



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr R Velayutham

**Respondent:** Dunsten Herose Vijaykanthan t/a Rosh Bond Street, ESSO

**Heard at:** Leicester      **On:** Friday 19 May 2017

**Before:** Employment Judge Evans (sitting alone)

**Representatives**

**Claimant:** Mr A Anastasiades, Solicitor

**Respondent:** Did not attend and was not represented

## JUDGMENT ON REMEDY

1. Following the Claimant's successful claim of unfair dismissal, the Respondent is ordered to pay the Claimant:
  - 1.1 a basic award of £2,600;
  - 1.2 a compensatory award of £5,380.
2. The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 apply to the monetary award made in respect of unfair dismissal. The monetary award is £7,980. The prescribed element is £4,455. The dates to which the prescribed element is attributable are 30 July 2016 until today, 19 May 2017. The amount by which the monetary award exceeds the prescribed element is £3,525.
3. The Respondent is ordered to pay the Claimant's legal costs in the amount of £1,206 under Rule 78 of the Employment Tribunals Rules of Procedure 2013.

## REASONS

1. Following his dismissal on 30 July 2016, the Claimant brought claims of unfair dismissal and wrongful dismissal against the Respondent. The Respondent did not present a Response. Accordingly, the employment tribunal issued a Rule 21 Judgment in relation to liability on 27 January 2017. A remedy hearing was then listed which took place before me today.
2. The Claimant attended the remedy hearing represented by Mr Anastasiades. Also in attendance was an interpreter. The Respondent did not attend and was not represented. I had before me a bundle prepared by the Claimant's representative running to 40 pages.
3. This judgment and these reasons were given *ex tempore* at the end of the hearing but the Claimant's representative requested them in writing at the

conclusion of the hearing.

### **Issues**

4. The primary issue before me was to decide the amount of the basic and compensatory awards to be made to the Claimant following his successful claim of unfair dismissal. In addition, the Claimant has brought a successful claim of wrongful dismissal. However, no separate award is made in respect of this claim because the amount ordered in respect of the compensatory award for the successful claim of unfair dismissal covers the period which would have been the Claimant's notice period if he had been given notice.
5. The secondary issue before me was whether to make a costs order in favour of the Claimant. The Claimant's application was for costs of £1350 in relation to the preparation and conduct of the remedy hearing today.

### **The Law**

6. Section 118 of the Employment Rights Act 1996 provides:

**118 General.**

*(1) Where a tribunal makes an award of compensation for unfair dismissal under section 112(4) or 117(3)(a) the award shall consist of—*

*(a) a basic award (calculated in accordance with sections 119 to 122 and 126), and*

*(b) a compensatory award (calculated in accordance with sections 123, 124, 124A and 126).*

7. An employee is under an obligation to mitigate their loss. If the Respondent raises the argument that the Claimant has failed to mitigate their loss (the burden of proof being on the Respondent in relation to this matter), his compensatory award may be reduced if the tribunal concludes that the Claimant has unreasonably failed to mitigate his loss. If the Respondent has failed to comply with the ACAS Code of Practice in relation to dismissal, then the Tribunal may increase the compensatory award by up to 25% if it finds it just and equitable so to do.
8. Rule 76 of the Employment Tribunal's Rules of Procedure gives the Tribunal the power to make a costs order or preparation time order in certain circumstances. It provides:
9. As such, the Tribunal has an obligation to considering making a costs order when it is of the view that any of the grounds for making one have been made out. However, whether or not to make an order in such circumstances is still a matter for the discretion of the Tribunal.

### **Findings of fact**

10. The Claimant's net weekly pay at the date of his dismissal was £162. He had completed 13 years' employment and his date of birth was 14 February 1975. The Claimant was summarily dismissed on 30 July 2016. He was not paid notice pay or a payment in lieu of notice.
11. The Claimant claimed job seeker's allowance for approximately one week following his dismissal. However, he acted promptly, immediately beginning a

search for further employment. He found alternative employment to begin on 11 August 2016. He has earned £108 net per week in this new employment since that date and the employment is continuing.

12. At the hearing, the Claimant gave evidence through the interpreter, both in relation to his initial and his subsequent attempts to find employment and, having found employment, to reduce his weekly loss further. I find he has acted reasonably in his attempts to find further employment and so reduce his loss. There has been no failure on his part to mitigate his loss. I find that it will take the Claimant a further 10 weeks to reduce his weekly loss to zero, which reflects his evidence to the tribunal, but in that period he will suffer an ongoing loss totalling £540.

**Calculation of the amounts due to the Claimant**

Basic award	13 x £200	£2,600
-------------	-----------	--------

(This is calculated on the basis that the Claimant was aged 41 at the date of dismissal and had completed 13 years' continuous employment.)

**Prescribed element**

30 July 2016 to 19 May 2017 (the date of the remedy hearing)		
30 July 2016 to 22 October 2016	12 weeks at £162	£1,944
(This figure has been calculated applying the Norton tool principle which is that a claimant need not give credit for earnings in what should have been his statutory notice period when he is unfairly summarily dismissed)		
23 October 2016 to 19 May 2017	30 weeks at £54	£1,620
(The loss of £162 per week was reduced during this period to £54 per week following the Claimant finding new employment.)		
	<b>Sub total</b>	<b>£3,564</b>
25% increase under Section 124A of the Employment Rights Act 1996		£891
(The Respondent failed completely to comply with its obligations under the ACAS Code of Practice)		
	<b>Total prescribed element</b>	<b>£4,455</b>

**Non-prescribed element**

20 May 2017 plus 10 weeks	10 weeks at £54	£540
Loss of statutory rights		£200
	<b>Sub total</b>	<b>£740</b>
25% increase under Section 124A of the Employment Rights Act 1996		£185
Total non-prescribed element		£925
	<b>Total compensatory award</b>	<b>£5,380</b>

13. No separate award is made in respect of the wrongful dismissal claim because the Claimant has received his losses for this period under the prescribed element heading above.

14. Turning to the issue of costs, I concluded that the Respondent had acted unreasonably in its conduct of these proceedings. Once the Rule 21 judgment had been issued the Respondent should have actively taken steps to agree the amount due to the Claimant but it did not.
15. In these circumstances I have concluded that I should exercise my discretion to make an order for costs. I have summarily assessed these at £1206. That represents five hours in respect of preparation for and attendance at today's hearing at the hourly rate appropriate for a solicitor of Mr Anastasiades call of £201 plus VAT per hour.

---

Employment Judge Evans

Date 23 June 2017

JUDGMENT SENT TO THE PARTIES ON  
15/7/17

.....  
S.Cresswell  
.....

FOR THE TRIBUNAL OFFICE