# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs L Unsworth

**Respondent:** The Stroke Association

**HELD AT:** Liverpool **ON:** 24 February 2017

**BEFORE:** Employment Judge T V Ryan
Mr G Pennie
Mr A Wells

**REPRESENTATION:**

**Claimant:** Mr M Pourghazi, Counsel
**Respondent:** Mr J Searle, Counsel

## JUDGMENT ON RECONSIDERATION

The unanimous judgment of the Tribunal is that:

1. The judgment on remedy sent to the parties on 11th November 2016 ("the remedy judgment") is varied as set out in paragraph 2 of this judgment below on the claimant's application for reconsideration.

2. The respondent shall pay to the claimant £3, 961.15 by way of Basic and Compensatory Awards in respect of the finding that the claimant was unfairly dismissed as follows:

Compensatory Award:

i. Pecuniary loss 16.10.15 – 01.07.16 £4,697.52

ii. Less 8 weeks incapacity <u>£1,015.68</u>

£3,681.84

iii. Plus Loss of statutory rights <u>£126.96</u>

iv. Varied Compensatory Award £3,808.80

v. Plus interest £152.35

vi. Varied total £3,961.15

# REASONS

1. The tribunal made a judgment on remedy on 17th October 2016 in this matter and it was sent to the parties on 11th November 2016; that judgment (referred to as the Remedy Judgment) was further to a judgment on liability sent to the parties with Reasons on 2nd August 2016.

2. The claimant applied for reconsideration of the Remedy Judgment specifically with regard to the Compensatory Award made and the way in which the tribunal approached issues of mitigation of loss and calculation of the award.

3. There was a mathematical error in the calculation of the number of week's losses. The tribunal had calculated the period from 16th October 2015 until 10th April 2016, less 8 weeks, as 12 weeks when it is 17 weeks and 2 days. This ground of application was conceded by the respondent. The interests of justice require that the tribunal vary its Remedy Judgment not least in this respect. The error in calculation has been corrected and the correct period of time has been taken into account below.

4. The claimant also applied to the tribunal to reconsider its judgment with regard to the way in which it decided that the claimant had failed to mitigate her loss of income effectively cutting-off the compensatory award at 10th April 2016. The tribunal accepts that it ought properly have approached the issue of mitigation in accordance with the steps identified in the claimant's application and this was not evident from the Remedy Judgment. The interests of justice require that the tribunal vary its Remedy Judgment not least in this respect.

5. MITIGATION:

5.1 We asked ourselves what steps the claimant ought to have taken in a situation where the claimant takes no issue with the Tribunal's earlier findings that she ought to have taken more time with her job searches and she ought to have looked for temporary work. We have considered whether she ought to have widened her job searches in respect of the hours that she was prepared to work and the geographical radius of her search. We have noted that the claimant applied a mechanical, or more accurately a technological, limit on her computer job search to an 18 hour working week within a five mile radius from home. She said however in evidence that notwithstanding that this limited her search most often and usually, nevertheless she had applied for some work where the stated hours varied up to 20 hours per week; she said such an extension was not a major adjustment but she just did not know where it was reasonable to stop extending the search. There was an issue as to whether travelling caused or exacerbated pain but working over 18 hours, in her own words, "wasn't un-doable".

5.2 We also took into account that a number of potentially suitable job advertisements were shown to the claimant and she had not applied for them because they were outside her strict search requirements. There were four job vacancies that she missed, one of which she described as being "perfect". There were four vacancies that she had ruled out because they were temporary not permanent, although she knew that there would be disruption to her employment because of treatment; a temporary placement may have suited her but she had ruled out temporary work. There were eight roles where the hours advertised exceeded 18 hours per week (five of which were outside the claimant's restricted geographical radius), and there were 3-5 that were based over five miles' radius from the claimant's home address.

5.3 There were approximately 20 jobs out of a list of 39 produced by the respondent that the claimant could have considered in some shape or form had she extended her search. So when we considered what steps we thought the claimant ought to have taken, or put another way what was unreasonable for her not to do, we thought it was completely unreasonable for her not to consider the possibility that she could work even within a 5½ miles radius for even 18½ hours; the way that she did her search was unreasonable because it excluded those possibilities; it excluded from her deliberations the opportunity to self-filter jobs outside her restrictive parameters of search to see whether anything existed within a reasonable distance or for reasonable hours in close proximity to what she considered ideal. It was unreasonable not to give herself the opportunity to consider the outer limits of what she felt was, in her words, "doable". Had she done so she could then consider logistics and commercial factors before applying or excluding job vacancies.

5.4 I had asked Mr Pourghazi whether or not the claimant had also limited herself to working between 9.30am and 2.30pm, and he said she had not. On checking our notes of the claimant's evidence she did add in a number of factors in her evidence in addition to those relating to her search parameters. She said she needed to be home by 3.00pm, that is after travelling; she did not want to inconvenience people who could offer her help; she was not prepared to ask anybody for a lift because she would rather not. The claimant also wanted to take into account, with regard to radius, whether it was worth her while travelling any distance over five miles if it was for working only 18 hours.

5.5 The Tribunal found and still finds that the claimant was unreasonably proscriptive in her searches for employment post dismissal when she had no success in finding work after 10th April 2016.

5.6 It became unreasonable of the claimant not to widen her search, possibly to 20/25 hours, we would not have thought more than that. Furthermore it was unreasonable not to extend the geographical range of her search possibly to ten or even 15 miles which would have taken in large parts of Liverpool and its hinterland. She was unreasonable in not considering jobs other than administrative jobs. Reasonable extensions of her searches

would have given her the opportunity to exercise her discretion and to self-filter. The claimant would then have reduced the risk that she obviously ran, because it eventuated, of missing suitable employment. She would then have been able to consider the logistics, the timings, and all practical considerations (including whether a particular wage made the hours and travelling worthwhile) if only she had thrown her net wider and drawn it in. The claimant did not so much throw a net to catch jobs but used a harpoon. The claimant was unreasonable in limiting her aim too narrowly in the circumstances. She clearly missed a number of "do-able" jobs as a consequence.

5.7 By adjusting her parameters, giving herself that leeway so that she could consider further and consider potentially more options, we assess that within a further 12 weeks period from 10th April 2016 the claimant would have or could have secured employment. We rely in part on the job advertisements we have seen, where there were a number just on the edges of what she had considered for her search. We rely in part on our local knowledge, experience and reasonable expectations.

6 As a consequence of our reconsideration we vary the Remedy Judgment. The award for pecuniary loss is varied so that the losses will be from the period of 16 October 2015 (16 October being the effective date of termination) to 1 July 2016, which is 37 weeks. 37 weeks at £126.96 is £4,697.52. From that figure must be taken wages for a period of 8 weeks to reflect the time that the claimant was recovering post-operatively and would not have been paid had she remained in the respondent's employment. That deduction is of 8 week's pay at £126.96 per week amounts to £1,015.68. The deduction reduces the loss to £3,681.84.

7 The statutory protection claimed in the schedule was excessive. One week's pay is the guideline figure and is what the tribunal has awarded already; that is £126.96. When that loss is added to the sub-total above it makes £3,808.80.

8 There is then the question of interest at 8% on the above varied Award. We are varying the Remedy Judgment that was made almost on the anniversary of the date of termination. Neither party has provided a calculation of interest; both representatives agree our approach to calculate interest on the basis of a full year but then to award half of that figure by way of interest; the agreed formula is £3,808.88 x 8%p.a divided by 2 = £152.35.

9 The total varied Compensatory Award is therefore £3,961.15.

10 The tribunal acknowledges that whilst it announced its judgment on the above basis it mistakenly overstated the Award at the hearing. The tribunal did not reconsider its remedy judgment to the effect that credit was to be given to the respondent for the 8 week period of incapacity in the period of calculation of the claimant's loss. That was never in issue between the parties. It was conceded by the claimant. It did not form any of the grounds of the claimant's application for reconsideration. The tribunal failed to deduct it however when explaining its calculations to the parties; neither representative drew the error to the tribunal's attention although no criticism is intended by saying that. The tribunal wishes to

apologise to the parties for any inconvenience caused to them, for the disappointment caused to the claimant by this correction (if any), and any disappointment caused to the respondent by the same error when the judgment was announced. The interests of justice require that the error is corrected and due account is taken of that 8 week's discount.

Employment Judge T V Ryan

8th March 2017

JUDGMENT AND REASONS SENT TO THE PARTIES ON

10 March 2017

FOR THE TRIBUNAL OFFICE