



EMPLOYMENT TRIBUNALS

Claimant: Mrs C Holdway

Respondent: (1) Happy Dayzzz Nursery Limited
(2) Little Explorers Hythe Limited

Heard at: London South (Ashford) **On:** 4 & 5 January 2018

Before: Employment Judge John Crosfill
Mrs S Dengate
Mr N Phillips

Representation

Claimant: In person

Respondent: Mr P Holt, a lay representative.

JUDGMENT

1. The Claimant's claim for unfair dismissal brought pursuant to Part X of the Employment Rights Act 1996 against the Second Respondent is well founded.
2. The Claimant's claim for notice pay brought pursuant to the Employment Tribunals (Extension of Jurisdiction) Order 1994 succeeds but there is no separate award of compensation.
3. The Claimant's claim in respect of a failure to consult brought under regulations 13 and 15 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 succeeds.
4. The Claimant's claim for payment in respect of annual leave brought under Regulation 30 of the Working Time Regulations 1998 is dismissed.
5. The calculation of the awards/damages under each successful claim is set out in the schedule below.
6. The Employment Protection (Recoupment of Benefits) Regulations 1996 apply to the compensatory award made under Section 123 of the Employment Rights Act 1996. For the purpose of those regulations:

- 6.1. the Monetary Award is £1,011.28
- 6.2. The Prescribed Element is £711.28
- 6.3. The dates of the period to which the Prescribed Element is attributable are 19 August 2016 until 3 October 2016.
- 6.4. The excess of the Monetary Award over the Prescribed Element is £300.
7. The Second Respondent is ordered to pay the Claimant the following sums:
 - 7.1. The sum of £1688.40 as a basic award under Section 119 of the Employment Rights Act 1996; and
 - 7.2. Subject to the terms of the recoupment regulations, a compensatory award under Section 123 of the Employment Rights Act 1996 of £1011.28; and
 - 7.3. An award under Section 15 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 of £1,000.

Employment Judge John Crosfill
Date 18 January 2018

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

SCHEDULE

Unfair dismissal

1. The basic award under Section 119 of the Employment Rights Act is **£1,688.40**.
2. The Tribunal found that the Claimant would have been provided with no more than her contractual minimum of 16 hours per week at the rate of £7.20p.h. That is a weekly loss of £115.20.
3. The Claimant found employment which extinguished any loss on 17 October 2016.
4. The Claimant suffered no loss for two weeks before that date as she was unfit for work.
5. The period of loss is 6 weeks and 2 days x £115.20 = £737.28 loss.
6. The Claimant had earned the sum of £26 in mitigation of her loss.
7. The loss of earnings is therefore £737.28 - £26.00 = £711.28.
8. The Tribunal awarded the sum of £300 in respect of a loss of statutory rights.
9. The total compensatory award is £711.28 + £300 = **£1011.28**.

TUPE 2006

10. The tribunal made an award of **£1,000** in respect of the failure to consult.