



EMPLOYMENT TRIBUNALS

Claimant: Mr P Pitchell

Respondent: JATA construction Ltd

Heard at: Bristol (by CVP)

On: 11th & 12th November 2024

Before: Employment Judge Clarkson

REPRESENTATION:

Claimant: In person

Respondent: Mr Ushiago (HR)

JUDGMENT

The judgment of the Tribunal is as follows:

Unfair Dismissal

1. The complaint of unfair dismissal is well-founded. The claimant was unfairly dismissed.
2. There should be no reduction to the Claimant's compensation on the basis of that the claimant would have been fairly dismissed in any event (Polkey reduction).
3. The Respondent unreasonably failed to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015 and it is just and equitable to increase the compensatory award payable to the claimant by 10% in accordance with s 207A Trade Union & Labour Relations (Consolidation) Act 1992.
4. The claimant caused or contributed to the dismissal by blameworthy conduct and it is just and equitable to reduce the compensatory award payable to the claimant by 33.33%.
5. It is just and equitable to reduce the basic award payable to the claimant by 33.33% because of the claimant's conduct before the dismissal.

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

(a) A basic award of **£2572.12**

(b) A compensatory award of **£23,725.12**.

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

Calculations:

The Basic award.

7. Capped at £643 x 1.5 by 4 years =£3,858. Minus 33.33 =**£2572.12**

Compensatory award:

8. Net pay of £664.08 x 52 = £4,532.16

9. Divided by 23 weeks for the period covered, multiplied by 52 for a year = £34,532.16.

10. Less income of £2,340.68 that the Claimant has already received = £32,191.48.

11. Add 10% £3,219.14 =£35,410.62

12. Minus 33% is £23,725.12.

13. This compensatory award of £23,725.12 added to the basic award is **£26,297.24**.

Recoupment

14. The monetary award is **£26,297.24**.

15. The prescribed element for loss of earnings is £23,725.12

16. The dates of the period to which the Prescribed Element relates is 08/09/23 - 07/09/24.

17. The amount by which the monetary award that exceeds the prescribed element is £2,572.12.

18. The Tribunal will inform the Department of Work and Pensions of the decision, and they will contact the Respondent regarding recoupment.

**Employment Judge Clarkson
20 November 2024**

Judgment sent to the parties on:
25 November 2024
For the Tribunal:

Note

Reasons for the judgment were given orally at the hearing. Written reasons will not be provided unless a party asked for them at the hearing or a party makes a written request within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions

Judgments (apart from judgments under rule 52) 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.

ANNEX TO THE JUDGMENT

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

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.