



EMPLOYMENT TRIBUNALS

Claimant: Mr R Longosz

Respondent: Crussh Retail Limited

Heard at: London Central (by CVP)

On: 4 February 2025

Before: Employment Judge Forde

REPRESENTATION:

Claimant: Miss V Quinn, Assistant Legal Officer, Free Representation Unit

Respondent: Did not attend and was unrepresented

REMEDY JUDGMENT

The judgment of the Tribunal is as follows:

1. The respondent shall pay the claimant the following sums:

- (a) A basic award of **£14,476.50**.
- (b) A compensatory award of **£16,226.70**.

Note that these are actual the sums payable to the claimant after any deductions or uplifts have been applied.

2. The Employment Protection (Recoupment of Benefits) Regulations 1996 apply:

- a. The total monetary award (i.e. the compensatory award plus basic award) payable to the claimant for unfair dismissal is **£30,703.28**
- b. The prescribed element is **£16,226.78**.
- c. The period of the prescribed element is from 14 January 2024 to 30 June 2024 to 4 February 2025.
- d. The difference between (1) and (2) is **14,476.50**.

Reasons

Background

3. The Claimant was employed by the respondent between 22 September 2003 and 14 January 2024. Following a series of promotions, he was in the position of Area Manager from 27 May 2019.
4. The respondent is a retailer of health foods and coffee and was impacted by the Covid pandemic. It commenced a reorganisation of the business in October 2023.
5. As part of this reorganisation, on 12 July 2023 the claimant was offered a promotion to 'Retail Stores Manager'. The claimant did not want to move to that position but made what the tribunal found to be a counter-offer with an increased salary. The counter-offer was not accepted and on 13 October 2023 the original offer was withdrawn because the respondent decided that a director could absorb the duties of that role.
6. The only alternative role offered to the claimant was the role of 'Store Manager', which the tribunal found was not similar to Claimant's Area Manager role. The claimant did not accept the effective demotion of his role and he resigned on 3 December 2023.
7. The claimant brought claims for constructive unfair dismissal by way of constructive dismissal, redundancy pay and wrongful dismissal. Following a hearing to determine liability held on 5 – 7 November 2024, the tribunal found that the claimant was unfairly dismissed by reason of redundancy in accordance with s139 Employment Rights Act 1996 ('ERA'). The Claims for breach of contract in relation to notice pay were dismissed.
8. This hearing is to determine the remedy due to the claimant following that finding.
9. The tribunal was informed the night before the hearing by Mrs Kirsten Riddell, HR Advisor, HR Wizard Ltd and someone familiar to the tribunal as a witness in the liability hearing that the respondent had in her words "ceased trading" as of 24 January 2025 and, as a consequence, no one would be attending the remedy hearing for or on behalf of the respondent and that the respondent was relying on the evidence in support of its case contained within the bundle.
10. Independently, the claimant had been informed by some of his former colleagues that the respondent was experiencing financial difficulties. A search of the register at Companies House disclosed that the business was still active. In light of this and without further information I determined that the hearing could go ahead as I was unaware whether formal insolvency steps had been taken by the respondent or any other party such as one of the respondent's creditors.

11. For the hearing, I had access to a small bundle of 202 pages which included within the pleadings, orders, remedy witness statements confined to the claimant, Mr Billy Mustafa and Mr Daniel Holland, mitigation evidence from both parties and the claimant's relevant medical evidence. Mr Mustafa had given live evidence to the liability hearing.
12. The witness evidence disclosed that the claimant had experienced a difficult time following dismissal. He had experienced anxiety and depression and was faced with the additional difficulty of representing himself at the liability hearing. In addition, he told me that due to his long tenure he was unfamiliar with how to apply for a job and that unfamiliarity, coupled with an inability to access advice to aid his job search had hampered his ability to find jobs to apply for. The claimant reinforced these points when providing sworn, oral evidence to the tribunal.
13. In their witness statements, both Mr. Holland and Mr. Mustafa make a point that that Mr. Mustafa had offered the claimant the details of contacts of his in the catering industry, which would have allowed the claim of the opportunity to pursue potential job opportunities. On the back of this factual assertion, it is said that by failing to take up this offer the claimant had failed in his duty to mitigate loss. The claimant denies this and says that that conversation never took place. Even if I accept Mr. Mustafa's evidence, at its highest, it doesn't tell me whether or not there was an actual opportunity available to the claimant. It merely speculates as to the possibility of the claimant investigating a possibility of an opportunity which at that stage had not yet materialised, which of itself does not amount to anything and therefore I do not consider it relevant to my consideration here. In any event the claimant denies that this conversation takes place. On the balance of probabilities I accept the claimant's evidence on this point.
14. I started my consideration of remedy by assessing that in terms of the period of the claimant's loss as starting from the effective date of termination which is 14 January 2024. What the claimant has told me today and has set out in his witness statement is that he has suffered greatly as a consequence of his treatment at work, such that his mental health was impaired. Crucially, the claimant has not been able to tell me that he has been unable or incapable of obtaining alternative work. What he says is that his job search has been hampered through a mixture of inexperience and health.
15. It is my view that, notwithstanding the difficulties presented to the claimant, the investigation of three potential job opportunities in the period running to the end of June 2024 is inadequate by any measure. Miss Quinn is right to point out to me that it is for the respondent to prove that the claimant's efforts of mitigation. Are inadequate or unreasonable, but it is for it is, in my view, for the claimant to demonstrate to the tribunal what efforts he has made and for the Tribunal to evaluate those efforts in light of the claimants personal circumstances and by the standards of today. The claimant set his position clearly, passionately and honestly. But he was unable to provide an explanation for the limited job search that he has undertaken to date.

16. In my judgment, it is not adequate for the claimant to have only explored 3 possibilities or to have taken the steps that he has taken to date. I have given the claimant credit for the presentation of his evidence to me today, which was impassioned, and I have no reason to doubt what he has told me. But as he admitted to me today, he has not at any time been told that he is unable to work by anyone treating him. Consequently, I find that he has failed to adequately mitigate loss for the period he claims. Accordingly, I consider that the period of loss should be reduced to that ending on 30 June 2024 which means that the claimant will not receive the full extent of the past contributory losses and any future losses.
17. In doing so, I have in mind the provisions of s.123 (1) ERA 1996 which provides for a compensatory award in the amount that 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. In my view, the level of compensatory award properly reflects the application of the law to the facts of this case.
18. I apologise to the parties and in particular the claimant for the delay in this judgment's promulgation.

**Employment Judge Forde
4 February 2025**

Judgment sent to the parties on:

30 May 2025

.....
For the Tribunal: