



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M Hayward

**Respondent:** Noel Chadwick Limited

**HELD AT:** Liverpool

**ON:** 11 November 2016

**BEFORE:** Employment Judge Robinson  
(sitting alone)

## REPRESENTATION:

**Claimant:** Ms H Bennett, Lay Representative

**Respondent:** Mr E Isap of Counsel

## JUDGMENT

The judgment of the Tribunal is that:

1. The claimant's claim for unfair dismissal succeeds, together with his notice pay claim. The respondent is ordered to pay to the claimant forthwith the sum of £6,091 made up as per the schedule below.
2. The recoupment provisions apply and the period of recoupment is 14 April 2016 to 3 June 2016, and the recoupment is £2,714.

## SCHEDULE

Basic Award £2,177.00

Compensatory Award:-

Compensation for loss of statutory rights £260.000

Loss of earnings between 14 April 2016

and 3 June 2016	<u>£1,911.00</u>	
Total		£2,171.00
25% uplift for failure to follow ACAS guidelines		<u>£543.00</u>
Total Compensatory Award		£2,714.00
Tribunal fees		<u>£1,200.00</u>
Total due to the claimant		<u>£6,091.00</u>

## REASONS

1. In identifying the issues I noted that Mr Hayward's claims against Noel Chadwick Ltd were for unfair dismissal and breach of contract. The breach of contract claim is a claim for damages for breach of contract relating purely to notice pay.
2. Mr Isap on behalf of the respondent has accepted and conceded that due process was not followed by the respondent company, and consequently the dismissal of Mr Hayward constitutes an unfair dismissal. Mr Hayward therefore has his declaration of unfair dismissal.
3. The issues I have to consider in the light of that concession are whether the claimant should receive any compensation. If he should receive compensation, how much should that be? Should the compensation be reduced firstly because, under the principles of **Polkey**, if a proper process had been followed he would have been dismissed in any event, or alternatively I have to calculate what the percentage chance of a dismissal would have been if that proper process had taken place.
4. I also have to consider whether any actions of Mr Hayward contributed to his dismissal. In those circumstances there can be a further reduction for contributory fault.
5. The issues therefore have been narrowed down considerably.

### The Facts

6. I have found the following facts. I have heard evidence from Mr Chadwick who is the son of the dismissing officer and from the claimant. I have also taken some factual findings from documents which were in the bundle. I have also read some statements from witnesses who did not attend. I made the parties aware at the outset that those statements and that evidence did not carry much weight with me because it was not tested by cross examination.

7. Mr Hayward is a 37 year old man. He worked for the respondent for 7½ years. If I decide to give him basic award compensation he will have seven weeks' pay and the calculation is based on one week for one year's work.

8. The respondent's business is a longstanding butcher's business but it also includes a delicatessen and restaurant. It is a small business that has thrived in Standish. I do not necessarily expect the highest standard of processes from a small business. I accepted the respondent's witnesses' that reputations are hard to gain and easily lost in a small community as Standish is.

9. The business did formerly have a Human Resources function. At the time of the claimant's dismissal that function was not available to Mr Chadwick senior nor his son. The burden therefore as to how to deal with Mr Hayward fell upon Mr Chadwick senior with the assistance of Mr Paul Chadwick, his son, from whom I heard evidence. I did not hear from the dismissing officer.

10. The respondent believed that there had been a breach of their social media policy. Both Mr John Chadwick (father) and Mr Paul Chadwick (son) had already decided before they got Mr Hayward into the meeting on 13 April 2016 that they were going to dismiss him. I have only heard from Mr Paul Chadwick. The decision maker, however, was his father. I believe that Mr John Chadwick could have been called to give evidence if the respondent had wished that to happen.

11. The claimant accepts that previously he had been "pulled up" for his use of social media, but no warning was given by Mr Ian Reid who was carrying out the HR function at the time. That previous post on facebook was different in form from the one that eventually got the claimant sacked. The post that I am interested in is the one that is contained at pages 38 and 39 of the bundle. It is a Facebook message to his girlfriend, Helen Burnett, who represents him here today. It gives her information about the price of meat. That post may have been seen by other people, although it is impossible to know how many. It is likely to be a very small number.

12. The respondent called the message on Facebook an "advertisement". It is not an advertisement. The post contains information about the cost of packets of meat purchasable online from a company known as Fresh Meat Packs North West Limited. They are not a direct competitor of the respondent. Fresh Meat Packs North West Limited sell the same product (meat) but they take online orders, take online payments and then deliver the goods. It is a different set up from the respondent's business, which relies on local reputation, on people visiting the shop and have few, if any, online orders. The respondents online orders are emails requesting deliveries and nothing more than that. No different from someone telephoning the butchers and asking for an order. It is true that both companies sell meat but that is as far as it goes. Noel Chadwick Limited has a delicatessen business and also a restaurant business which Fresh Meat Packs North West Limited does not have.

13. The claimant was dismissed summarily in a process which was reprehensible. There was no letter asking the claimant to attend nor were any reasons given to him why he should attend at the meeting, nor was there a warning that the disciplinary proceedings could lead to his dismissal. The claimant was not given the opportunity to have someone with him at the meeting. Once the meeting took place it was so

short he was not allowed, or did not have time, to give any explanation with regard to his actions. No appeal was offered to the claimant by the respondent. The claimant asked for an appeal. Because no appeal was arranged within a few weeks the claimant lost confidence in the respondent and did not follow the matter up. The duty for setting up the appeal once the request has been made is on the respondent not the claimant. The respondent did not send a letter to the claimant explaining the reasons for the dismissal nor did they, ultimately, ever send a date of appeal to the claimant.

14. This was an employee who had no previous conduct issues. Whatever Mr Chadwick may say now, there was no warning on the claimant's record. It was Mr Chadwick's contention that Mr Reid had given the claimant a warning. I accept the claimant's evidence that there was no such warning from Mr Reid nor was there anything on the claimant's employment file to suggest that even a verbal warning had been given to him.

15. The claimant was not given the chance to explain that other people had posted things on Facebook without any comeback, which he would have been able to do if there had been a properly set up disciplinary hearing. The claimant himself accepted that he had posted things on Facebook about a company called Taylors who were, in the claimant's eyes, a bigger competitor than Fresh Meat Packets to the respondent company. Nothing happened to him over that post.

16. Those are the relevant facts.

### **The Law**

17. Where there is an admission of unfair dismissal because of procedural wrongs I have to then consider what would have potentially happened in the future, and consider what might have happened if proper process had been followed. I can consider all the issues in those circumstances unlike deciding an unfair dismissal claim when I would not be able to substitute my views. Here, I have to decide on the evidence what is more likely than not to have happened if that proper process had been followed and a properly constituted disciplinary hearing set up. It is recognised that it would not be just and equitable to award compensation where an employee has suffered no injustice by being dismissed. I also have to consider if the dismissal was procedurally unfair what was the percentage chance of the claimant being fairly dismissed.

18. There is a duty on me to consider contributory fault. I must consider whether it would be just and equitable to reduce or further reduce the basic or the compensatory awards because of any the conduct of the claimant

19. Applying those principles to these facts I concluded as follows.

20. Mr Hayward's misdemeanour, if one can call it that, was minor. A post on Facebook about the selling of meat to his girlfriend and the cost of that item or those items cannot constitute gross misconduct. He was not in breach of any social media policy. It is fanciful of the respondent to suggest that there would be any financial loss to them with regard to other people seeing that post. It is also fanciful to say that

such a post harms their reputation. I accepted that Chadwick's had an extremely high reputation in the locality, but they are not the only organisation to sell meat in the area. There are a number of other outlets selling meat, including supermarkets and other butchers in the wider area.

21. The action of the claimant was not a malicious retaliatory act as had been suggested by Mr Chadwick. As I have set out above, it is difficult to see how the post could harm the company. I accepted, as the claimant did, that it may be a little disloyal to recommend to his girlfriend to buy meat at a good price from another company, but extolling the virtue of another organisation, even if indeed that was what Mr Hayward was doing, does not mean that Mr Hayward is being disloyal to his employer.

22. This was a wholly mishandled dismissal root and branch. I could not find on the evidence before me that a properly carried out disciplinary process would have concluded that what the claimant did was deserving of dismissal or even of sanction. I certainly could not find that dismissal was a sanction within the band of reasonable responses. I find that there was no chance, following the principles in **Polkey**, that the claimant would have been dismissed in any event if a proper process had been followed. Furthermore nor can I find that the claimant has contributed to his dismissal. As set out above, even if his actions are seen as a little disloyal, that disloyalty is so minimal as not to even register as something deserving of criticism never mind sanction .

23. In those circumstances I am going to award to the claimant a full compensation package with no deductions or reductions. Indeed I will give to the claimant a full 25% mark up because of the breach of the ACAS Code by Mr John Chadwick when dismissing.

24. The compensation that will be paid to the claimant is as follows and is as set out in the schedule at the head of the judgment.

25. With regard to the basic award which is calculated on the claimant's age and length of service I note that Mr Hayward was 37 years of age at the time of his dismissal. He worked there for seven years. He earned £311 gross per week. That is therefore seven weeks' compensation at £311. The basic award therefore is £2,177.00.

26. The claimant is also entitled to £260, a week's wages, for loss of statutory rights because at his new job with Starbucks he had to build up his employment protection. He will also recover all his loss between 14 April 2016 and 3 June 2016. That is seven weeks at £273 net per week, a sum of £1,911.00.

27. The compensatory award in total is therefore £2,171.00. I am going to uplift that by the maximum I am allowed of 25% for the breach of the ACAS Code. That sum is £543. That leaves a compensatory award in total of £2,714.00.

28. I make no award for notice pay because that is swallowed by the compensatory award. Mr Hayward either gets his compensatory award or his notice

pay. I have given him his compensatory award. There is no future loss because he now earns more with Starbucks than he earned with the respondent.

29. The total amount of compensation therefore is a basic award of £2,177, a compensatory award of £2,714, a total of £4,891, and I will reimburse the claimant his Tribunal fees of £1,200.

30. Consequently the respondent must pay forthwith to the claimant the sum of £6,091.00.

22-03-17

Employment Judge Robinson

JUDGMENT AND REASONS SENT TO THE PARTIES ON

28 March 2017

FOR THE TRIBUNAL OFFICE