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# THE EMPLOYMENT TRIBUNAL

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**SITTING AT:** LONDON SOUTH

**BEFORE:** EMPLOYMENT JUDGE MORTON  
**MEMBERS:** Ms B Leverton  
Ms M Foster-Norman

**BETWEEN:**

Ms H LeCompte

Claimant

AND

Ancaster Group Limited (1)  
Ryan Masoura (2)

Respondents

**ON:** 6 February 2017

**Appearances:**

**For the Claimant:** Ms I Egan, Counsel

**For the Respondent:** Mr A MacMillan, Solicitor

## **REMEDY JUDGMENT**

The unanimous Judgment of the Tribunal is that the Claimant is entitled under s124(2)(b) Equality Act 2010 to compensation of £13246.29 in respect of:

1. direct discrimination and harassment under sections 18 and 26; and
2. discriminatory dismissal under s39(7)(b).

## Reasons

1. The Tribunal found on the basis of Ms LeCompte's written and oral evidence and the bundle of documents provided for the purposes of the hearing, including the Schedule of Loss and the Respondent's Counter-Schedule, that Ms LeCompte was entitled to £6083.87 for loss of earnings and £9500 for injury to feelings (a total of £15583.87).
2. The Tribunal also considered it to be just and equitable to reduce both sums by 15 per cent (a total of £2337.58) in light of Ms Compte's failure to comply with the ACAS Code of Practice by declining to participate in the grievance process. The total amount of compensation is therefore reduced to £13246.29.
3. To explain how we arrived at these figures, we first re-calculated the loss of earnings in the 13 week period between 7 July 2015 (when Ms LeCompte went on sick leave with stress as a result of the events surrounding her probationary review) and 10 October 2015 when her maternity leave started and she began to receive statutory maternity pay. We did so because the weekly earnings figures in the Schedule of Loss and the Counter-Schedule differed. Having looked at the payslips (for example at page 26 of the bundle) we concluded that the correct weekly earnings figure was £174 not the £181.05 claimed by Ms LeCompte. 13 weeks' pay at £174 per week amounts to £2262. From that loss of earnings figure we deducted statutory sick pay of £1562.63 leaving £699.37.
4. In the three month period following the start of her maternity leave Ms LeCompte was in receipt of higher rate statutory maternity pay ("SMP") for six weeks and standard rate SMP of £139.58 per week for a further eight weeks. Those are sums that should not be deducted from her subsequent loss of earnings claim as they were payable in respect of a period during which Ms LeCompte would not have been seeking work in any event. This point was overlooked at the hearing and the oral remedy judgment therefore gave an incorrect loss of earnings figure for the period following 16 January 2016 because the Tribunal wrongly deducted from the loss of earnings claimed after 16 January 2016 sums that were received in the period prior to that date. That error has been corrected by the Tribunal of its own motion but either party that considers that the computation is incorrect may apply for the decision to be reconsidered.
5. The Tribunal made a further loss of earnings award of 51 week's pay from 16 January 2016 being that date on which Ms LeCompte would have returned to work, to the date that she started her new employment on 10 January 2017. We accepted her evidence that she would have returned to work at Ancaster Group approximately three months after the birth of her child. The job was conveniently located for her and enabled her to combine work with her childcare responsibilities. It was difficult in the immediate aftermath of giving birth to her second child to find alternative work that was sufficiently flexible and paid a salary that made it feasible to cover her childcare costs and this took time.

6. A further 51 weeks' pay from 16 January 2016 to 10 January 2017 amounted to £8874. From that loss of earnings figure we deducted the remaining twenty five weeks of standard rate SMP amounting to £3489.50 leaving a total of £5384.50.
7. The overall net loss of earnings figure was therefore £5384.50 plus £699.37 – a total of £6083.87.
8. With regard to Ms LeCompte's duty to mitigate the Respondent did not discharge the burden of showing that Ms LeCompte had failed to take reasonable steps to mitigate her losses. We accepted the evidence that she gave us as regards her attempts to find work and the period that it took her to find a suitable role, given the complications of being a lone parent with a young child and a baby and the need to find employment that could be combined with her childcare responsibilities and was sufficiently well paid to cover her costs.
9. As for the injury to feelings award of £9500 the Tribunal was compensating Ms LeCompte only for the matters referred to in paragraphs 1 and 2 of the liability judgment, namely the contents of the letter preceding the probationary review, the letter received after the probationary review and the discriminatory constructive dismissal, which were the matters in respect of which her claim succeeded at the liability stage. Nevertheless her constructive dismissal led to the loss of a job that was particularly suitable to her circumstances at a particularly vulnerable time and this caused her considerable stress and anxiety. We did not accept all of Ms LeCompte's evidence uncritically and noted in particular that the witness statement had not been expressed in her own words. But we did accept that the impact on her of losing a job that was manageable for her in her circumstances as a lone parent who was expecting another child was serious and lasted well into the period following the birth. We consequently concluded that an award at the lower end of middle band set out in ***Vento v Chief Constable of West Yorkshire Police (No 2) [2002] EWCA Civ 1871*** was appropriate in this case.
10. We went on to consider both parties' submissions as regards the ACAS Code and Ms LeCompte's non-attendance at and non-cooperation with the grievance process. We arrived at the decision that it would be just and equitable to reduce Ms LeCompte's overall award by 15 per cent in consequence of these failures. We arrived at this decision because Ms LeCompte gave the Tribunal two entirely different explanations for her failure to engage with the grievance process. At the liability hearing she attributed her non-engagement to the health of her unborn baby and various issues associated with it that she said that she was dealing with at the time. At the remedy hearing however she attributed her failure to engage with the grievance process to her solicitors not having explained its importance and her ignorance of the appropriate way pursue a grievance internally. She therefore did not show to our satisfaction that her failure to engage was a reasonable failure and it plainly had considerable consequences for the manner in which this dispute subsequently unfolded, although the precise way in which events might have unfolded had she engaged with the process is a matter of conjecture.
11. In arriving at the 15 per cent figure however we also took into account our

criticisms of the Respondent's investigation as set out in paragraph 38 of the liability judgment and we arrived at a reduction that in our view was just and equitable to both parties.

Employment Judge Morton  
Date: 27 February 2017