

Time to increase the £25,000 cap on contractual claims in the Employment Tribunal?

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The Claimant brought a claim for enhanced contractual redundancy entitlement in the Tribunal under the Employment Tribunal's Extension of Jurisdiction (England and Wales) Order 1994.

The Claimant's enhanced and statutory redundancy entitlement under her terms of employment was £43,949.04, inclusive of the £5,868 statutory redundancy award. The Respondent had dismissed the employee by reason of redundancy and refused to make the redundancy payment on the grounds that suitable alternative employment had been offered to the Claimant which was unreasonably refused.

The ET found that the Claimant was entitled to the contractual redundancy payment, but capped at £25,000 by virtue paragraph 10 of the above Order which provides "An [employment tribunal] shall not in proceedings in respect of a contract claim, or in respect of a number of contract claims relating to the same contract, order the payment of an amount exceeding £25,000.". It also declined to order a statutory redundancy payment.

The EAT held that the Claimant was entitled to a statutory redundancy payment in addition to the contractual redundancy payment on the basis that there were two causes of action.

His Honour David Richardson said that the separate claims allowed for separate awards. In this particular case, the Respondent was entitled to set off the statutory redundancy payment against the contractual redundancy payment which meant that the net amount of the contractual payment would be £38,071.04. However, due to the cap, the EAT was only able to award the statutory award together with the contractual award, capped at £25,000 to a total of £30,868 and as such the Claimant had to forego a substantial part of her contractual redundancy entitlement.

The EAT went on to comment that, "*if the ... cap had been increased in line with inflation they [the Claimant] would not have suffered these losses*", and "*the statutory cap is also out of step with the very much wider powers of the ET*". The case was concluded with a recommendation for a statutory instrument to be passed with a higher cap, under the powers held in accordance with the Employment Tribunals Act 1996.

Employers need to ensure that they are following fair and reasonable redundancy processes as it is likely the statutory cap for breach of contract may increase in the future which may lead to an increased number of claims in the Employment Tribunal, together with an increase in compensation values.

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