



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr O O'Connor  
**Respondent:** Tendable Limited

**Heard at:** Bristol Employment Tribunal      **On:** 11 April 2023

**Before:** Employment Judge J Bax

## Representation

**Claimant:** Mr O O'Connor (in person)  
**Respondent:** Ms E Afriyie (consultant)

# JUDGMENT

Upon liability not being contested:

1. The Claimant was unfairly dismissed by the Respondent.
2. The complaint that the Claimant was subjected to detriment because he alleged that the Respondent infringed the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 was well founded.

# JUDGMENT ON REMEDY

The Judgment on remedy is in two parts. The first part is the Judgment in figures net of tax (apart from the claim for loss of pension contributions). The second part sets out the calculation for the taxable part of the award providing a final grossed up figure.

## Part 1

**The Respondent shall pay the Claimant the following sums in respect of the claim of unfair dismissal :**

1. An agreed basic award of £1,713.00
2. The agreed sum of £22,955.84 net in respect of loss of earnings.

3. The agreed sum of £2,354.15 gross in respect of loss of employer pension contributions
4. The claim for a payment in respect of share options is dismissed.
5. **A total sum of £27,022.99.**

**The Respondent shall pay the Claimant the following sums in respect of the claim of the detriment claim :**

6. £7,000 in respect of injury to feelings.
7. Interest of £507.84 in respect of injury to feelings.
8. **A total sum of £7,507.84**

**Uplift for failing to follow the ACAS Code of Practice on disciplinary and Grievance Procedures 2015**

9. The Respondent was in breach of the ACAS Code of Practice in respect of grievance procedures and it was just and equitable to increase the award to the Claimant by 10%
10. The total sums due to the Claimant (unfair dismissal and detriment) are £34,530.83 of which 10% is £3,453.08 and is added to the award making a total of £37,983.08.

**Grossing up and Recoupment**

11. **The total amount payable to the Claimant is £37,983.08**
12. **These figures are subject to grossing up.**
13. **The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 ("the Recoupment Regulations") apply in this case.**

**Part 2: Grossing up of taxable part of the award**

14. By consent, the parties agreed that the awards should be grossed up as follows.
15. The award for personal injury and associated interest is not taxable.
16. The loss of employer pension contributions was calculated gross of tax and is therefore not included in the calculation.
17. The total of the awards in respect of injury to feelings, associated interest, loss of earnings and loss of pension is £35,628.93. The tax-free amount is £30,000. These are the taxable awards.
18. The taxable amount of the £35,628.93 is as follows:

The total of the awards liable to taxation	£35,628.93
<u>Less the tax-free amount</u>	<u>£30,000.00</u>
Total amount of the award liable to taxation	£5,628.93

19. The taxable amount needs to be grossed up to take into account 40% income tax. The gross figure of the taxable amount is £9,381.55 of which £3,752.62 is in respect of the income tax payable.

20. The total amount payable to the Claimant is as follows:

	<b>£37,983.08</b>	(awards for injury to feelings, interest thereon, loss of earnings, loss of pension contributions and ACAS uplift )
+	<b><u>£3,752.62</u></b>	(additional sum in respect of the taxable part)
=	<b>£41,735.70</b>	(after grossing up) to be paid by the Respondent to <b>the Claimant</b>

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Employment Judge J Bax  
Date: 11 April 2023

JUDGMENT SENT TO THE PARTIES ON  
21<sup>st</sup> April 2023 by Miss J Hopes

FOR THE TRIBUNAL OFFICE

Note

Reasons for the judgment were given orally at the hearing. The Claimant requested written reasons and they will follow separately and there is no need to make a further request.

## ANNEX TO THE JUDGMENT

### Recoupment of Jobseeker's Allowance, income-related Employment and Support Allowance, universal credit and Income Support Protective Awards

The following particulars are given pursuant to the Employment Protection (Recoupment of Jobseekers Allowance & Income Support) Regulations 1996 SI 1997 2349.

- (a) Monetary award: £41,735.70
- (b) Prescribed element: 22,955.84
- (c) Period to which (b) relates: 31 May 2022 to 11 April 2023
- (d) Excess of (a) over (b). £18,779.86

The tribunal has awarded compensation to the claimant but not all of it should be paid immediately. This is because the Department for Work and Pensions (DWP) has the right to recover (recoup) any Jobseeker's Allowance, income related Employment and Support Allowance, universal credit or Income Support which it paid to the claimant after dismissal. This will be done by way of a Recoupment Notice which will be sent to the respondent usually within 21 days after the tribunal's judgment was sent to the parties.

The tribunal's judgment should state the total monetary award made to the claimant and an amount called the prescribed element. Only the prescribed element is affected by the recoupment Notice and that part of the tribunal's award should not be paid until the recoupment Notice has been received.

**The difference between the monetary award and the prescribed element is payable by the respondent to the claimant immediately.**

When the DWP sends the recoupment Notice, the respondent must pay the amount specified in the Notice by the department. This amount can never be more than the prescribed element of any monetary award. If the amount is less than the prescribed element, the respondent must pay the balance to the claimant. If the Department informs the respondent that it does not intend to issue a Recoupment Notice, the respondent must immediately pay the whole of the prescribed element to the claimant.

The claimant will receive a copy of the Recoupment Notice from the DWP. If the claimant disputes the amount in the Recoupment Notice, the claimant must inform the DWP in writing within 21 days. The Tribunal has no power to resolve such disputes which must be resolved directly between the claimant and the DWP