



Case Number: 2301837.2016

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## EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**

Mrs P Levy

**Respondent**

East Kent Hospitals University  
NHS Foundation Trust

and

**Held at Ashford on 31 August 2017**

**Representation**

**Claimant:**

In Person

**Respondent:**

Miss A Smith, Counsel

**Employment Judge Kurrein**

## JUDGMENT ON REMEDY

- 1 The Respondent is ordered to pay the Claimant:-
  - 1.1 A Basic Award in the sum of £6,359.40.
  - 1.2 A Compensatory Award in the sum of £18,453.80.
- 2 The Recoupment Regulations apply to this award and for that purpose:-
  - 2.1 The prescribed sum is £13,655.95
  - 2.2 The prescribed period is from 10 July 2016 to 31 August 2017
  - 2.3 The total award exceeds the prescribed sum by £4,797.85

## REASONS

- 1 This Judgment should be read in conjunction with the Judgment on Liability.
- 2 The calculations giving rise to the above awards are as follows:-

**Figures for  
calculation**

Week's pay gross	£423.96
Week's pay net	£326.82
Day's pay net	£84.79

Start	29/03/2006
EDT	10/07/2016
Years	10

**Unfair Dismissal  
Calculation**

**Basic Award**

Week's pay	£423.96
Weeks	15

**Basic Award**

**£6,359.40**

**Compensatory award**

<b><u>Loss to date of hearing</u></b>	from	10/07/2016
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End of notice period	10/07/16	Weeks to date of hearing	57.5
Date of hearing	31/08/17	This will be the prescribed period to	31/08/2017
		Weekly loss of earnings	£326.82
		Sub-total	£18,792.15
		Less earnings in mitigation	£5,136.20
		<u>Net loss to date of hearing</u>	<u>£13,655.95</u>
		<u>Future loss of earnings</u>	
		Weeks of future loss	52
		Weekly loss	£42.82
		<u>Future loss of earnings</u>	£2,226.64
		<u>Total loss of earnings</u>	<u>£15,882.59</u>
		Loss of statutory rights	£300.00
		<b>Compensatory award</b>	£16,182.59
		<b>Pension Loss</b>	
		Lost contributions	14.30% £2,271.21
		<b>Compensatory Award</b>	£18,453.80
		<u><b>Total award</b></u>	<u>£18,453.80</u>
		<b>Prescribed amount</b>	
		Prescribed amount	£13,655.95
		Excess of total award over prescribed sum	£4,797.85

3 The figures for calculation were not in dispute.

4 The following issues were in dispute:-

4.1 The Respondent asserted that the Claimant had not taken reasonable steps to mitigate her loss.

4.2 The Claimant asserted she compensation should be based on whole career loss; the Respondent contended that 52 weeks future loss was appropriate.

4.3 The Claimant contended for the substantial loss approach on pension loss, the Respondent contended that simple loss calculations were appropriate.

5 I heard the evidence of the Claimant on her own behalf, and the evidence of Mr M Luff, Head of Employee Relations for the Respondent. I read the documents to which I was referred and heard the parties' submissions. I make the following findings of fact.

6 The Claimant was born in 1960 and was over 41 throughout her employment. She was entitled to a basic award of 15 weeks net pay.

7 I accepted the claimant's evidence:-

7.1 She had made many applications for employment, had registered with three agencies and with the Kent Community Bank.

- 7.2 She had obtained 4 periods of temporary employment up to 1 August 2017, when she started a permanent post earning almost £50 per week less than she had with the Respondent. She had earned over £5,000 in mitigation up to today.
- 7.3 She did not have records of every application she made. Many were made on-line.
- 7.4 She had not made documented applications when she was working and in some period when she was not working.
- 7.5 During her unemployed periods she was actively using the DWP system "Jobmatch".
- 8 In light of my above findings I did not accept the Respondent's submissions that the Claimant had failed to take reasonable steps to mitigate her loss because:-
- 8.1 she had unsuccessfully applied for NHS jobs;
- 8.2 there was no evidence that she had not applied for NHS jobs that had come to her attention;
- 8.3 the "gaps" during which there were no documented applications were, in large part, times when the Claimant was working and also caring full time for her father were periods when she was claiming benefits and using Jobmatch.
- 8.4 a lack of documentation is insufficient to establish a failure to mitigate of itself.
- 9 I therefore calculate a net loss of earnings to today's date, being 57.5 weeks from the EDT, at a rate of £326.82. For clarity I have taken the earnings figures of the Claimant by way of mitigation from her statement and payslips and added the sum of £225.00 for the pay she will receive for the final week of August 2017.
- 10 I did not accept career loss was appropriate. Although I accept that the Claimant intended to remain with the Respondent until retirement that was by no means certain: her absence record was poor.
- 11 I also took the view it was likely, once the Claimant had a more settled work record, she would move on to another employment that that she is now in, quite possibly within the NHS, and achieve a salary and benefits similar to those she previously enjoyed with the Respondent, within about a year.
- 12 On that basis I concluded:-
- 12.1 The element of future loss of earning should be limited to 12 months loss; and
- 12.2 It was not appropriate to compensate the Claimant for past and future pension loss on the "substantial loss" approach.
- 13 The Respondent accepted that the Claimant's net loss of future earnings was at a rate of £42.82 per week. I have calculated the loss on that basis.

- 14 It was common ground the Respondent contributed 14.3% of salary to pension. I have awarded the Claimant that percentage of her total net loss of earnings (including future loss).
- 15 I have concluded it is not appropriate to award the Claimant her costs: they are recoverable from HM Government by the Claimant as unlawful enrichment.

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Employment Judge Kurrein

31 August 2017