



EMPLOYMENT TRIBUNALS

Claimant: Mr D Ball

Respondent: Hydro-X Water Treatment Limited

HELD AT: Sheffield **ON:** 16 May 2018

BEFORE: Employment Judge Little

REPRESENTATION:

Claimant: Mrs N Ball – Claimant's wife

Respondent: Mr Trory of Counsel (instructed by RBS and Nat West Mentor)

REMEDY JUDGMENT

1. My Judgment is that the claimant is entitled to compensation in respect of unfair dismissal as follows:-
 - 1.1. A basic award in the amount of £3912.
 - 1.2. A compensatory award in the amount of £22,191.70
 - 1.3. Accordingly the total award is £26,103.70 which is payable by the respondent to the claimant forthwith.
2. The calculation of these awards is explained in the Schedule set out below.

REASONS

1. Old pay

It was not immediately clear what the claimant's net weekly pay had been with the respondent. The claimant's revised schedule of loss sets out gross figures only. Having considered the figure put forward in the claim form, four relevant pay slips which are in the bundle for today and the claimant's P60s for the years 2015, 2016 and 2017, I have assessed the net weekly pay at £580.

2. New pay

There was also some doubt as to the net weekly pay for the claimant's current new job with Swift Clean Limited. This was not given in the witness statement the claimant had prepared for today and there were no pay slips in the bundle. During an adjournment the claimant showed respondent's counsel 3 pay slips which were on the claimant's mobile telephone. From the figures that were relayed to me by counsel and bearing in mind that the claimant's new job pays at four weekly intervals, I was able to calculate that the new net pay is £380 per week.

3. Causation

Mr Trory has argued that the claimant's intervening employment with a company known as Affordable Granite and Marble had broken the chain of causation. That employment started on 9 October 2017 and ended on 23 January 2018. I am satisfied that this employment, which the claimant obtained through a friend of his wife, was always understood to be of a temporary nature whilst the owner of the business was abroad. Having regard to the temporary nature and in any event the relative brevity of that first new employment – and having considered the principles as set out in the case of **Dench v Flynn and Partners** – I am satisfied that the claimant is in principle entitled to recover his losses which post date the end of that first employment.

4. Mitigation

On the material before me I am satisfied that the claimant has mitigated his loss and indeed has had a financial imperative to do so. The jobs which the respondent suggests he could successfully have applied for are not in my judgment ones which were realistically available to him.

5. Period of future loss

I accept that suitable jobs at similar pay to the old job are not immediately available. I take account of the fact that the claimant is an experienced water treatment engineer and has managerial experience. It may well be the case that he will obtain nothing more than a factual reference from the respondent. I take into account that there are aspects of his current job which the claimant does not like and that job of course pays considerably less than his old job. In these circumstances whilst obviously speculation is required, I consider that the claimant should have obtained a new job which pays no less than the old job within the period of nine months hence. Accordingly that is the period of future loss that I award.

6. Pension loss

Although the information which I had asked to be made available at the case management hearing following the liability hearing has not been furnished, it is common ground relevant pension scheme was defined contributions scheme.

In his schedule of loss the claimant seeks compensation by reference to the employer's contribution which is at 2%, or £46.86 per month. Reducing that to a weekly figure (£10.81) I have used that to calculate immediate loss of pension.

In respect of future loss of pension I have taken into account that the claimant should and probably has been auto enrolled with his new employer, who, under the current rules, will also be contributing 2% of salary, although of course this will now be 2% of a lower salary. Doing the best I can with the information before me I have assessed that to be a weekly contribution now of £7 with the result that there is a differential of £3.81.

By way of correction, when explaining my decision to the parties in Tribunal I erroneously used a multiplier of £7, when I should have used a multiplier of £3.81, being the difference between old and new pension contributions. That means that the figure I announced as £273 for future loss of pension should in fact have been £148.59,

7. Loss of use of van and fuel for van

Here I have accepted the respondent's evidence that the value as it would be assessed by HMRC would be an annual figure of £3,800 and so the weekly benefit is £73.00.

8. Can the claimant recover compensation to reflect that the new job gives him five days less holiday than the old job?

In my judgment the answer to this question is no. The leading case of **Dunnachie v Kingston upon Hull City Council** is authority for the proposition that unfair dismissal compensation cannot cover non-economic loss. It is a non-economic loss which the claimant seeks to recover here – the enjoyment of and benefit derived from five additional holidays. That is not a financial loss and so is irrecoverable.

SCHEDULE

Basic Award

Claimant aged 41 at EDT
8 complete years served
“Weeks pay” cap applies

8 x £489	=	£3,912.00
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Compensatory Award

(i) Immediate Loss – Wages

Relevant period – 5.10.17 (EDT)
to 16.5.18 = 31 weeks

Weekly net pay (old employment)
= £580

31 x £580 net pw =	£17,980.00
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Less earnings in the relevant period:-

- Affordable Granite and Marble = £ 5,499.00
- Swiftclean Limited –

11 weeks (26.2.18 to 16.5.18)	£4,183.00
11 x £380.32 net pw	£9,682.00

So,	17,980.00
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Less	<u>9,682.00</u>
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£8,298.00

(ii) Immediate Loss (Pension)

31 x employer’s weekly contribution of £10.81

31 x £10.81	£335.11
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(iii) Immediate Loss (use of vehicle)

Annual value of use of van with fuel £3,800 therefore £73 pw

31 x £73	£2,263.00
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(iv) Future Loss (Wages)

Net weekly pay old job £580	
Net weekly pay new job £380	
Therefore differential £200 pw	
39 weeks x £200	£7,800.00
(v) <u>Future Loss (Pension)</u>	
Employer's contribution old job £10.81 pw	
Assumed employer's contribution new job £7.00 pw	
Differential £3.81 pw	
39 x £3.81	£148.59
(vi) <u>Future Loss (Van)</u>	
39 x £73	£2847.00
(vii) Loss of Statutory Employment Rights	£500.00
Total of Compensatory Award	£22,191.70
Grand Total (including Basic Award)	£26,103.70

Employment Judge Little

Date: 29th May 2018

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