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# EMPLOYMENT TRIBUNALS

**Claimant:** Mr CR Mace  
**Respondent:** Aquatronic Group Management Plc (AGM)  
**Heard at:** East London Hearing Centre  
**On:** 1 June 2017  
**Before:** Employment Judge G Tobin

## Representation

**Claimant:** Mr J Crozier (Counsel)  
**Respondent:** Mr M Magee (Counsel)

# JUDGMENT ON RECONSIDERATION

The judgment of the Tribunal is that following the reconsideration of the Judgment promulgated to the parties on 27 March 2017, the claimant is awarded compensation and damages in the sum of £68,254.33

# REASONS

1 Following the claimant's application of 4 April 2017 for reconsideration of the remedies award, it was accepted that the Tribunal had made an error in respect of calculating compensation including the director's fee. The basis of an agreed calculation was set out by counsel for both the claimant and the respondent and is as follows:

Weekly pay (pre-dismissal): £1,174.28 pw net	£
(a) Basic award	13,172.50
(b) Wrongful dismissal (adjusted for director's fee receipt)	10,617.99
(c) Award to hearing (weekly pay DEBA pay @ £574.43pw)	11,697.08
(d) Future Loss: [no of weeks] x £599.85 pw (to 31.04.17) [no of weeks] x £537.28 pw (from 01.05.17)	
(e) Grossing up: [TBC]	
(f) Expenses:	£100

(g)	Loss of statutory rights:	£300
(h)	Fees:	£1,300

Note: £25,090.49 (a, b & h) are not capped  
(c) – (g) are capped at £78,335.00

**Future loss of earnings based on the Tribunal's just and equitable discretion (i.e. point 1(d) above).**

2 The Tribunal (i.e. I) awarded compensation on the difference between the claimant's former monthly net salary plus pensions and benefits and his subsequent remuneration package, from DEBA (UK) Limited, at £408.25 per month [which was incorrect]. I projected this future loss of earnings, pension and benefits for 36 months and awarded compensation under this head of loss at £14,697.00. In reviewing my figures, Mr Magee (for the respondent) requested that I also review the issues of mitigation. He submitted that this was not merely a recalculation exercise but that I should have in mind a just and equitable determination of the claimant's losses. Mr Crozier (for the claimant) said that this would require a separate application for a review as it was altering the basis of my previous finding. I reject Mr Crozier's argument, the claimant succeeded in his application for a review. The claimant proffered arguments and calculations. The respondent submitted alternative arguments and calculations. Mr Magee merely responded to the claimant's application to review this matter and his submissions did not require a separate cross-application.

3 I made the following findings of fact which had not been challenged. The claimant worked for the respondent for 27 years and at the time of his dismissal he was 10 years or so short from when he said he intended to retire. In employment terms, the claimant was both very senior and highly experienced. Obviously, he was not used to looking for work and his dismissal came as a shock. Nevertheless, the claimant was able to obtain alternative employment, through his contacts and within a relatively short period of time. The claimant's alternative employment was at a significant reduction when compared to his pre-dismissal total remuneration package. I was satisfied that the claimant had mitigated his losses by finding another suitable job although with far less seniority and at substantially lesser earnings. I am also satisfied that the claimant's new overall wages were commensurate with the job that he undertook. Although I did not make a finding of fact on this point, I note that the claimant gave evidence at the substantive hearing that once he started his job with DEBA (UK) Limited he did not look for any other employment. The claimant's forecast was that his earnings were likely to increase until around £45,000 and then he would reach a plateau at that level. I set out at paragraph 100 of my judgment my assessment in respect of future losses on a just and equitable basis. I worked out the shortfall from the claimant's earnings at £408.25 per month and then projected this forward. I regarded a 36-month shortfall on a difference of earning of £94.21 per week was just and equitable for the circumstances of the case. Mr Magee submitted that the recalculation of the claimant's future losses at £599.85 per week (or £2,599.35 per month) should lead to a reappraisal of the question of the claimant's mitigation.

4 I have not heard further evidence from the parties because it was agreed between the parties that the claimant had not undertaken further mitigation from the time that he

obtained employment with DEBA (UK) Limited, which was on 7 September 2016. I note that the claimant had been dismissed on 13 May 2016. I make no criticism of the claimant in concentrating on working hard and keeping his new employment. He is a mature and experienced employee. He would be an asset to any business. Nevertheless, I understand that he feels vulnerable in the current economic climate such that as he heads towards the end of his working life he does not want to flit between employment. I accept Mr Crozier's submission that the claimant was fortunate to get the job he did so soon after the termination of his employment. This desire to concentrate on the mitigation that he has already achieved is understandable (to a point). Whilst exercising my discretion, I note that the respondent had put the claimant in this unfortunate position.

5 I note that the burden falls on the respondent to show that the claimant had failed to mitigate. Notwithstanding, the claimant's evidence is that he undertook no further mitigation following his commencement of his new employment, it must be correct that I review the whole just and equitable basis of my previous award. I awarded the claimant 36 months' loss of earning on the basis that his net losses were approximately £408.25 per month. The reasonableness of an award based on £94.21 per week and one based on £599.85 per week (decreasing to £537.28 per week) are different. My calculation worked out the losses and then projected this forward; therefore, I feel that it is just and equitable that I review this in line with the expedient increase in the figure for the claimant's future losses. There is a proportionality consideration, which demands that the mitigation required must be substantially more for a weekly shortfall of £599.85 than that provided for in my original award which was based on £94.21 per week.

6 My overriding principle when awarding compensation is, so far as I can, to do justice to the situation. I previously awarded the claimant 36 months' future loss of earnings, pension and benefits. As the parties have presented me with an agreed calculation based on weeks, I shall work this out in weeks: 36 months being 156 weeks. I previously awarded compensation on the equivalent of 156 weeks' losses bearing in mind the claimant's age, seniority and proximity to retirement. I also took into account his close association with the single company for which he advanced internally, which meant that his position in the open labour market was relatively precarious. I am satisfied that my original forecast of future losses at 36 months x £408.25 (or 156 x £94.21) was just and equitable.

7 Nevertheless, I accept Mr Magee's submission that I should review my original assessment of 36 months in line with the adjusted shortfall figure, i.e. as the multiplicand is adjusted then the multiplier should also be reviewed. An increase in the claimant's future losses to £84,944.18, would be to increase my original calculation by £70,247.18. This is not a just and equitable award in the circumstances of this case. This would significantly distort my overall award of compensation and would not have properly reflected the just and equitable principles, or balance, I relied upon to calculate the overall level of compensation.

8 When assessing a weekly shortfall of £599.85. I expect to see substantial mitigation – or a shorter period of losses awarded. I accept the claimant's difficulties on the labour market, but he has not sought employment at his pre-dismissal level of income. If the claimant wanted to regain his pre-dismissal earnings then I think he should have been able to get another job at his pre-dismissal wages and benefits within 12 months from the date of the last hearing. This is not much more than a guess, of course. Although,

