



EMPLOYMENT TRIBUNALS

Claimant: Miss T C Hurford

Respondent: North Petherwin Parish Council

Heard at: Exeter **On:** 15 December 2017

Before: Employment Judge Goraj

Representation

Claimant: in person with Mrs Hurford, Support

Respondent: Mrs B Huggins, Counsel

JUDGMENT having been sent to the parties on 21 December 2017 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. This is a remedy hearing pursuant to the Reserved Judgment of the Tribunal which was sent to the parties on 31 August 2017 (“the Judgment”). In summary, the Tribunal held in that Judgment that (a) the claimant had been unfairly dismissed by the respondent contrary to Section 98 of the Employment Rights Act 1996 (“the Act”) (b) any basic award should be reduced by 25% pursuant to Section 122(2) of the Act and (c) that any compensatory award awarded to the claimant in respect of her unfair dismissal for the period after 31 December 2016 should be reduced by 75% pursuant to Section 123(1) of the Act to reflect the chance that if the claimant had not been unfairly dismissed her employment with the respondent would, in any event, have terminated fairly by that date. The Employment Judge however noted when preparing these reasons that the fourth declaration of the Judgment erroneously refers to section 123 (6) instead of section 123 (1) of the Act. This is a typing error. The section is however correctly referred to at paragraph 168 of the Judgment.

Evidence

2. The Tribunal heard evidence from the claimant who provided an updated schedule of loss and an accompanying statement.

The bundle

3. The Tribunal was also provided with a bundle of documents which was submitted by the respondent. There was a dispute between the parties regarding the bundle. The bundle largely consisted of documents which were previously before the Tribunal or were schedules of loss/ counter schedules of loss and associated documents. The documents in the final section of the bundle, which were taken from the original hearing bundle, relate to the claimant's attempts to find alternative employment following her dismissal by the respondent. The bundle also contained a skeleton argument which had been prepared by the respondent.
4. The Tribunal invited the claimant to provide any additional documents which she wanted to include but the claimant contended that she was unable to do so because she had received the bundle from the respondent too late. The Tribunal gave the claimant the option of applying for a postponement of the remedy hearing if she believed that she was prejudiced by the late service of the bundle or alternatively, of identifying to the Tribunal during the course of the Remedy Hearing any further documents upon which she would have wished to rely. The claimant elected to proceed with the remedy hearing. The claimant did not identify during the course of her evidence any additional documents upon which she would have wished to rely.
5. When reaching its decision the Tribunal had regard to the above documents and evidence and also to the written/ oral closing submissions of the parties.

The basic award

6. The parties helpfully agreed the amount of the claimant's basic award. It was calculated on the basis that at the effective date of the termination of her employment with the respondent (31 May 2016) the claimant was aged 36, had 3 full years' of employment (1 May 2013 to 31 May 2016) and had a gross hourly rate of pay of £9.12 which gave a gross weekly salary of £45.60 (£9.12 x 5 hours per week). Accordingly, the claimant is entitled to a basic award (before any deductions) of £136.80 (3 x £45.60). A 25% reduction pursuant to Section 122(2) of the Act was applied to this figure in accordance with the Judgment which gave a revised sum of £102.60 which was agreed between the parties.

Findings of Facts in respect of the remaining issues

7. When reaching its findings of fact the Tribunal has also had regard to its previous findings in the Judgment where relevant.
8. It was agreed between the parties that at the date of the termination of the claimant's employment with the respondent on 31 May 2016 her net monthly take home pay was £184.80 which gives a net weekly figure of £42.65. The claimant worked for 5 hours per week and as stated previously had three full years of employment.

9. The claimant was absent from work due to sickness at the date of her dismissal. Following her dismissal on 31 May 2016, the claimant was paid a payment in lieu of notice for the remaining period of her sick note for the period until 6 August 2016.

Alternative employment

10. Following her dismissal the claimant took steps to find alternative employment including the applications referred to in the final section of the bundle and as a result of which she incurred travelling and associated costs as identified in her schedule of loss totalling £179.90.
11. The respondent has challenged this claim on the basis that they have not received any documentary evidence of such expenses. The Tribunal is however satisfied having heard the oral evidence of the claimant that she reasonably incurred such expenses prior to 1 October 2016 in respect of the claimant's search for alternative employment. The Tribunal is also satisfied that the claimant also reasonably incurred costs of £120 around this time in respect of her attendance on a payroll course to improve her prospects of employment.
12. The claimant secured a position as an accounts administrator with Bowden Derra with effect from 1 October 2016. The Tribunal has not received a copy of any contract or job description. The tribunal is however satisfied from the evidence that this was a full time post for 37½ hours per week and that it was a position in which the claimant continued to work until July 2017. The claimant contended that this was only a temporary post. The tribunal is satisfied however that this was a substantive post. When reaching this conclusion the Tribunal has taken into account in particular the available documentary evidence at pages 129 -130 of the bundle namely the exchange of correspondence between the claimant and that company in which there is no suggestion that the position was a temporary post.
13. The claimant's employment with Bowden Derra terminated in July 2017. The Tribunal has not been provided with any documentary evidence relating to such termination. The claimant contended that such employment was terminated by that company because it was not happy that the claimant had taken time off work and her levels of sickness. The claimant further attributed such matters to the actions of the respondent namely that it was necessary for her to take time off to prepare for and attend the tribunal proceedings and her sickness was caused by the actions of the respondent. The tribunal is not however satisfied in the absence of any supporting evidence that the dismissal of the claimant by Bowden Derra was attributable to any action taken by the respondent.

Pension Loss

14. The claimant claims compensation for pension loss from the respondent. The claimant contended that she had completed an application form in or around October 2015 to join a pension scheme but that this had not been actioned by the respondent. The claimant has not provided the tribunal with details or any documentary evidence of such application. The respondent

denies any such application. The Tribunal is not satisfied in all the circumstances that any such application was made.

The Law

15. The basic award is agreed. As far as the compensatory award is concerned the Tribunal has had regard in particular to Section 123(1) of the Act which, in summary, provides that the amount of any compensatory award shall be such amount as the Tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the claimant in consequence of her dismissal insofar as any such loss is attributable to the action taken by the respondent. Further, such loss shall include any expenses reasonably incurred by the claimant in consequence of her dismissal and any loss of any benefits which she might reasonably have been expected to have had but for the dismissal. This does not however extend to the costs associated with the preparation for and attendance at the Tribunal (including any travelling costs or subsistence).
16. The tribunal has also had regard to the case of **Hope v Jordan Engineering Ltd** which is an EAT decision **0545/2007** in which it was held that any reductions pursuant to 123(1) of the Act should be applied to all aspects of the compensatory award including to any award for loss of statutory rights.
17. The tribunal has also had regard to the case law on loss of statutory rights, including that in most cases the appropriate maximum amount to be awarded for loss of statutory rights is half the statutory notice period which the Tribunal considers to be the appropriate approach in this case.

Findings

Basic Award

18. The claimant's basic award in the sum of £102.69 has been agreed between the parties as set out previously above.

Compensatory Award

19. The claimant's claim, as confirmed at the commencement of liability hearing, was limited to one of unfair dismissal. The claimant has however, claimed as part of her Schedule of Loss for a significant number of matters which are not recoverable in law and /or in fact as part of her compensatory award pursuant to Section 123 (1) of the Act including in particular (a) a claim for her ongoing expenses as the clerk to the respondent as it was not necessary for her to incur any such expenses after her dismissal (b) loss of sick pay and costs of trips to the doctor (c) loss of future possible maternity pay (the claimant was not pregnant at the time of or following her dismissal by the respondent) (d) for the cost of future courses and qualifications relating to the role of Town Clerk which the claimant has not attended/ incurred (e) a weekly fee of £4 for a period of 71 weeks for alleged expenses for preparation for the Tribunal hearing (f) a claim for the costs of parking for attendance at the Tribunal together with loss of pay for attending the hearing, the costs of travel to the hearing and the costs of food and

drink whilst in attendance (g) a claim for compensation for alleged damage to health by alleged stress caused by the respondent and (h) a claim for an uplift to her compensatory award in respect of alleged breaches of the ACAS Code which was previously refused in the Judgment (paragraphs 158 and 176 of the Judgment).

20. The Tribunal has therefore gone on to determine the remaining matters.
21. Having had regard to section 123 (1) of the Act in particular the Tribunal is satisfied that it is just and equitable to award the claimant a compensatory award as set out below.
22. The claimant is awarded compensation for net loss of net earnings between 6 August 2016 (when the claimant's pay in lieu of notice expired – paragraph 9 above) until 30 September 2016 which the Tribunal calculates to be 8 weeks' net pay which is £42.65 net weekly salary x 8 which gives a figure of £341.20.
23. The Tribunal is not however satisfied that it is just and equitable to award the claimant any continuing loss beyond that date as the claimant secured alternative substantive employment with Derra Bowden on 1 October 2016 for 37½ hours per week in which she remained until July 2017. Further the Tribunal is not satisfied that the claimant sought or would have undertaken any supplementary employment in addition to such employment (as it was for 37.5 hours per week) or that this was only a temporary post as contended by the claimant. Still further the Tribunal is not satisfied that the loss of this post was attributable to the actions of the respondent (as explained at paragraphs 12- 13 above).
24. The Tribunal is also satisfied that it is just and equitable to award the claimant compensation for loss of statutory rights at 1½ weeks x £42. 65 which gives a figure of £63.98. However, in the light of the EAT Judgment referred to above the Tribunal is satisfied that it is necessary to reduce such award by 75% which gives a figure of £16.00.
25. The Tribunal is also satisfied that it is just and equitable to award the claimant compensation for expenses of £179.90 for looking for alternative employment (paragraph 10 above) The Tribunal is further satisfied that it is appropriate to award the claimant the sum of £120 in respect of the payroll course which she attended in order to improve her opportunities to secure alternative employment (paragraph 11 above).

The total award

26. The total compensatory award which the claimant is awarded is therefore £657.10 (£341.20 in respect of net loss of earnings, £16.00 in respect of loss of statutory rights, £179.90 in respect of expenses for seeking alternative employment and £120 in respect of the payroll course). The Tribunal has then added the sum of £102.60 in respect of the basic award which gives a total award of £759.70 which the respondent is ordered to pay to the claimant.

Employment Judge Goraj

Date 16 January 2018

REASONS SENT TO THE PARTIES ON

17 January 2018

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FOR THE TRIBUNAL OFFICE