



# EMPLOYMENT TRIBUNALS

## London South Employment Tribunal

**Claimant:** Joe Dufaur

**Respondent:** P D Harris (Henfield) Limited

### JUDGMENT

#### The Employment Tribunal Rules of Procedure 2013 - Rule 21

1. This claim was issued in the London South Employment Tribunal on 17 July 2023.
2. A Notice of Claim was sent to the Respondent on 10 August 2023 at Unit 4-5 The Granaries, Hassocks, Sussex BN6 9JJ. Their response was required, in accordance with Rule 16 of The Employment Tribunals Rules of Procedure 2013 (as amended), to be filed with the Tribunal by 7 September 2023.
3. No response having been received by that date, the file was referred to an Employment Judge. On 23 February 2024, EJ McLaren directed that the claim should be re-served to a different address – 12a Marlborough Place, Brighton BN1 1WN – being the registered office address for the Respondent held at Companies House.
4. The letter re-sending the claim to the Respondent made it clear that, in addition to filing their response, they had to explain their reasons for not responding to the original Notice of Claim.
5. Their ET3 and Grounds of Resistance were received by the Tribunal on 22 March 2023.
6. At paragraph 8 of the Grounds of Resistance they state “*On 18 August 2023 Respondent received an ET1 from the Claimant. As the Respondent thought it had reached an agreement with the Claimant and the Respondent did not think it had to respond to the claim. The Claimant had informed Respondent that he had made a claim but said he would not pursue it if certain terms could be met. Those terms were reflected in the agreement made in July 2023.*”
7. It may be that the Respondent genuinely believed that they had reached an agreement with the Claimant in July 2023. If that was the case, then that is precisely what they should and were required to have said in the response to the original Notice of Claim which they accept they received on 18 August 2023. I note that they have provided no evidence of this putative agreement.
8. It is simply insufficient to receive a notice from the Court or Tribunal and to decide that no response is necessary. There are consequences resulting from that choice.
9. I find that the Respondent received the original Notice of Claim and failed to file a response by the deadline required. I am satisfied that they have, in their belated response to the claim – after it had been unnecessarily re-served – provided insufficient reasons to justify any exercise of discretion to extend the time for them to have filed their response. I find, as matter of law and fact, that they failed to provide a valid response to the claim on time.

10. I have decided that I am able to determine the claim in accordance with Rule 21 of the Rules.
11. The Claimant was unfairly dismissed.
12. He is entitled to a basic award which is calculated based on his age at dismissal, the number of years' service etc.
13. He has sought compensation for lost earnings for 21 weeks. I am satisfied that he could, and should, have been able to obtain other employment and to thereby mitigate his losses within 12 weeks. I therefore find that any compensation for lost earnings will only run for 12, not 21, weeks.
14. He has also sought a payment of additional compensation in the sum of £11,510. He appears to have used a *Vento Band* to come to this number. Such compensation is only available in certain circumstances and not, as here, where the claim is for unfair dismissal. He is not entitled to that compensation.
15. I have also determined that as he had worked for the Respondent for a sufficient period to establish statutory rights, he is entitled to limited compensation for the loss of those rights (for example, many employment rights only accrue after 2 years' continuous service which he has now lost).
16. The Respondent must pay to the Claimant the total sum of **£6,254.60** forthwith. This is broken down in the annex to this judgment.
17. The Claimant shall be responsible for accounting to HMRC for any statutory, tax or National Insurance payments due on the payment received from the Respondent.

**Judge M Aspinall**  
**Dated:**  
**Wednesday, 27 March 2024**

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**IN THE EMPLOYMENT TRIBUNALS  
CASE NO: 2303686-2023**

**BETWEEN**

**Mr J Dufaur  
AND  
P D Harris (Henfield) Limited**

**BREAKDOWN OF AWARD**

**1. Details**

Date of birth of claimant	21/09/2001
Date started employment	10/10/2019
Effective Date of Termination	26/07/2023
Period of continuous service (years)	3
Age at Effective Date of Termination	21
Date new equivalent job started or expected to start	18/10/2023
Remedy hearing date	27/03/2024
Date by which employer should no longer be liable	18/10/2023
Statutory notice period (weeks)	3
Net weekly pay at EDT	438.74
Gross weekly pay at EDT	526.48

**2. Basic award**

Basic award	789.72
Number of qualifying weeks (1.5) x Gross weekly pay (526.48)	
<b>Total basic award</b>	<b>789.72</b>

**3. Compensatory award (immediate loss)**

Loss of net earnings	5,264.88
Number of weeks (12) x Net weekly pay (438.74)	
Plus loss of statutory rights	200.00
<b>Total compensation (immediate loss)</b>	<b>5,464.88</b>

**4. Adjustments to total compensatory award**

<b>Compensatory award before adjustments</b>	<b>5,464.88</b>
<b>Total adjustments to the compensatory award</b>	<b>0.00</b>
<b>Compensatory award after adjustments</b>	<b>5,464.88</b>

**5. Summary totals**

Basic award	789.72
Compensation award including statutory rights	5,464.88
<b>Total</b>	<b>6,254.60</b>

<b>AFTER COMPENSATION CAP OF -£105,707.00</b>	<b>6,254.60</b>
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