



THE EMPLOYMENT TRIBUNAL

CLAIMANT: Ms LeCompte

RESPONDENT: Ancaster Group

JUDGMENT ON RECONSIDERATION

The total compensation payable to the Claimant is £13246.29 calculated as set out in the reasons below. The Respondent's application for a reconsideration of the remedy judgment dated 27 February 2017 is refused.

Reasons

1. Following the remedy judgment on reconsideration sent to the parties in February 2017 the Respondent applied for a further reconsideration, as it submitted that the tribunal had failed to give credit for the Statutory Maternity Pay paid to the Claimant. I considered the application in accordance with Rules 70 and 72 Employment Tribunal Rules.
2. I sent both parties a letter setting out my preliminary view of the Respondent's application and both parties agreed with that view and agreed that it was not necessary in the interests of justice for the matter to be reconsidered at a hearing. The Tribunal then agreed that the original decision should be varied.
3. However in arriving at that decision the Tribunal had erroneously proceeded on the basis that it had failed to give the Respondent credit for any of the SMP paid to the Claimant. In fact it did give credit for 25 weeks of SMP in paragraph 6 of the 27 February judgment. As that seems to the Tribunal still to be the correct position there is no need to reconsider the judgment.
4. To recap, the Claimant's period of loss effectively fell into three sections:
 1. the period 7.7.15 to 10.10.15 during which the Claimant lost earnings but received SSP, for which credit was given - the Respondent has raised no issue about that period;

2. The period from 11.10.15 to 16.10.16 (14 weeks) during which the Claimant experienced no loss of earnings as she would not have been working in that period even if she had not been constructively dismissed from her employment with the Respondent; she did however receive SMP in this period;
3. The period from 16.1.16 to 10.1.17 during which we determined that the Claimant lost earnings because of her dismissal; she continued to receive SMP for 25 weeks of this period.
5. The Respondent submits that credit should be given for all the SMP paid. The Tribunal does not accept that submission. The view that the Tribunal took that no credit should be given for the 14 week period between 10 October 2015 and 16 January 2016 still seems to us to be correct. This was a period during which the Claimant would not have been working and receiving an income and no loss of earnings was therefore awarded for that period against which the SMP paid in that 14 weeks could be offset.
6. The Tribunal did, as noted above, give the Respondent credit for the remaining 25 weeks of SMP paid to the Claimant - a sum of £3489.50. This amount did overlap with the period during which the Claimant would have been earning had she not been dismissed and there is therefore an award of loss of earnings against which that part of the SMP can and should be offset.
7. The total payable to the Claimant should therefore remain at £13246.29 calculated as follows:

Loss of earnings less SSP in period 1 = £699.37

Loss of earnings in period 2 = nil (and no credit therefore given for SMP paid in that period)

Loss of earnings in period 3 = £8874 minus 25 weeks of SMP at £139.58 per week (£3489.50) = £5384.50

Loss of earnings is therefore £5384.50 + £699.37 = £6083.87.

£6083.87 + £9500 injury to feelings = £15583.87.

Deduct 15% for non-compliance with the ACAS Code (£2337.58) giving a total of £13246.29.

Employment Judge Morton
Date: 30 October 2017