismissal. This will include loss of any salary, bonus, pension, loss of statutory rights S.123(1) refers to "*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*".
30. S.123(4) sets out "*In ascertaining the loss referred to in subsection (1) the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales*". This requires the

Tribunal to consider whether the Claimant has mitigated his loss. It is a test of whether the Claimant has acted reasonably.

31. Gardener – Hill v Roland Berger Technics Ltd [1982] IRLR 498 EAT set out the criteria which the Tribunal should consider as;
 - a. What steps were reasonable for the Claimant to take to mitigate his/her loss,
 - b. Did the Claimant take those steps,
 - c. To what extent would the Claimant have mitigated if s/he had taken those steps. i.e if the Claimant acted reasonably, when would they have found alternative, equally paid work.

32. The burden of proving this lack of mitigation lies on the Respondent.

33. Further guidance was given by Cooper Contracting v Lindsey 2016 ICR D3, EAT, where Langstaff J, said
 - a. The Claimant does not have to prove that s/he has mitigated.
 - b. Responsibility for providing evidence of lack of mitigation falls on the Respondent
 - c. It is for the Respondent to show that the Claimant acted unreasonably, what is reasonable is a question of fact.
 - d. The standard placed on the Claimant should not be too onerous, as the cause of their loss is the unfairness by the Respondent,
 - e. Tribunal must consider whether it was reasonable for the Claimant to have taken a better paid job.

34. Credit must be given for any earnings obtained between the date of dismissal and the date of award. Recoupment of any relevant benefit will also be calculated, in order that the Claimant is not unduly enriched by his dismissal.

35. The Tribunal must consider the obligation of each of the Claimants to mitigate their loss by seeking new employment.

Decision

36. First Claimant – Mr Haxhiu

Basic Award – This was agreed by the parties as follows: the First Claimant was 44 years old on 23 December 2020 when he was dismissed. He had commenced work on 5 June 2007. His average earnings in the preceding 12 weeks were £402.32.

His basic award therefore amounted to £5833.64. This is subject to the 60% deduction, leaving basic award at **£2,333.46**

37. Compensatory award – the calculations of this award were agreed between the parties. The only issue to be decided was whether the First Claimant reasonably mitigated his loss between 23 December 2020 and May 2023.
38. It is accepted that it was initially difficult for the First Claimant to come to terms with the end of his employment after 13 years with the Respondent. However, there is no medical evidence to support any contention that the Claimant suffered from illness which prevented him working.
39. It is also relevant that the First Claimant's search for work started at a time when England remained restricted due to the spread of Covid 19. The First Claimant was therefore limited in his ability to apply for jobs on a face to face basis. As a person with limited internet skills and limited knowledge of English he faced multiple difficulties in finding work.
40. It was also reasonable of the Claimant to initially consider that he did not want to have to rely on the Respondent to provide him with a reference.
41. The First Claimant showed that he registered and attended the job centre and the Shaw Trust. That he attempted to carry out work which was offered to him and that the loss of his security badge did not hinder him from looking for work.
42. The evidence provided by the Respondent, who bears the burden of showing that the mitigation was unreasonable amounted to copies of job adverts, some of which required qualifications and skills which the First Claimant did not possess (e.g solicitor, crane driver) and which covered a very large geographical area around London (e.g Sidcup, Kent) from February 2023. This was insufficient evidence to show that the Claimant had unreasonably missed out on a large number of jobs which he could have fulfilled.
43. I accept that the First Claimant had little evidence of specific job applications, but he referred to having made around 50 applications in a period of 2.5 years. This does not appear to be a particularly significant attempt to find work in what is a relatively wide industry of work. The First Claimant could have been applying for driving jobs (as he ultimately obtained) during the surge in requirement for these during the lockdown period. There was no evidence that he did so.
44. I therefore conclude that the First Claimant acted reasonably between December 2020 and January 2022. Thereafter, the labour market was likely to have improved as the UK reopened its nightclubs and all workplaces began to return to pre-Covid levels of engagement.
45. The relevant period for losses is therefore December 2020 to 31 January 2022.
46. From this period a deduction of 60% for contribution must be made.
24/12/20 to 5/4/21 = £5051.06
6/4/21 to 31/1/22 = 43 weeks @£344.04 = £14,793.72

Less 60% = **£7,937.91**

47. The relevant pension loss associated with this period of time
24/12/20 to 5/4/21` = £177.28
6/4/21 to 31/1/22 = 43 weeks @3% of £402.32 = £518.99
Less 60% = **£278.71**

48. The loss of statutory rights award is £350.00
Less 60% = **£140**

49. I accept that the First Claimant spent approximately **£70** looking for work and make that award.

50. The total award to the First Claimant amounts to **£10,760.08**

51. The recoupment provisions apply to the period of time in which the First Claimant was in receipt of Universal Credit. The prescribed element in this case is
5 February 2021 to 5 April 2021= 8 x 343.61 = £ 2748.88
6 April 2021 to 31 January 2022 = 43 x 344.04 = £14,793.72
Less 60% contribution = **£7,017.04**

52. The prescribed period is from the date of termination on 23 December 2020 to 18 April 2024

53. The balance to be paid to the First Claimant is **£3,743.04**

54. **Second Claimant – Mr Bejaj**

The Second Claimant worked for the Respondent for 8 years and was upset and embarrassed by his dismissal. He has provided no schedule of loss and very limited information.

55. The only documentary evidence of the Universal Credit which he admits he received from January 2021 onwards is contained in the bank statements he has provided, which are not complete. He said that he received on average £700 per month and that he continued to receive the benefit at the time of the hearing, albeit at a reduced rate. It would appear from my calculation of the bank statements that this sum is approximately correct over the period for which I have seen bank statements.

56. The Second Claimant's evidence that he had had no employment since his dismissal, is not accepted. His evidence is contradicted by the letter in the remedy bundle from a hospital attendance on 17 April 2023 where it is recorded that he works as a storeman on a building site.

57. He denied that the reason he has not had employment is due to his care for his autistic child. His attempts to find work appeared to be very limited with regard to one firm in April 2022.

58. He could not provide any evidence of having registered with any job agency, or applied for any jobs. In his evidence he asserted matters in relation to the Covid 19 lockdown which were untrue -such as the requirement for a letter to allow you to leave your house.
59. Had the Second Claimant taken on the course with regard to solar panel installation he may have been able to secure this employment after May 2023, however the evidence suggests he was in employment prior to this.
60. The Second Claimant told the Tribunal that he started training to become an electrician in September 2023. He provided no evidence to support this, nor any evidence of the nature of the course, the job prospects at the end of it, or whether it attracts any payment throughout.
61. There was no assertion by the Second Claimant that he had been, or was medically incapable of work in the relevant period.
62. Whilst the Respondent's evidence was the same for both Claimants, it appears that the Second Claimant has not shown any attempt to find work, nor any reason why he could not do so. The evidence suggests that he has in fact had some work during the period up to the hearing.
63. I therefore conclude that the Second Claimant has not fully complied with his obligation to mitigate his loss. His job search has been very limited and could certainly have been conducted with greater commitment and vigour. He has also had some earnings, which he appears not to have declared. I therefore limit the period of time to 24 December 2021 on the basis that it would have been reasonable to have found work in the security industry or otherwise in that period.
64. Basic award – the Second Claimant was 37 years old on 23 December 2020 when he was dismissed. He had commenced work on in 2012. His average earnings in the preceding 12 weeks were £ 508.62 gross
His basic award therefore amounted to £4068.96. This is subject to the 75% deduction, leaving basic award at **£1,017.24**
65. Compensatory award – some of the calculations of this award were agreed between the parties. However, there remained a dispute over the net pay for 2020/21 and the appropriate period for the loss. It was not clear to me why the Second Claimant was disputing the calculation as he gave no reason to do so and he agreed it at one point in the hearing and then later appeared to change his mind.
66. The net calculation of the gross weekly amount which was initially agreed by the Second Claimant is £409.15 per week.
67. The award to 24 December 2021 is calculated as;
52 x 409.15 = £21,275.80
Less 75% = **£5,318.95**

68. The relevant pension loss associated with this period of time was £15.25 pw
24/12/20 to 24/12/21 = 52 x 15.25 = £793.00
Less 75% = **£198.25**
69. The loss of statutory rights award is £350.00
Less 75% = **£87.50**
70. The total award to the Second Claimant is **£ 6,621.94**
71. The recoupment provisions apply to the period of time in which the First Claimant was in receipt of Universal Credit. The prescribed element in this case is
January 2021 to 24 December 2021 = 52 x 409.15 = 21,275.80
Less 75% contribution = **£5,318.95**
72. The prescribed period is from the date of termination on 23 December 2020 to 18 April 2024.
73. The balance to be paid to the First Claimant is **£1,302.99**

**Employment Judge Cowen
Date: 18 April 2024**

Judgment sent to the parties on:
22 April 2024

For the Tribunal:

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