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THE EMPLOYMENT TRIBUNAL

SITTING AT:
BEFORE:

**LONDON CENTRAL
EMPLOYMENT JUDGE ELLIOTT**

BETWEEN:

**(1) Mr M Brown
(2) Mr R Rottier
(3) Mr Z Temesgen
(4) Ms M Hathaway
(5) Mr A McDonald
(6) Mr C Smith**

Claimants

AND

Afrimax (UK) Ltd

Respondent

ON: 23 October 2018

Appearances:

For the first to fifth claimants:	No appearance
For the sixth claimant Mr Smith:	In person
For the respondent:	No appearance

JUDGMENT

The Judgment of the Tribunal is that:

1. The respondent shall pay to the first claimant Mr Mr Brown the sum of **£14,130.43.**
2. The respondent shall pay to the second claimant Mr Mr Rottier the sum of **£11,404.98.**
3. The respondent shall pay to the third claimant Mr Temesgen the sum of **£13,346.51.**
4. The respondent shall pay to the fourth claimant Ms Hathaway the sum of **£9,770.67.**
5. The respondent shall pay to the fifth claimant Mr McDonald the sum of **£10,352.15.**

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6. The respondent shall pay to the sixth claimant Mr Smith the sum of **£61,219.23**.

REASONS

1. This judgment was given orally on 23 October 2018. Written reasons are given as the respondent and the first to fifth claimants were not in attendance.
2. The only attendee was claimant Mr Smith. He had spoken to claimant Mr McDonald and was aware that he was not attending because he had just started a new job and is based in Manchester. Mr Smith thought Mr Brown was attending and did not know about any of the others.
3. Mr Smith had not had any contact with the respondent regarding these proceedings. He understood that the CEO had returned to Italy, his place of residence and he was the person with whom Mr Smith had dealings.
4. By claim forms presented on 17 April 2018 the claimants brought claims for redundancy payments, notice pay, unlawful deductions from wages for pension contributions and holiday pay.
5. Notice of proposed consolidation of the proceedings was sent to the parties on 14 August 2018. Representations were ordered to be made by 28 August 2018. No representations were made as to why the claims should not be considered together and I therefore consolidated them.
6. The respondent is a company which remains active on the register but with a proposal to strike off.
7. The response to the claim was due to be filed by 11 September 2018 for all claims.
8. A default judgement was not considered appropriate. On 25 September 2018 the tribunal on the direction of Regional Judge Potter sent a letter to the claimants stating that if they sought to pursue the claim it was vital that they complied with the tribunal's order of 14 August 2018 and a copy was enclosed. Each claimant was ordered to provide a statement of remedy on or before 4 September 2018.
9. The sixth claimant Mr Campbell Smith produced a statement of remedy, on the due date, claiming £94,451.53. He also attached his dismissal letter from the respondent dated 17 January 2018 informing him that his employment would terminate by reason of redundancy on 31 January 2018 due to closing the London offices and relocating the Group Finance

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and HR activity to Zambia. He was told in that letter that he would receive a total termination payment of £52,317.31.

10. Mr Smith's termination letter said that he would receive his total termination payment of £52,317.31 made up of a statutory redundancy payment of £8,942.31; three months notice pay in the sum of £38,875, healthcare £750 and pension £3,875. He was also told that his bonus would be paid (subject to RemCo approval) even if this was after the date of termination. The statutory redundancy payment was not correctly calculated.
11. The second claimant Mr Randy Rottier sent a statement of remedy on 21 August 2018 claiming a total of £10,876.13.
12. The third claimant Mr Zeleke Temesgen sent a statement of remedy on 26 August 2018. He claimed a compensatory award which is not recoverable in these proceedings together with sundry expenses which were also not recoverable. Minus those amounts he claimed the gross sum of £22,124.92.
13. At the time of the hearing there were no remedy statements on the tribunal files from the other three claimants namely Mr Brown, Mr McDonald and Ms Hathaway.

Striking out claims

14. The claims of those who had not complied with the Tribunal's order to provide remedy statements were struck out under the Employment Tribunal Rules of Procedure 2013, Rules 37(1)(c) and (d) for non compliance with an order of the tribunal and on grounds that that the claim has not been actively pursued. These were the claims brought by Mr Brown, Mr McDonald and Ms Hathaway.
15. After the conclusion of the hearing, the judge was informed by the tribunal's administration that Mr Brown, Mr McDonald and Ms Hathaway had sent remedy statements to the tribunal on time and these had not been linked to the files.
16. I therefore **reconsidered** my decision in relation to those three claimants under Rule 70 upon receiving this information in the afternoon on the day of the hearing.

Findings

17. The tribunal heard evidence from Mr Smith only. His evidence was unchallenged and I therefore found for him on his evidence.

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18. The tribunal saw Mr Smith's letter from Mr Lars Stork the CEO of the respondent terminating his employment by reason of redundancy on 31 January 2018 due to closing the London offices. The date of the letter was 17 January 2018 therefore two weeks' notice was given.
19. The letter admitted liability and gave amounts for the statutory redundancy payment, notice pay, healthcare and pension.
20. I saw Mr Smith's contract of employment signed by both parties. I also saw Mr Smith's payslips for December 2017 and January 2018. Mr Smith's evidence was that despite receiving his payslips he was not paid for either of those months including his termination payments.
21. Mr Smith claimed his 2016 bonus which he said fell due in April 2017. This claim was out of time, the ET1 having been presented on 17 April 2018.
22. In relation to pension contributions, Mr Smith's December 2017 payslip showed a deduction of £904.17 which was never paid to the pension provider Aviva. He had received a letter in February 2018 from Aviva (not shown to the tribunal) saying that the pension contributions had not been made by the respondent. Mr Smith's evidence, which I accepted, was that it was also not received for November 2017.
23. For the other five claimants, I find that they were all made redundant and that in the absence of any other information and on a balance of probabilities the same relevant facts apply as applied to Mr Smith.

The law

24. Section 13(1) of the ERA provides an employer shall not make a deduction from wages of a worker employed by him unless the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or the worker has previously signified in writing his agreement or consent to the making of the deduction.
25. Section 23(2) of the ERA provides that subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with the date of payment of the wages from which the deduction was made. Subsection (4) provides that where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint

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if it is presented within such further period as the tribunal considers reasonable.

26. Section 135 of the Employment Rights Act 1996 gives the right to a redundancy payment for an employee who is dismissed by reason of redundancy. The employee must have two years continuous service – section 155.
27. The entitlement to annual leave is set out in Regulations 13 and 13A of the Working Time Regulations 1998 (as amended). The entitlement to a payment in lieu on termination of employment is set out in Regulation 14.

Conclusions

Mr Smith

28. Mr Smith is entitled to a redundancy payment of £1,467 based on 2 years service, his age at termination entitling him to 1.5 times a week's pay and the cap on a week's pay at the relevant time of £489 making **£1,467**.
29. Mr Smith was not paid in December 2017. Mr Smith's gross salary was £155,000. It included a sum for holiday pay not taken during 2017 which can be awarded on termination of employment. The net pay on the December 2017 payslip was £14,025.73. As it is pay, this is awarded gross in the sums shown in the payslip of £12,916.67 and holiday pay £12,817.23 and this is awarded to Mr Smith as unlawful deductions from wages in the sum of **£25,733.90**.
30. The same applies to the January 2018 payslip as the termination date was 31 January 2018. Payments were shown in the payslip for gross salary of £12,916.67 and holiday pay of £1,266.34. I therefore award **£14,183.01**.
31. Mr Smith is entitled to notice pay. He was given two weeks notice out of three months. His net monthly pay based on his November 2017 payslip was £7,210.79. Three months net pay is £21,632.37. By consent this is awarded at 2.5 months net pay at **£18,026.98**.
32. Mr Smith claimed a failure to make pension payments. His December 2017 payslip showed a deduction of £904.17 which was never paid to the pension provider Aviva and the same applied to November 2017. The amount awarded is **£1,808.34** as an unlawful deduction from wages.
33. The total amount awarded to Mr Smith is **£61,219.23**.

The other five claimants

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34. In relation to the other five claimants, I based my decision on the papers they provided. Where I was in any doubt as to the figures, I made the decision on a balance of probabilities because they did not attend the hearing to give evidence in order to prove their claim.

Mr Rottier

35. The second claimant Mr Randy Rottier sent a statement of remedy on 21 August 2018 claiming a total of £10,876.13. He claims his December 2017 salary in the sum of **£2,916.67** which is awarded gross.
36. He claims pay in lieu of notice in the same figure £2,916.67. This should be awarded net and not gross and in the absence of any figures to assist me and in the absence of any evidence from this claimant, I have reduced this by one third to **£1,944.45**.
37. Mr Rottier claims holiday pay in the sum of **£1,884.68** which was shown in his December 2017 payslip and is awarded.
38. He claims a redundancy payment in the sum of £2,934. He said he had five years service with the respondent. On checking his dates of service in box 5 of his ET1 from 23 September 2013 to 31 December 2017 I find that he had only four complete years service. A week's pay is capped at £489 and he is entitled to 7.5 weeks pay in the sum of **£3,667.50**, more than the amount claimed.
39. He claims pension contributions for November and December 2017 as did Mr Smith. The total of the sums claimed for pension contributions is **£991.68** which is awarded.
40. He also claims an additional 20% for cost of travel to interviews, travel to court (a trip that was not made) and personal stress amongst other things, these items are not recoverable under the relevant jurisdictions.
41. The total award to Mr Rottier is **£11,404.98**.

Mr Temesgen

42. The third claimant Mr Zeleke Temesgen sent a statement of remedy on 26 August 2018. He claimed a compensatory award which is not recoverable in these proceedings as it is not an unfair dismissal claim, together with sundry expenses which are also not recoverable. Minus those amounts he claimed the gross sum of £22,124.92.
43. For his redundancy payment I noted that his period of service was from

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1 April 2015 to 31 December 2017 and he therefore had two complete years service. His employment terminated on an earlier date namely 31 December 2017 and he found another job from 3 January 2018. He was under the age of 41 at the effective date of termination he is therefore entitled to a redundancy payment in the sum calculated at 2 x £489 namely **£978**.

44. He claims his November 2017 salary giving credit for the sum of £1,997.97. His gross monthly salary is shown in the November payslip as £4,833.33. Deducting the sum for which credit is given, I award for November 2017 the sum of **£2,835.36**.
45. The third claimant was unpaid for December 2017 and I award the full amount of his gross salary in the sum of **£4,833.33**.
46. His notice pay was claimed for December 2017 is a duplication as he cannot be awarded pay twice for the same month. I note that he secured new employment immediately after the termination of his employment and therefore no sum is awarded for notice pay. He mitigated his loss, as he was obliged to do, by finding new employment. I also saw his termination letter written by Mr Smith the sixth claimant, which was dated 1 November 2017 so he was given two months notice prior to termination.
47. Holiday pay is claimed in the sum identified in his December payslip in the sum of **£3,123.12**.
48. Pension contributions are claimed in the total sum of **£1,576.70** for November and December 2017 and are awarded in that amount.
49. I award no bonus for 2016 for the same reason as set out for Mr Smith as such claim is out of time.
50. The total amount awarded to Mr Temesgen is **£13,346.51**.

Ms M Hathaway

51. I saw Ms Hathaway's termination letter dated 1 November 2017. Her termination date was 31 December 2017. Her ET1 shows her dates of service as from 6 June 2016 to 31 December 2017. She did not have two years service and is therefore not entitled to a redundancy payment by reason of section 155 Employment Rights Act 1996.
52. She secured new employment on 9 January 2018 and was therefore only out of work for just over a week. To that extent she mitigated her loss so far as the notice pay claim is concerned. Based on her December 2017

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payslip I award her arrears of salary in the gross sum of **£5,416.67** and holiday pay of **£2,000**.

53. For her notice pay I have estimated, in the absence of a relevant payslip or any oral evidence net pay at £3,610. I have looked at this on an annual basis and divided it by 52. To award notice pay of just over a week and to reflect the fact that she was earning slightly less in her new employment I award **£900**.
54. Pension contributions are awarded in the sum claimed being the sum of **£1,454**.
55. Bonus for 2016 is not awarded as the claim is out of time.
56. The additional sums claimed for a further 20% for cost of travel to interviews, travel to London to attend the hearing (a trip that was not made) and stress amongst other things, are not recoverable under the relevant jurisdictions.
57. The total award to Ms Hathaway is **£9,770.67**.

Mr Brown

58. Claimant Mr Matthew Brown was employed on 1 December 2015 to 31 December 2017 and therefore had two years service. He was over 41 at the effective date of termination. He is entitled to a redundancy payment of 1.5 x a week's pay capped at £489 x 2 making a total of **£1,467**.
59. Based on his December 2017 payslip he is awarded **£6,208.33** for his December salary and **£2,005.78** for holiday pay.
60. Mr Brown is also awarded a pension contribution of **£310.43** again based on his December 2017 pay slip.
61. For the same reason as set out above he is not awarded a 2016 bonus.
62. This is not an unfair dismissal claim and there is no jurisdiction to award future loss or loss of statutory rights or any uplift for failure to follow the ACAS code.
63. Mr Brown is awarded pay in lieu of notice on a net basis. I did not see his termination letter. From his contract I saw that he was entitled to 3 months notice and I make this award consistent with the letters terminating employment on 31 December 2017 which were dated 1 November 2017 thus one months notice remaining. Without the

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assistance of a payslip revealing the normal amount of net pay and without any oral evidence I award notice pay in the sum of **£4,138.89**.

64. The total amount awarded to Mr Brown is therefore the sum of **£14,130.43**.

Mr McDonald

65. Mr Alex McDonald's period of service was from 23 May 2016 to 31 December 2017. As he has less than two years service he does not qualify for a redundancy payment.
66. He is entitled to his December pay as unlawful deductions from wages in the sum of **£5,583.33**. He is also awarded holiday pay in the sum of **£2,061.52**.
67. Mr McDonald is awarded the pension contributions claimed in the total sum of **£1,862**. This is for November and December 2017.
68. For the same reason as given above I make no award for his 2016 bonus.
69. Also for the same reasons given above he is not awarded a 20% increase or expenses incurred for attending this hearing as he did not attend.
70. I saw his letter from Mr Smith terminating his employment on 31 December 2017, the date of that letter was 1 November 2017. He was therefore given two out of his three months notice. He found new employment on 8 January 2018 at an equivalent salary. He has therefore mitigated his loss save for one week. He gives his net monthly pay is £3,663. I award him one week's net pay in the sum of **£845.30**.
71. The total awarded to Mr McDonald is therefore **£10,352.15**.

**Employment Judge Elliott
Date: 23 October 2018**

Judgment sent to the parties and entered in the Register on: 25 October 2018.
_ for the Tribunals