



EMPLOYMENT TRIBUNALS

Claimant: Mr D Barrett

Respondent: Wembley Tyres Ltd

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

1. The claim that the Claimant was unfairly dismissed is well-founded. The Respondent is not ordered to pay any compensation.
2. The claimant was dismissed in breach of contract in respect of notice and the respondent is ordered to pay damages to the claimant in the sum of **£418.16**. This sum is to be paid without any deduction.
3. The claimant was dismissed by reason of redundancy and is entitled to a redundancy payment.
4. The respondent has failed to pay the claimant's holiday entitlement and is ordered to pay the claimant the sum of **£265.96** (subject to any lawfully required PAYE deductions, but without any other deduction or set off)

REASONS

1. The Respondent has not filed a response, or replied to any of the correspondence sent by the Tribunal or the Claimant. A hearing which had been due to take place in August 2023 was postponed. The Claimant had applied for postponement, but the major reason was that the Claimant had not complied with the orders to send schedule of loss to the Respondent as well as to the Tribunal.
2. Since those orders, the Claimant's solicitors have stated that they have sent the schedule of loss and other documents to the Respondent. They have sent various emails to the Tribunal which do not expressly state that they have been sent to the Respondent by post (which is, in itself, a breach of Rule 92); however, given the terms of my previous orders, I assume that they have been.

3. At the time of postponing the hearing, I notified the parties that I might be prepared to make a decision on the papers (which had been the Claimant's application). The Respondent has not objected.
4. ACAS conciliation was 10 to 25 November 2022. Claim was presented on 23 December 2022.
5. The Claimant had worked for the Respondent for more than two years. His claim form said for 16 years, and schedule of loss said 19.
6. On around 16 August 2022, he was told that company was ceasing trading and he would be entitled to redundancy payment. He had not previously been warned about this. His dismissal took place with immediate effect on 16 August 2022 and he was not given notice.
7. He obtained a new job in September 2022. He has not given the exact date. His earnings exceed what he had when working for the Respondent. His earnings for the Respondent were 209.08 per week net.
8. Because of the Claimant's length of service, he was entitled to at least 12 weeks' notice and received none. On the basis of the schedule of loss, I infer that he was unemployed for around two weeks (17 to 31 August) and started work at beginning of September. He is entitled to damages of £418.16 for those 2 weeks, but, after that, had fully mitigated his loss.
9. The Claimant was entitled to £265.96 for unused holiday, and that was not paid.
10. The Claimant is entitled to a redundancy payment from the Respondent. He might be entitled to make a claim to the Redundancy Payments Service. He has failed to specify the start date of employment in his claim or schedule of loss.
11. The dismissal was unfair as the Claimant had no warning, and there was no discussion. There is no basic award because he is entitled to a redundancy payment. There is no compensatory award, because his loss of earnings is covered by the breach of contract award.

Employment Judge Quill

Date: 21 March 2024

JUDGMENT SENT TO THE PARTIES ON
12 April 2024

.....
AND ENTERED IN THE REGISTER
T Cadman

.....
FOR THE TRIBUNAL OFFICE