

IN THE INDUSTRIAL TRIBUNAL

Case No. 602/563 (P63573)

BETWEEN

JULIO ALVES-LEITE

Claimant

-and-

CAMMEL LAIRD (GIBRALTAR) LTD

Respondent

Chairman: James Levy Esq QC
Counsel for the Claimant: Charles Gomez Esq
Counsel for the Respondent: Nick Cruz Esq

RULING ON DAMAGES

The initial application of the Claimant was heard on 1st and 2nd July 2003, when the Tribunal heard live evidence and considered the issues. I delivered a decision in respect of this application in August 2003 ("the Decision"). The facts and issues relating to this case can be found in the Decision and there is no need to recite them again.

I ruled in favour of the Claimant. I held that the Respondent had unfairly dismissed the Claimant and, in particular, that the Respondent had acted unreasonably in the alleged “redundancy” by failing to offer the Claimant alternative employment.

Under section 70(3) of the Employment Ordinance (“the Ordinance”), the Tribunal has power to order compensation after it has ruled on the issue of dismissal. In light of the ruling in the Claimant’s favour, the Tribunal now has to decide the amount of compensation that is to be awarded to him.

Preliminary Issue

I must, however, first turn my attention to a submission made by Counsel for the Respondent who suggests that once the period for giving evidence is closed, this Tribunal cannot reopen the hearing having delivered the decision. He does not cite any authority for his proposition.

If this proposition were correct, it would result in the Tribunal only being entitled to award the Claimant the Basic Award under the Ordinance. Counsel for the Claimant, argues that this is not correct. He states that it is actually the norm for Tribunal hearings to be heard in two separate stages, with the substantive issue as to liability being dealt with separately from any claim for damages which may result from a decision favourable to the claimant. He further cites the case of *Gibraltar Gold Coin Company Ltd v Her Majesty’s Attorney General*¹, heard in the Court of Appeal in Gibraltar, as authority for the proposition that “procedural” arguments are not to be allowed to interfere with the determination of “substantive” issues.

After having carefully considered the arguments put forward by both Counsel, I do not consider that this Tribunal is barred from hearing evidence on quantum after it

¹Civil Appeal No 15 – 2004

has delivered the Decision on the substantive issue. Furthermore, under section 16(1) of the Industrial Tribunal Rules, this Tribunal can regulate its own procedures. It surely makes no practical sense to argue that the Tribunal must sit through arguments of quantum in cases where there may be a finding that no liability attaches to the employer. I therefore rule that it is proper for the hearing to have been divided into two parts and accordingly, the evidence given at the hearing of the 11th March 2004 is allowed.

Damages

It follows from the above, that Mr Leite can be granted an amount in respect of the Compensatory Award under section 3 of the Industrial Tribunal (Calculation of Compensation) Regulations 1992. I therefore turn now to the quantification of those damages, and I will deal with each heading under which I am granting damages, separately.

Basic Award

The computation of the Basic Award results in an award of £225.03 in favour of the Claimant. By virtue of section 2 of the Industrial Tribunal (Calculation of Compensation) Regulations 1992, however, the amount of the basic award shall not be less than £2,200.

The Claimant is therefore awarded £2,200 as the Basic Award.

Compensatory Award

A Compensatory Award can be awarded under section 3 of the Industrial Tribunal (Calculation of Compensation) Regulations 1992. In this case, the maximum sum

recoverable under this head of damage, is £23,403.12, representing the Claimant's weekly wages multiplied by 104 (i.e. two years of salary). The award I am making today is below that potential maximum amount.

Normally, calculation of this aspect of an award requires the computation of two different time frames. The first period is the time between the effective date of termination, 11th September 2002, and the date of the first hearing, 1st July 2003 ("the Immediate Loss"). The second time period to consider is the time the Claimant spent unemployed after the Tribunal heard the case ("the Future Loss"). The Future Loss is often calculated using a "broad brush" approach, multiplying the Claimant's weekly wage by a given number of weeks, e.g. 12, 26 or 52, which represent a period of unemployment. In this case, however, such an approach has not been necessary due to the very specific figures that both Counsel have submitted, for which this Tribunal is grateful, and the fact that the period of unemployment can be ascertained exactly as a result of a fax dated 9th February 2004, from Counsel for the Claimant.

Each Counsel's figures differ only very slightly. I have relied on those submitted by Counsel for the Respondent since, given the fact that they represent the increases in tax allowances as a result of the Claimant's change of circumstances, I hold them to more accurately reflect the Claimant's earnings.

I also consider relevant the fact that the Claimant earned £845.75 whilst employed with a company known as Bencrafts Construction Limited ("Bencrafts"). This amount must be deducted from any Compensatory Award made by this Tribunal.

Accordingly the Claimant is awarded £15,450.10 under the Compensatory Award, representing £9698.84 in respect of the Immediate Loss together with £6597.01 in respect of the Future Loss less the £845.75 the Claimant earned whilst working with Bencrafts.

Statutory Protection

I am also awarding the Claimant £150 for his loss of Statutory Protection.

Contributory Fault

In arriving at this overall amount I have also considered whether Mr Leite's award should be reduced due to any contributory fault on his part, and whether, after having been unfairly dismissed, Mr Leite acted reasonably in trying to mitigate his losses.

Conduct

I do not believe that Mr Leite's conduct in any way contributed to his dismissal and I therefore rule that the award should not be reduced in this respect.

Mitigation

The Claimant is under a duty to mitigate his losses once dismissed.

Mr Leite spent 16 months unemployed, except for 4 weeks where he was temporarily employed with Bencrafts. During these 16 months, Mr Leite went to the Gibraltar employment offices twice a week in search of alternative employment. He also placed himself on the Spanish and Gibraltar unemployment lists and looked for employment in Gibraltar, La Linea and Algeciras. His course of action did enable him to find some employment, but only for a limited period of time.

I consider that although Mr Leite took active steps to seek employment, more could have been done. First of all he visited the Employment and Training Board in Gibraltar, twice weekly. I am of the opinion that he should have visited the offices more regularly, especially as his time unemployed increased. Secondly he could have expanded his search for new employment further than the confines of Gibraltar, La Linea and Algeciras. The Claimant has spent a considerable amount of time unemployed and I do not think the Respondent can be held solely responsible for the whole of this period of unemployment. I also note that in this period of unemployment, the Claimant did little to improve his job prospects, such as re-training or undertaking new study courses.

For these reasons, I hold that the Compensatory Award should be reduced by 10% to reflect the Claimant's failure to mitigate his losses to the fullest extent.

Recoupment

Before concluding I would like briefly to address the issue of the unemployment benefits received by the Claimant, from the Spanish Authorities, during some of his unemployment period. Neither Counsel have sought to address me on the relevance, if any, of this issue. Had unemployment benefits been paid to Mr Leite by Gibraltar authorities, a recoupment notice could have been served on the employer asking it to repay the Government of Gibraltar the benefit it extended to the Claimant. In this case, however, this is a matter for the Spanish authorities. I have no power in law to make a deduction to the above awards so as to reflect the benefits received by the Claimant.

It could be argued that this has unjustly enriched the Claimant. Perhaps so, but this Tribunal can do nothing in respect of this issue. The employer is certainly not entitled to have the amount of unemployment benefit received by the Claimant

reduced from the sums payable by it as that would unjustly enrich the employer. The situation is, nonetheless, anomalous and this is a point which the legislature may wish to review in order to avoid any such an anomaly recurring in the future.

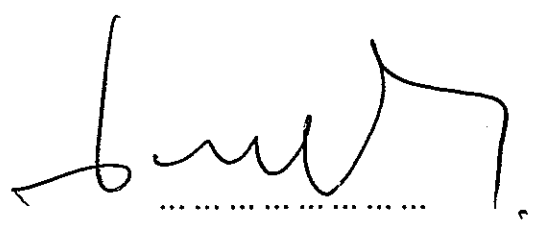
Conclusion

In conclusion the Claimant is awarded:

- £2200 under the Basic Award
- £15,450.10 under the Compensatory Award
- £150 for loss of Statutory Protection

This is reduced by 10% (£1,545.01) for the above given reasons in respect of mitigation.

Total Compensation = £ 16,255.09



James Levy QC

Wednesday the 2nd day of June 2004