

**EMPLOYMENT APPEAL TRIBUNAL**  
58 VICTORIA EMBANKMENT, LONDON EC4Y 0DS

At the Tribunal  
On 14 May 2003

**Before**

**MR RECORDER LUBA QC**

**MR S M SPRINGER MBE**

**PROFESSOR P D WICKENS OBE**

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MR I HUSSAIN

APPELLANT

CENTURY ELECTRONICS UK INC LTD (IN RECEIVERSHIP)

RESPONDENT

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Transcript of Proceedings

JUDGMENT

Revised

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## **APPEARANCES**

For the Appellant

MR D PANESAR  
(of Counsel)  
Instructed by:  
Free Representation Unit

For the Respondent

No Appearance or Representation  
By or on Behalf of the Respondent

## **MR RECORDER LUBA QC**

### **Introduction**

1        This is an appeal by Mr Iftikhar Hussain against a decision of the Employment Tribunal sitting at Watford on 22 April 2002. The appeal concerns the amount of a compensatory award ordered by the Tribunal in respect of Mr Hussain's unfair dismissal.

2        This has been an oral hearing of the appeal in which Mr Hussain has been ably represented by Mr Panesar of Counsel. We are grateful to him for his submissions and for the Skeleton Argument he has prepared to assist us in the appeal.

3        The appeal has been heard on notice to the Respondent company. That company is in receivership and the receivers have indicated to us that they do not wish to oppose the appeal. We are setting out our judgment at some length, on what is otherwise a short point, because it may be that those who hereafter have to consider this case will not have the benefit of the assistance of Mr Panesar or another representative for Mr Hussain. In short, for the reasons we are about to give, we consider this appeal should be allowed.

### **The Facts**

4        On 2 November 1998 Mr Hussain began work as a production operator for Century Electronics Manufacturing Incorporated (UK) Ltd. After the usual six months probationary period his employment was confirmed and that employment was pensionable employment.

5        On 30 March 2001 the company was placed in administrative receivership by its bank. Messrs Grant Thornton were appointed as administrative receivers for the company.

6        On 2 April 2001 (that is, shortly after the company was placed in receivership) Mr Hussain suffered an accident at work when he tripped over a notice board and landed heavily on his knee. Thereafter, he was certified by his general practitioner as incapable of work.

7        By a letter dated 12 April 2001 he was asked to attend a disciplinary hearing by his employer in relation to an allegation of gross misconduct. The misconduct was said to have involved Mr Hussain reporting maliciously to the gas supply authorities that there were gas leaks at the workplace when there were no such leaks. The disciplinary hearing was held on 18 April 2001 in Mr Hussain's absence. He was summarily dismissed for gross misconduct. A letter of that date confirms.

8        By letter dated the next day, 19 April 2001, Mr Hussain requested an appeal against his dismissal and that he be represented on the appeal by his trade union representative. By two letters, both dated 23 April 2001 his employers rather confusingly both put back the appeal to 1 May 2001 and, by the second letter of the same date, indicated that the hearing would in fact take place on 26 April 2001.

9        In the early hours of 25 April 2001 Mr Hussain assembled a letter addressed to his employers and relating to his dismissal and the appeal from it. Some hours later he sadly suffered a heart attack and was admitted to hospital where he remained for several days.

10 In a letter dated 8 May 2001 Mr Hussain gave notice to his employers of his intention to take legal action against them. That letter bore the heading “*Accident at work, unfair dismissal, and subsequent suffering with heart attack.*”

11 On 11 May 2001 the administrative receivers transferred the business of the company to a new company. The old company’s assets were sold. The **Transfer of Undertaking (Protection of Employment) Regulations 1981** applied to the transfer of the business and some 42 employees of the company were transferred to become employees of the new company.

12 On 14 May 2001 Mr Hussain presented a complaint on the usual form to the Employment Tribunal. That complaint was of unfair dismissal. The relief he sought was his reinstatement in employment. The employer’s response to the Employment Tribunal indicated that it would resist the claim.

13 On 21 January 2002 the Employment Tribunal first met to consider the substance of Mr Hussain’s claim. Sadly, no notice of a hearing date had been given to the administrative receivers and the case was postponed. In fact, on 4 February 2002 the receivers indicated that they would not be attending any subsequent hearing of the unfair dismissal complaint.

14 On 13 February 2002 the Employment Tribunal convened for a second time to consider Mr Hussain’s complaint of unfair dismissal. By that date, as indicated, the administrative receivers had signalled their intention not to attend and further indicated that due to the unavailability of a witness and on other economic grounds they were not inclined to defend the claim.

15 In those circumstances the Employment Tribunal upheld Mr Hussain's complaint of unfair dismissal and ordered his reinstatement by the company. It further ordered, pursuant to section 114 of the **Employment Rights Act 1996**, that the company pay compensation for the period from dismissal to reinstatement; more particularly, limiting that award in a respect to which we shall return in a moment. The order was, in effect, qualified by limitation in relation to loss of future earnings.

16 On 20 February 2002 Mr Hussain wrote to inform the administrative receivers that his case had succeeded but that he was not yet fit to return to work. The administrative receivers on receipt of that news applied on behalf of the company for a review of the Employment Tribunal's decision. The administrative receivers put in evidence that there had been a further adverse turn of events in relation to fortunes of the new company. It seems that that had gone into liquidation on 25 March 2002 and indeed that the old company itself was shortly to be liquidated.

17 In those circumstances, a third Employment Tribunal convened on 22 April 2002. It allowed the administrative receiver's application for a review and it withdrew the earlier order for reinstatement. It obviously also withdrew the award of compensation under section 114 of the **Employment Rights Act 1996** and instead went on to consider an award under section 118 of the Act which is the appropriate provision for unfair dismissal cases in which there is no reinstatement.

18 The Tribunal gave Extended Reasons on 12 August 2002 for the approach it took to the assessment of compensation for Mr Hussain. It decided that an award of compensation under section 118 was appropriate and it awarded those sums as follows:

(i)	two weeks' net pay -	£559.00
(ii)	loss of statutory rights -	£250.00
(iii)	basic award: 1½ x £229 x 2 years	£688.47
TOTAL:		<u>£1,397.47</u>

19 However, that amount shown in the Extended Reasons, and its constituent component parts, was precisely the amount that had been awarded previously by the earlier Employment Tribunal in respect of compensation under section 114 of the **Employment Rights Act 1996**.

20 The Employment Tribunal effectively imposed a cut-off (or what Mr Panesar for Mr Hussain has described as a “guillotine”) in relation to its award. As the Tribunal explained at paragraph 6 in the Extended Reasons:

- 6 “The Tribunal makes no award in respect of loss of pay from 2 May 2001 onwards because the Applicant has a personal injury claim against the Respondent which will include the loss of earnings from 1 May 2001.”

Precisely the same passage had appeared in the earlier judgment dealing with the section 114 compensation assessment.

## **The Appeal**

21 By Notice of Appeal given on 12 August 2002 Mr Hussain appeals from that last decision of the Employment Tribunal. As we have indicated, the administrative receivers in a letter dated 19 February 2003 have indicated that they do not seek to resist the appeal as it turns only on the calculation of compensation.

22 At a Preliminary Hearing this Tribunal decided, on 18 November 2002, that Mr Hussain's appeal should be allowed to proceed to a full hearing only on the question of whether the Tribunal had properly approached the task of assessing the elements and the amounts of compensation in respect of his unfair dismissal. This Tribunal, on 18 November, accordingly dismissed the other grounds of appeal and we have only considered the ground left in the notice relating to the assessment of compensation.

23 Mr Hussain, previously acting in person, has done what he can to put before this Tribunal the relevant documentation. However, we now have the considerable assistance of Mr Panesar developing the appeal on his behalf.

24 Mr Hussain's essential contention is that, were it not for the unfair dismissal, he would have remained in the employment of the company up to and including the point at which its business was transferred to the new company by the administrative receivers. He would thereafter have had continued employment with the new employers until those employers too went into liquidation. At that point he would have been entitled, he contends, to some form of redundancy payment.



25 In those circumstances, his case is that what he has lost by reason of the dismissal is the earnings that he would otherwise have received up to and until the point at which the successor company went into liquidation, and also other consequential benefits such as holiday pay, sick pay or redundancy payments.

26 Although it may be the case that he has not been physically capable of work since his unfair dismissal he raises, and Mr Panesar relies upon, a contention that the Tribunal ought to have considered whether that incapacity arose from the heart attack which occurred on 25 April 2001. In particular, Mr Hussain contends that medical evidence now available to him demonstrates a link between the stressful circumstances of the dismissal and the subsequent heart attack. To the extent that the heart attack has prevented him working, and may do so in the future, he contends that that may be a matter of relevance that should be taken into account by an Employment Tribunal in assessing the amount of compensation.

27 Finally, and most importantly, he contends that the Tribunal was wrong to limit its treatment of the appropriate compensation payable to him by reference to a claim that he was pursuing in relation to the industrial accident which caused the injury to the knee and which occurred earlier in April 2001.

28 The Tribunal were, he contends, wrong to limit their compensatory award under the provisions of section 118 by reference to the extant claim for personal injury damages which in fact bore no relation to the question of his continued employment by the company at all.

## Conclusions

29 We have not had the benefit of representations from the administrative receivers. There are no detailed findings of fact by the Employment Tribunal which address any of the matters raised for Mr Hussain by Mr Panesar on his behalf. We are satisfied that the matters canvassed before us are matters that should have been properly considered by the Employment Tribunal.

30 It seems to us that the Employment Tribunal took far too limited an approach to the proper assessment of compensation for Mr Hussain flowing from what had, on the basis of its earlier conclusion, plainly been an unfair dismissal.

31 In our view the Tribunal erred in law in delimiting the reach of its compensatory award to 2 May 2001 for the reason which it gave; that is, the extant claim for personal injury in relation to the tripping accident. In those circumstances we have no hesitation in setting aside the Tribunal's award of compensation in the figure of £1,397.47.

32 We remit to a further Employment Tribunal the question of the assessment of compensation for Mr Hussain's unfair dismissal under section 118 (1) (b) and sections 123 to 124 of the **Employment Rights Act 1996**. That Tribunal may find it helpful, in approaching the task of assessing the compensatory award, to have regard to the facts and matters outlined in this judgment, albeit that it will be for Mr Hussain to make for himself his case to the Tribunal as to the matters to be properly taken into account by them in making their assessment.

33 For all those reasons, this appeal is allowed.