



EMPLOYMENT TRIBUNALS

Claimant: Mr J Dorman

Respondent: Nesy Learning Limited

Heard at: Bristol **On:** 22 to 26 October 2018

Before: Employment Judge Livesey
Mr E Beese
Mrs LB Simmonds

Representation

Claimant: Ms Reindorf, counsel

Respondent: Ms Hirsch, counsel

JUDGMENT

1. The Claimant's claim of unpaid holiday pay is dismissed upon withdrawal.
2. Following the Respondent's concession that it failed to comply with s. 98 (4) of the Employment Rights Act, the Claimant's claim of unfair dismissal succeeds but compensation is reduced as follows;
 - (a) Under the *Polkey* principle since the Tribunal concluded that there was an 85% chance that the Claimant would have been dismissed fairly in any event after his notice period; and
 - (b) Under s. 122 (2) and 123 (6) of the Act, by a further 70%.
3. The Claimant's complaint that he suffered direct discrimination on the grounds of race under s. 13 of the Equality Act succeeds insofar as it relates the making of the comment referred to in paragraphs 14 and 17 of the Claim Form. All other complaints under s. 13 and the complaints of indirect discrimination and victimisation under ss. 19 and 27 are dismissed.
4. The Claimant's complaint of unlawful deductions from wages succeeds. He was entitled to bonus payments calculated on all US sales and bonus on both UK and US sales up to 8 December 2017.
5. In relation to the questions which the Tribunal was asked to answer in respect of the Claimant's purchase of a shareholding in the Respondent, it determines that the Claimant would not have been sold shares in the Respondent. The second question does not therefore need to have been answered.

6. The Judge will hold a Case Management Preliminary Hearing on **28 November 2018** at **10.00 am** by telephone to discuss directions for and the listing of a remedy hearing. The parties are to dial _____ and enter the code _____ when prompted to do so.

Employment Judge Livesey

Date: 26 October 2018

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.