



EMPLOYMENT TRIBUNALS

Claimant: Mr. A Hoffman

Respondent: Castlegate Nexus Limited (In Administration)

Heard at: Nottingham **On:** 9th October 2018

Before: Employment Judge Heap (sitting alone)

Representation

Claimant: Written Representations

Respondent: No attendance or representations

JUDGMENT

1. The correct Respondent to these proceedings is Castlegate Nexus Limited (In Administration).
2. The complaints of detriment contrary to Section 47B Employment Rights Act 1996 succeed (save as for any complaint of detriment relating to the termination of the Claimant's employment) on the basis that they are no longer contested by the Respondent and the Respondent is Ordered to pay to the Claimant the sum of **£2,500.00** in respect of those complaints.
3. The complaint of unfair dismissal contrary to Section 103A Employment Rights Act 1996 succeeds on the basis that it is no longer contested by the Respondent. The appropriate Order to make in respect of that complaint is one of compensation only and the Respondent is Ordered to pay to the Claimant the sum of **£96,655.89** in respect of his unfair dismissal made up as follows:

a. Basic Award:	£9,340.50
b. Compensatory Award:	£87,315.39
i. Loss of Earnings	(£69,830.77)
ii. Loss of Fringe Benefits	(£16,984.62)
iii. Loss of Employment Rights	(£ 500.00)

TOTAL AWARD FOR UNFAIR DISMISSAL: £96,655.89

The Employment Protection (Recoupment of Jobseekers Allowance and Income Support) Regulations 1996 apply to this award as follows:

a. Grand Total:	£96,655.89
b. Prescribed element:	£69,830.77
c. Period of Prescribed element:	28/03/2017 to 09/10/2018
d. Excess of Grand Total over Prescribed element:	£26,825.12

REASONS

Background and the issues

1. This claim is one of unfair dismissal and detriment on the grounds of the Claimant having made a protected disclosure. Originally, the claim was presented against Aspin Group Holdings Limited but, as identified by Employment Judge Britton earlier in the proceedings, that Company changed its name to Castlegate Nexus Limited during the life of the claim. That Company is, therefore, the correct Respondent to these proceedings. It is common ground that that Respondent is now in Administration. The Administrators consented to the continuation of the proceedings and indicated that they did not intend to take any active part in the proceedings. The reasons for that are entirely understandable.
2. Employment Judge Britton accordingly directed that as the claim was therefore effectively no longer defended by the Respondent, this hearing today would proceed as a Remedy hearing. No earlier Default Judgment had been made and accordingly the Judgment above deals with both liability and remedy.
3. Given the fact that the Respondent is in administration and in view of the likelihood of there being a realisation of any assets to meet the terms of a Judgment, the Claimant has submitted a Schedule of Loss upon which he relies as written representations for the purposes of this hearing and therefore the matter has proceeded on the papers.
4. I have considered both that Schedule of Loss, the ET1 Claim Form, Further & Better Particulars, ET3 Response and the Order made by Employment Judge Britton at a Preliminary hearing on 23rd January 2018 in dealing with this hearing today.
5. Given that the direction of Employment Judge Britton was that the claim was now undefended (and that conclusion has not been challenged by the Respondent) it follows that the claim is no longer contested and therefore the complaints succeed on the basis of the information before me. That is save as for any complaints of detriment contrary to Section 47B Employment Rights Act 1996 which relate to the termination of the Claimant's employment (and thus paragraphs 23(iv) and (vi) of the Particulars of Claim) given the provisions of Section 47B(2)(b) Employment Rights Act 1996.

THE LAW

Unfair dismissal

6. Remedies for unfair dismissal are provided for by Sections 118 to 126 Employment Rights Act 1996. The provisions relevant to this claim are contained within Sections 119 and 123 Employment Rights Act 1996 which provide as follows:

119 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.

Section 123 Compensatory award

(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.

(2) The loss referred to in subsection (1) shall be taken to include—

(a) any expenses reasonably incurred by the complainant in consequence of the dismissal, and

(b) subject to subsection (3), loss of any benefit which he might reasonably be expected to have had but for the dismissal.

(3) The loss referred to in subsection (1) shall be taken to include in respect of any loss of—

(a) any entitlement or potential entitlement to a payment on account of dismissal by reason of redundancy (whether in pursuance of Part XI or otherwise), or

(b) any expectation of such a payment,

only the loss referable to the amount (if any) by which the amount of that payment would have exceeded the amount of a basic award (apart from any reduction under section 122) in respect of the same dismissal.

(4) 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 or (as the case may be) Scotland.

(5) In determining, for the purposes of subsection (1), how far any loss sustained by the complainant was attributable to action taken by the employer, no account shall be taken of any pressure which by—

(a) calling, organising, procuring or financing a strike or other industrial action, or

(b) threatening to do so,

was exercised on the employer to dismiss the employee; and that question shall be determined as if no such pressure had been exercised.

(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.

(6A) Where—

(a) the reason (or principal reason) for the dismissal is that the complainant made a protected disclosure, and

(b) it appears to the tribunal that the disclosure was not made in good faith, the tribunal may, if it considers it just and equitable in all the circumstances to do so, reduce any award it makes to the complainant by no more than 25%.

(7) If the amount of any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy (whether in pursuance of Part XI or otherwise) exceeds the amount of the basic award which would be payable but for section 122(4), that excess goes to reduce the amount of the compensatory award.

(8) Where the amount of the compensatory award falls to be calculated for the purposes of an award under section 117(3)(a), there shall be deducted from the compensatory award any award made under section 112(5) at the time of the order under section 113.

7. Compensation for detriment complaints are contained within Section 49 Employment Rights Act 1996 which provides as follows:

Remedies

(1) Where an employment tribunal finds a complaint under section 48(1), (1ZA), (1A) or (1B) well-founded, the tribunal—

(a) shall make a declaration to that effect, and

(b) may make an award of compensation to be paid by the employer to the complainant in respect of the act or failure to act to which the complaint relates.

8. Compensation for unlawful detriment can include compensation for injury to feelings. Awards for injury to feelings are to be considered under the bands set out within **Vento v Chief Constable of West Yorkshire Police [2002] EWCA Civ 1871** and as updated in **Da’Bell v National Society for the Prevention of Cruelty to Children UKEAT/0227/09**. Those bands have been further clarified by recent Presidential Guidance, the relevant part of which says this:

*“.....taking account of Simmons v Castle and De Souza v Vinci Construction (UK) Ltd, the Vento bands shall be as follows: a **lower band of £800 to £8,400** (less serious cases); a **middle band of £8,400 to £25,200** (cases that do not merit an award in the upper band); and an **upper band of £25,200 to £42,000** (the most serious cases), with the most **exceptional cases capable of exceeding £42,000**”.*

FINDINGS OF FACT

9. I accept from the Claimant’s schedule of loss that he was employed between March 2000 and 28th March 2017 and that during the course of his employment he earned the net monthly sum of £7,565.00 along with provision of a car allowance, private health cover and pension provision. The figures in the Schedule of Loss attributed to those benefits on a monthly basis is in the sum of £600.00; £1,125.00 and £115.00 respectively.
10. As at the date of termination of his employment the Claimant was aged 46 years of age.
11. The Claimant was a shareholder in the Respondent Company and his shares were compulsorily acquired by the Respondent after his employment was terminated at a value of £1.00.
12. The Respondent went into administration on 21st February 2018.

CONCLUSIONS

Remedy for unfair dismissal

13. The Claimant in his Schedule of Loss seeks re-engagement. Clearly, given the fact that the Respondent Company is now in a state of administration that is unachievable and is not a remedy that I can Order.

14. The appropriate remedy, accordingly, is one of compensation.
15. Beginning with the basic award, that is in the sum of £9,340.50 based on the Claimant's age, length of service and the maximum amount of weekly pay in force at the time. Added to that is a sum for the loss of statutory rights which I award in the sum claimed in the Schedule of Loss of £500.00.
16. Turning then to loss of earnings, the Schedule of Loss sets out that the Claimant claims losses until 4th January 2018. As the Schedule makes no claim past that, I presume that the Claimant does not say that he has suffered any loss after that point. No suggestion is made by the Respondent that the Claimant has failed to mitigate his losses and therefore I award loss from the effective date of termination of employment to 4th January 2018; that being a period of 40 weeks at a net weekly rate of £1,745.76. That equates to an award of £69,830.77.
17. In terms of the loss of fringe benefits, I award the Claimant loss of £16,984.00 to take into account the loss of those benefits over the same 40 week period. I make no other award in respect of pension loss given that the actuarial evidence referred to in the Claimant's Schedule of Loss is not before me.
18. I cannot make any award in respect of the loss of value of shares (whether in the context of the detriment claim or a consequent loss of the unfair dismissal complaint) on the basis that the expert evidence referred to in the Claimant's Schedule of Loss is not before me.
19. I do not make any adjustment to the compensatory award as claimed by the Claimant on the basis that I have insufficient information as to the background of the dismissal process to make a determination as to whether any failure to follow the ACAS Code of Practice was an unreasonable failure or not.

Injury to feelings

20. The Claimant seeks an award of £10,000.00 in respect of injury to feelings. In order to accurately assess an award of injury to feelings it is necessary for me to be able to determine the impact of the detriment upon the Claimant. I have, of course, not heard from him nor is there anything else within the documentation before me which particularly assists me in dealing with that matter.
21. Any award for injury to feelings can attach only to the acts of detriment complained of by the Claimant. That cannot of course include the matter of his dismissal. Taking into account the acts of detriment in the complaint and the relatively short period over which those appear to have taken place along with the fact that I have not heard evidence from him as to the impact of those matters, I consider an appropriate award to be the sum of £2,500.00. That sum is, in my view, sufficient to compensate the Claimant for what are somewhat generally pleaded complaints and which are not in my view particularly serious matters. They sit squarely within the lower **Vento** band and my award duly reflects that.
22. I should note that I have not been invited in the Schedule of Loss or within any other representations to gross up the award.

Employment Judge Heap

Date: 19th October 2018
JUGDMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE