



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr I Walker

**Respondent:** Automotion CPM Ltd t/a Car Motion

**HELD by:** CVP

**ON:** 18 May 2021

**BEFORE:** Employment Judge Shulman

## REPRESENTATION

**Claimant:** In person

**Respondent:** Did not appear, was not represented and filed no response.

# JUDGMENT

The Judgment of the Tribunal is as follows:

1. The claim of unfair dismissal is well founded and the respondent shall pay the claimant the sum of £14,299.74 by way of compensation.
2. The claim for 12 days unauthorised deduction of wages is well founded and the respondent shall pay the claimant the sum of £420.00.
3. The claim for no holiday pay is well founded and the respondent shall pay the claimant in respect thereof the sum of £736.95, being 15 days holiday pay.
4. The claimant made various other monetary claims. In respect of the claims for commission, warranties, finance and cam belts and the claim for the pension element of the unfair dismissal claim and a claim for short payment in September 2020 the claimant could not prove these claims and they are therefore hereby dismissed.
5. Initially the claimant has made claims in respect of tax and national insurance matters and matters of defamation and the Tribunal has no jurisdiction to hear those claims and they are therefore dismissed.
6. Because amongst other things the claimant has made a successful claim for unfair dismissal, the Tribunal has power to make an award in respect of no statement of employment particulars. In respect thereof that award shall be for the maximum of four weeks in the sum of £980.00 which the respondent shall pay to the claimant.

7. The claimant made all the awards on the basis that the respondent failed to file a response and therefore they are default Judgments under Rule 21 of the Employment Tribunal Rules.

## REASONS

### 1. Introduction

The claimant was summarily dismissed by the respondent on 13 October 2020 having commenced his employment as a used car sales executive on 2 June 2018. At the relevant time he was 59 years of age. The claimant comes to this Tribunal for various claims dealt with as above.

### 2. Issues

The issues relate to what was the reason for dismissal, which has not been proved, and whether the dismissal was fair, again of which there is no evidence from the respondent. Additionally at the time of his dismissal the claimant was owed holiday pay and wages and he had not been given a contract of employment.

### 3. Facts

- 3.1. These are contained introduction and below and are as a result of the Tribunal having carefully reviewed all the evidence before it (both oral and documentary) and it finds these facts proved on the balance of probabilities.
- 3.2. The claimant's gross wage was £46.15 per day or £323.05 per week.
- 3.3. The Tribunal finds that the claimant was entitled to 28 days holiday in a year and not the 22 days that he felt he was entitled to. The holiday year from 1 January to 31 December in the same year and accrued at £49.13 net per day. He had taken nine days holiday in the year 2020 and therefore had 19 left but as he left on 13 October 2020 he was only entitled then to 15 days holiday to his dismissal
- 3.4. The claimant was not issued with employment particulars.
- 3.5. The claimant after his dismissal started a job as a driver on 23 October 2020 at an average net weekly wage of £300.00. His existing weekly pay and commission with the respondent amounted to £576.92 per week. He is obviously in a job which pays less than the job in which he was employed by the respondent but says that he has been looking constantly for work, that is for better work, and expects to get the equivalent work within three months of this hearing.
- 3.6. He did not work at all between 13 October and 22 October 2020, which is 10 days. He was working as a driver between the date of his new appointment and today's date for 208 days and the difference between his old wage and his wages as a driver was £40.12 per day. The period in days as I have said is 208 days. Bearing in mind the likelihood of employment within three months the Tribunal awards another 92 days.
- 3.7. The claimant has made a claim for pension which the Tribunal pointed out to him should be based on the respondent's contributions to his pension. He did not know this and therefore there is no basis for an award.

#### 4. Determination of the issues

After listening to the factual submissions made by the claimant the Tribunal awards remedy as follows:

- 4.1. The claimant elected for compensation as applicable.
- 4.2. The Recoupment Regulations apply (see annexe for their explanation and effect).
- 4.3. The Tribunal has awarded compensation for unfair dismissal as follows:

**The basic award** - two years' service multiplied by 1.5 (the multiplier) multiplied by a gross week's pay during the claimant's employment with the respondent - £323.05 which equals £969.15.

**Compensatory award** - Immediate loss – 13 October 2020 to 22 October 2020 at the rate of £576.92 per week – period 10 days – amount of immediate loss in that period - £824.28.

- Further immediate loss - between 23 October 2020 and 18 May 2021 at the rate of £576.92 pay minus the figure earned by the claimant as a driver - £300.00 equals £276.92 and this is for a period of 208 days at an amount of £40.02 per day - £8324.47.

- Future loss – 19 May 2021 to 18 August 2021 – at the weekly rate of £276.92 being 92 days - £3681.84.

**Subtotal for basic and compensatory award** - £12,830.59.

**Loss of statutory industrial rights** - £500.00

**Subtotal** £13330.59.

Grand total for unfair dismissal - £14299.74. (i)

Prescribed element £13330.59. (ii)

Period prescribed element 13 October 2020 to 18 August 2021 (iii)

Excess of (i) over (ii) £969.15

- 4.3 With regard to unauthorised deduction of wages the claimant was not paid for 12 days in October 2021 being his last 12 days and is therefore entitled to 12 days multiplied by £35.00 per day net = £420.00
- 4.4 So far as holiday pay is concerned the claimant was entitled to 28 days holiday in a full year £49.13 per day and he had 15 days entitlement left. Total holiday pay is £736.95

4.5 Finally payment of four weeks for the failure to issue a statement of employment particulars is £980.00.

Employment Judge Shulman

Date: 1 June 2021