



EMPLOYMENT TRIBUNALS

Claimant: Mr M Bailey

Respondent: Network Plus Services Limited

HELD AT: Manchester (by CVP)

ON: 10 July 2024

BEFORE: Employment Judge Slater

REPRESENTATION:

Claimant: Mr D Mawdsley, Counsel

Respondent: Mr Z Malik, Solicitor

JUDGMENT having been sent to the parties on 16 July 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. These are reasons for my judgment on remedy. The claimant had succeeded in complaints of “ordinary” unfair dismissal and failure to comply with the requirements of sections 188 and 188A Trade Union and Labour Relations (Consolidation) Act 1992.

Facts

2. I rely on the facts in my Judgment on Liability, some of which I reiterate here, and make further findings of fact.

3. On 10 May 2023 the claimant started looking for work, understanding that he was to be made redundant. On 11 May 2023 Mr Mccomb sent him an email with a list of possible alternative roles. At the meeting on 15 May 2023, the claimant's dismissal was confirmed and alternative roles were not discussed.

4. By some means, which is in dispute between the parties and it is not necessary for me to decide, the claimant was put in touch with an organisation called Konnect Utilities. On 18 May 2023 the claimant was contacted by Mr Dixon of Konnect Utilities. The following day, on 19 May, he was informed by Konnect Utilities of an induction on Monday 22 May.
5. On 19 May 2023 the respondent sent to the claimant a letter confirming his redundancy and confirming that he would be receiving four weeks' notice pay after the effective date of termination.
6. The claimant had an induction day with Konnect on 22 May, for which he was not paid. He then started his self-employment, subcontracted to Konnect, on 23 May 2023. His employment with the respondent ended officially on 31 May 2023.
7. On 31 May 2023, a payslip from the respondent for the claimant includes a notice payment equivalent to four weeks' pay and a statutory redundancy payment of £2,893.50.
8. On 27 June 2023, the claimant wrote to the respondent about his intention to issue Tribunal proceedings. ACAS early conciliation took place in the period 27 June to 3 August 2023, and the claimant's claim was presented to the Tribunal on 15 August 2023.
9. The claimant's gross salary with the respondent was agreed to be £45,675 which gives a gross weekly pay of £878.36. Net weekly pay was agreed to be £700. The claimant was provided with a company car (a Peugeot 2008) which he could use for private use. The respondent paid for petrol for business use but not for private use and paid for the maintenance of the vehicle. The claimant had the benefit of a discretionary annual bonus. The claimant was paid a bonus of £1,600 on leaving the respondent. I have seen and heard no evidence about the amount of bonus in any other year.
10. The claimant was a member of a pension scheme whilst in employment with the respondent. The employer's pension contributions are agreed to have been £262.90 a month giving a weekly equivalent of £61.
11. The claimant remained engaged by Konnect by the date of this remedy hearing. I accept the claimant's evidence that he is paid £200 gross per daily shift, so this would be £1,000 per week if he worked five days per week. However, the claimant incurs various expenses in being able to do that work because this is away from his home. He has to stay overnight in hotels and pay more for meals out than he would do if eating at home. The claimant is provided by Konnect with a van, but for business use only.
12. I accept that the claimant's expenses are as set out in his tax returns, and I accept the net profit in various periods is as set out in the Schedule of Loss.
13. I find, based on this, that the claimant's total net earnings with Konnect since the effective date of termination have been £26,890.

14. I accept the claimant's evidence that the bank account into which his payments from Konnect are made is a joint account with his wife.

15. Most of the claimant's working experience has been in the gas industry. However, he has experience of multi utilities work, having worked in this for two years prior to joining Gallaghers, a business which was subsequently acquired by the respondent.

16. The respondent has provided evidence of jobs with the respondent being advertised on Indeed following the claimant's dismissal but has not provided any evidence of jobs with other companies which it says the claimant could have applied for.

17. The claimant made no claim for state benefits after his dismissal.

Conclusions

18. I deal first with the matter of compensation for unfair dismissal. The respondent submits that the claimant failed to take reasonable steps to mitigate his loss, submitting that there is a strong possibility the claimant could have got a job with the respondent in another area. The respondent asserts that there are failures of disclosure which show that the claimant has been evasive. The respondent asserts (in effect) that these failures, together with changing figures in Schedules of Loss, suggest that the claimant's evidence cannot be relied on.

19. I think it more likely than not that there have been some failures in disclosure on the part of the claimant. For example, I would have expected to see some documentary evidence of his job search before obtaining the work with Konnect. It is also surprising that the claimant was not apparently intending to provide a witness statement to give evidence relating to remedy until he did one in response to the statement of Mr Mccomb.

20. I do not consider that these defects in preparation are, however, sufficient to persuade me that the claimant has not acted honestly or to allow me to infer that the claimant has income which he has concealed from the respondent and this Tribunal.

21. I accept the respondent's submission that the claimant would have been able to work on utilities than gas, having worked on multi utilities for a period of two years, even though the claimant did not like this work. The claimant did, however, secure work in his preferred field of gas, even before his employment with the respondent ended, so this is not a case where the claimant waited to see if an opportunity arose in his favoured field, rejecting possibilities in relation to other utilities. The claimant took work at some distance from his home to secure an income.

22. The burden is on the respondent to satisfy the Tribunal that the claimant failed to take reasonable steps to mitigate his loss. The only job opportunities the respondent has put forward in evidence are jobs with the respondent. The claimant, after a period of reflection following his dismissal, came to the view that his dismissal was unfair, and I found this to be the case in my decision on liability even though not for all the reasons asserted by the claimant.

23. From 27 June 2023 onwards the claimant was engaged in early conciliation and had put the respondent on notice of a possible Tribunal claim. On 15 August 2023 the claimant presented his claim to the Tribunal. In these circumstances, I conclude that it would not have been reasonable to expect the claimant to mitigate his loss by applying for employment back with the respondent. The respondent has produced no evidence of jobs for which it says the claimant should have applied to mitigate his loss, other than jobs with the respondent.

24. I conclude, therefore, that the claimant has, up to the date of this remedy hearing, taken reasonable steps to mitigate his loss and that he should be compensated for the financial loss suffered up to this date. This includes loss of employer's pension contributions and the value of the benefit of a company car. Although the respondent has had information about the claim for compensation for the car for some time, the respondent put forward no alternative valuation of the benefit. I, therefore, accept the valuation included in the claimant's Schedule of Loss of £5,167 for two years' replacement costs. There may be some compensation which would be appropriate for bonus, but I will return to this separately.

25. I conclude that there is likely to be some period of future loss for which it would be just and equitable to compensate the claimant. The claimant has sought a further two years' compensation from today's date. I consider that this would be too long. Since the claimant has experience in multi utilities I consider that, in taking reasonable steps to mitigate his loss, the claimant should be seeking other better paid work or work nearer home that did not involve such heavy expenses, even if this is outside the gas field in which he feels most comfortable. In addition, I must consider the likelihood that the claimant's employment with the respondent might have come to an end for other reasons before the end of more than three years from 31 May 2023. For these reasons, I consider it just and equitable to limit future loss to one further year.

26. The claimant received a bonus of £1,600 at the end of his employment. I had no evidence from either party on whether bonus had been awarded in earlier years, and, if so, at what level. In the absence of such evidence, I conclude that it would be appropriate to include in the award one further bonus of £1,600 for the total period of loss.

27. The latest Schedule of Loss does not contain a claim for loss of statutory rights, although £350 was claimed for this in an earlier version of the schedule. Although the claimant is currently self-employed, if he takes another employed position, he would have to start building up his statutory rights again so I consider it appropriate to award £350 for this head of loss. With a new Government, I understand that there may be changes to the period of service required to acquire statutory rights, but this is not certain and the claimant may take new employment before any change takes effect.

28. Mr Mawdsley accepted, on behalf of the claimant, that no basic award is payable since the claimant received a statutory redundancy payment.

29. The recoupment regulations do not apply to the award of compensation for unfair dismissal or to the protective award since the claimant made no claim for state benefits after his dismissal.

30. I turn then to the calculation of the compensatory award, which is as follows.

31. In respect of loss of earnings to 10 July 2024 I consider that the correct way to calculate this loss is to take the earnings the claimant would have had with the respondent and deduct from that the total of the mitigation earnings. The period to 10 July 2024, for which the claimant has loss of earnings, is a period of 54 weeks. There are 58 weeks in the period 1 June 2023 to 10 July 2024, but the claimant was paid for four weeks in lieu of notice so I take off four weeks in arriving at the period of 54 weeks. Loss of earnings to 10 July 2024 for 54 weeks at the net weekly rate of £700 gives a figure of £37,800 which the claimant would have earned with the respondent had he remained employed. The total mitigation earnings in this period taking this from the Schedule of Loss is £26,890 so, deducting this from the £37,800, gives a loss of earnings in the period to 10 July 2024 of £10,910.

32. For future loss of earnings of one year, I have decided that the best way to do this is to take average earnings with Konnect in the period from 6 April 2024 to 10 July 2024 as being more representative than including the start-up earnings, which includes a period before his employment started. For the period 6 April 2024 to 5 June 2024, converting the net earnings in that period to a weekly amount, gives net weekly earnings of £509. For the period 6 June 2024 to 10 July 2024 gives net weekly earnings of £545. I consider it appropriate to take the £545 as being the relevant amount. This means that there is continuing loss for the future loss period at the rate of £700 - £545 which is £155 per week. 52 weeks' loss at £155 per week is £8,060.

33. Added to these amounts is the loss of employer's pension contributions. This is for the 54 weeks to date plus one year's future date, which is 106 weeks at £61 per week giving a total of £6,466.

34. The loss of the car benefit, taking the figure provided by the claimant for two years, is £5,167.

35. For bonus, I include one further payment of £1,600.

36. Loss of statutory rights is £350.

37. Adding together all those elements gives a total compensatory award before grossing up of £32,553.

38. Because the claimant is likely to be taxed on the amount over £30,000, he is likely to be taxed on £2,553 of that amount. In the tax year 2024-2025, taking the claimant's net profit to date and extrapolating from this, I expect he will achieve a net profit for the year of £35,412. That is arrived at by adding £3,632 to £5,902, dividing that by 14 weeks and multiplying it by 52. The personal allowance for the current tax year is £12,570 which would mean that there was £22,662 of his net profit taxable at the rate of 20%. This means that there is sufficient left in the 20% tax band for the £2,553 to be taxed at the 20% rate, so I gross up using the 20% rate. Grossing up £2,553 means dividing that figure by 0.8 which gives a grossed up figure of the £2,553 of £3,191.25. Adding that back on to the £30,000 that means the grossed up figure for the compensatory award is £33,191.25. This is below the statutory cap of 52 weeks'

pay, which would be 52 x the gross weekly pay, therefore there is no requirement to cap it and the £33,191.25 is what is awarded.

39. Turning then to the protective award, I conclude that there was a complete failure to comply with the collective consultation requirements. I do not consider that the rather limited consultation on an individual level which has been referred to in my findings of fact on the liability decision provide a sufficient basis for the award to be of less than 90 days, and no argument was put before me of there being any special circumstances rendering it not practicable for the respondent to comply with the requirements of section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992. I, therefore, in accordance with **Susie Radin Ltd v GMB and others 2004 ICR 893 CA**, consider it appropriate to make an award that the claimant be compensated for wages of 90 days beginning with the effective date of termination, which is 31 May 2023.

Employment Judge Slater

Date: 30 July 2024

REASONS SENT TO THE PARTIES ON
2 August 2024

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments 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.