



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH
BEFORE: EMPLOYMENT JUDGE ELLIOTT (sitting alone)
BETWEEN:

Mr L Doyne
Mr C Travers

Claimants

AND

London General Transport Services Ltd

Respondent

ON: 3 January 2017

Appearances:

For the Claimants: Mr D Panesar, counsel

For the Respondent: Mr I MacCabe, counsel

JUDGMENT ON RECONSIDERATION

The Judgment of the Tribunal is that:

1. The remedies judgment of 26 July 2016 is varied to increase the award to Mr Doyne by **£2,887.70** and to Mr Travers by **£2,799.58** and the respondent shall pay those sums to the claimants.
2. The respondent shall pay to the claimants the sum of **£350** in respect of costs under Rule 76(4) for the fee for the reconsideration application.

REASONS

1. This decision was delivered orally on 3 January 2017.
2. By a judgment sent to the parties on 4 May 2015 the claimants Mr Laszlo

Doyne and Mr Clive Travers succeeded in their claims for unfair dismissal, including automatically unfair dismissal and breach of contract for wrongful dismissal.

3. Following a hearing on 7 July 2016 a reserved judgment on Remedy was sent to the parties on 27 July 2016. On 5 August 2016 the claimants made an application for Reconsideration under Rule 70 of the Employment Tribunal Rules of Procedure 2013.
4. There is also an appeal to the EAT under potential appeal number EAT/0607/16 which is stayed until 10 January 2017 pending the outcome of this reconsideration application.

The grounds for the reconsideration application

Gross and net pay

5. There were three areas of challenge: (i) the figures for net and gross pay. The gross pay figures were agreed at this hearing as set out below, (ii) the consequent effect on the figure for pension loss and (iii) the award for nominee travel passes for each claimant.

Documents

6. I had the claimants' application dated 5 August 2016 and written submissions from the respondent dated 27 December 2016. I also had a written submission from the claimants presented on the day of the hearing. The parties spoke to their respective submissions.

Agreement on gross pay

7. The respondent having had an opportunity to understand the claimants' reasoning, agreed the gross pay of both claimants as follows: Gross weekly pay at £655.52 from dismissal to 26 June 2015 and £667.52 from 26 June 2015 to 6 June 2016.
8. As the claimants' pension contributions were based on gross pay, the respondent agreed that this was simply a question of mathematics and the necessity to apply 9% for Mr Doyne and 6% for Mr Travers

Findings

Net pay

9. The claimants' position is that in arriving at net pay, no deductions should be taken into account other than tax and national insurance. The fact that the claimants' had deductions made from their pay for their Personal Assurance Benefits, union subscriptions and parking fines should not have been taken into account thus reducing the net pay figure.
10. The respondent says that these deductions are properly taken into

account because these deductions were actually made and it is what happened.

11. The parties were not aware of any case law to assist on the point.
12. I accept the claimants' submission that the sums other than tax and national insurance do not fall to be deducted from their net pay. It is their choice to pay union dues and into benevolent funds. The employer would not have authority to make those deductions without consent. The claimants could choose to spend those sums in any way they sought fit and chose to make the contributions to union dues and benevolent funds.
13. The respondent does not need authority for the statutory deductions of tax and national insurance which they deduct under the PAYE scheme. I therefore find that only tax and NI falls to be deducted from net pay. Other sums required the claimants' consent.
14. The parties agree that in the light of my findings the award should be increased for both claimants by **£2,622.81 each**.

Pension loss

15. As set out above the figures for gross pay were agreed.
16. The parties agree that as a consequence of this the award to Mr Doyne should be increased by **£264.98** and the award for Mr Travers by **£176.77**.

Travel benefits

17. The claimants said that in relation to the disclosure of documents after the hearing with the written submissions that an explanation had been provided in their letter of 25 July 2016 sent the day before deliberation In Chambers. The letter said:

We accept that the additional documents disclosed with the written submissions were not presented in time for consideration at the remedies hearing on 7 July 2016.

We had requested copies of the relevant documents from the claimants. However, we were not in a position to disclose the documents in advance of the hearing, although the respondent was given an opportunity to view the emails with regard to Mr Travers job applications on a laptop prior to the hearing. The documents have been disclosed in accordance with our ongoing obligation in respect of disclosure and we do not believe that a further hearing is required.

As referenced above the respondent was aware of Mr Travers job applications, the issue in respect of his curriculum vitae arose from this and his evidence was given during cross-examination. The issues with regard to Mr Travers earnings and missing wage slips also arose from cross-examination, whilst the documentation in respect of the personal group hospital plan is consistent with the evidence that had been presented prior to the remedies hearing with regard to Mr Doyne. Mr Travers also referred to the AIG policy he had taken out following his dismissal during his evidence. The issue in respect of his daughter and son's eligibility for the nominee pass arose from his evidence and he has provided further documentation to support his claim that the nominee pass would have been given to his son.

The disclosure of Mr Doyne's travel and nominee pass should be uncontroversial but arises from his evidence given under cross-examination, as does the issue in respect of pension contribution levels and the nest savings plan. The correspondence from HM Revenue and Customs relates to a suggestion from the respondent that Mr Doyne did not reside same address as his daughter and former nominee.

18. I find that this does not adequately explain the reasons why the documents which were entirely pertinent and relevant to the claims made by Mr Doyne and Mr Travers were not disclosed until written submissions. These are documents which are put forward in support of monetary claims. No claim whatsoever was made prior to submissions in respect of Mr Travers's son. Had he wished to claim for his son there is no reason why he could not have done so and disclosed the relevant documents.
19. I have no doubt that, as stated by the claimants' solicitors in their letter of the 25 July 2016, that they asked their clients for the relevant documents. What has not been adequately explained is why their clients failed to produce relevant documents in time for the hearing and to allow the respondent an opportunity to consider and deal with those documents. It is not acceptable for the claimants (when professionally represented) to offer sight of a document on a laptop, without the document being available for introduction to the bundle and to allow the respondent a proper opportunity to take instructions on it. The only exception would be if the content of the document was agreed.
20. Mr Travers was seeking to claim £35,000 for a nominee who no longer lived with him.
21. Mr Travers made no mention whatsoever in evidence of his son as a potential nominee for a travel pass. I find that Mr Travers introduced in closing written submissions an entirely new application for the loss of a nominee travel pass when he realised, that having given evidence that his daughter no longer lived with him, that this substantial claim was likely to fail. Had Mr Travers wished to make this claim on behalf of his son, there was no good reason why he could not have done so, with evidence in his witness statement and proper disclosure of documents to enable the respondent to challenge that evidence in the normal way. The decision not to award the value of a travel pass for Mr Travers' son is confirmed.
22. In relation to Mr Doyne's daughter it is argued that the award of a travel pass should be for a full 9 zone pass. I take account of section 123 of the Employment Rights Act 1996 which provides that the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.
23. There was no documentary evidence showing the loss sustained by Mr Doyne's daughter other than that she travelled from zone 2 to zone 2 for work. There was no evidence put before the tribunal that she made use of

the travel card to zone 9 or any other zone other than zone 2. Had such evidence been before the tribunal, the decision may have been different. I consider that it is not just and equitable to award the claimant the value of a zone 9 pass with no evidence to show that any loss was actually sustained by the absence of such a pass following the claimant's dismissal.

24. The original award in relation to the loss of travel benefits for Mr Doyne's nominee is confirmed.

The law

25. Rule 70 of the Employment Tribunal Rules of Procedure 2013 provides that a tribunal may, either on its own initiative or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again.

Conclusions

26. The award to Mr Doyne is varied so as to be increased by the sum of **£2,887.70** (being £2,622.81 + £264.98).
27. The award to Mr Travers is varied so as to be increased by the sum of **£2,799.58** (being £2,622.81 + £176.77).
28. The claimants are also awarded the sum of **£350** under Rule 76(4) in respect of the tribunal fee for the reconsideration application as they have succeeded in part. The respondent said that half should be awarded. I considered that the Government's guidance was to the effect that if a party succeeded they should expect to recover their fee and I therefore awarded the full amount.
29. It was accepted for the claimants that this tribunal does not have the power to award the fee paid by the claimants to the EAT.



Employment Judge Elliott

Date: 03 January 2017