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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4104122/2020

Held by Cloud Video Platform (CVP) on 26 February 2021

Employment Judge: Ronald Mackay

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Mr B Logue

**Claimant
(In Person)**

DSG International

**Respondent
(No appearance or
representation)**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The judgment of the Tribunal is that the Claimant was unfairly dismissed and the Respondent is ordered to pay the Claimant the sum of TEN THOUSAND FOUR HUNDRED AND NINETY ONE POUNDS (£10,491) by way of compensation.

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REASONS

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1. The Claimant was employed by the Respondent as a delivery driver. He was dismissed with effect from 4 May 2020. At that time, he had 13 complete years' service and was 59 years of age.
2. The claim is one of unfair dismissal. The Respondent has not defended the claim. Having failed to do so and having accordingly failed to advance any potentially fair reason for dismissal in accordance with Section 98(4) of the

Employment Rights Act 1996 (“**ERA**”) (the burden of proof resting on the Respondent) the Tribunal found the dismissal to have been unfair.

3. The Tribunal then went on to consider the question of compensation.

Basic Award

- 5 4. The Claimant had a basic salary of £25,000 per annum with regular overtime payments. He accepted that the Respondent’s calculation of 12 weeks’ notice pay (£6,559.91) was a fair assessment of his average earnings including overtime. This gives rise to gross weekly pay of £546.65.
- 10 5. On termination of employment the Claimant received certain payments, including a sum described as a redundancy payment (“the **Redundancy Payment**”) from the Respondent.
- 15 6. Notwithstanding the characterisation of the Redundancy Payment, the Respondent having failed to establish that the dismissal was by reason of redundancy, the exclusion from entitlement to a basic award in s122(4) of ERA does not apply. The Claimant is, therefore, entitled to a basic award of £10,491 (being 19.5 weeks’ pay). The calculation is based on the Claimant’s gross weekly pay of £546.65 (capped at £538) and 13 weeks of service above the age of 41.

Compensatory Award

- 20 7. In addition to receiving payment in lieu of 12 weeks’ notice (£6,559.91), the Redundancy Payment amounted to £18,180.44 (paid gross).
8. The Claimant commenced alternative employment on 26 October 2020. His current earnings are marginally lower than those he enjoyed with the Respondent. Of the 25 weeks between termination of the Claimant’s

employment with the Respondent and his commencing alternative employment, the payment in lieu of notice covered 12 of those, leaving an unpaid period of 13 weeks. The Redundancy Payment received being considerably in excess of the loss of earnings sustained during that period, the Claimant suffered no financial loss to the date of the Hearing.

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9. Having regard to the extent of the termination payments received by the Claimant, and his current earnings, there will be no loss for a further considerable period of time (without even considering the Claimant's continuing duty to mitigate loss). For that reason, the Tribunal did not consider it appropriate to make any award for future loss.

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10. No compensatory award is accordingly payable.

15 Employment Judge: Ronald Mackay
Date of Judgment: 09 March 2021
Entered in register: 20 March 2021
and copied to parties

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