



EMPLOYMENT TRIBUNALS

Claimant:
Mrs M Patel

v

Respondent:
Royal Mail Group Ltd

REMEDY HEARING

Heard at: Reading **On:** 19 February 2018

Before: Employment Judge Chudleigh
Members: Mr A Kapur and Mr DE Palmer

Appearances

For the Claimant: Mr N Patel (Husband)

For the Respondent: Mr I Hartley (Solicitor)

JUDGMENT having been sent to the parties on 14 March 2018 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The Judgment in these proceedings was sent to the parties on 9 February 2018.
2. At the Remedy Hearing, the claimant gave evidence and the tribunal made the following findings of fact:-
 - 2.1 The claimant is educated to secondary level in India. She has no qualifications that are relevant in today's employment market. The only qualification that she has is a typing qualification from 40 or 50 years ago.
 - 2.2 The claimant put in an appeal against the decision to dismiss her. It took a significant period of time to process and did not in fact end until 3 January 2017 with a letter from a consultant occupational health physician supporting the decision to offer ill health retirement. The claimant did not apply for work during this period for a number of reasons. One was that she wanted to return to her job with Royal Mail which she loved. In addition, the claimant was suffering from mental ill health in the form of anxiety and depression.

- 2.3 The claimant felt well enough to start looking for work in April 2017. Between April 2017 and December 2017, she made eight applications. One was successful, that is a job with Coy Cars Richmond doing work putting catalogues into envelopes. The claimant received £200 in respect of that employment. The other jobs that the claimant applied for were customer sales adviser, admin work, customer storage adviser, administrator assistant and checkout operator.
- 2.4 The claimant worked for the respondent sorting mail. It was a job that she was competent at. Prior to that period of employment, she worked for three or four years soldering IT cables. This was the sort of work that the claimant was suitable for. She speaks little English, has a disability and has no relevant qualifications. The only work which she is able to do is industrial type light manual work which involves sitting in a fixed location doing things with her hands.
- 2.5 The claimant did not apply for any work during 2018 because of the employment tribunal hearing.
3. At the hearing, the respondent produced some job search documents. One was a search conducted on 13 February 2018 to find vacancies that the claimant could have applied for. The restrictions that applied when she worked for the respondent were factored into the search. These included avoiding long standing over 10 minutes, avoid prolonged walking over 20 minutes, avoid prolonged driving, allow to sit and stand as required, avoid lifting and carrying over 3kgs and avoid extended forward reaching. The respondent came up with 23 different vacancies which it says were available using the claimant's home postcode as a base. Most of the jobs were full time work which were not suitable for the claimant as she only ever worked part time and is only capable of part time work. The tribunal concluded that none of the roles were suitable for the claimant as none involved the type of industrial work that she can do. The roles included office administrator, receptionist, alarm receiving centre control operator and more. The tribunal concluded that all of these jobs were unsuitable for the claimant as she is not able to work in a job which involves the use of significant communication skills nor does she have suitable IT or typing skills.
4. The respondent also produced a document described as an "Off-Flow Report". The document contained a table which indicated that of 1,110 females aged 50-plus who were signed off from claiming jobseeker's allowance, 75.6% found work within 52 weeks. However, the table did not differentiate between part time and full time work and did not indicate the proportion of the women in question who were disabled.
5. The respondent's case was that the claimant had failed to mitigate her losses. Mr Hartley argued it was a complete failure and that the claimant could and should have taken more steps to proactively look for work such as attending at job centres and registering with agencies. Mr Hartley conceded that the burden of establishing a failure to mitigate was on the respondent. He said that had the claimant tried hard enough, she would

have found a job within a year or possibly even two years so there should be no future loss awarded. Alternatively, he said that the tribunal could approach the failure to mitigate in terms of percentages and he submitted that had the claimant taken reasonable steps to mitigate her losses, she would have a 50% chance that she would have found work and that accordingly, the awards for past and future loss should be reduced by 50%. His case was that she could do work such as receptionist and office administration work.

6. In terms of the lump sum the claimant received by way of an ill health pension, Mr Hartley relied on the decision of Marsh v Ministry of Justice [2017] EWHC 1040 and argued that the facts of this case were indistinguishable from that. The case was authority for the proposition that the claimant had to give credit for the sum in question as the sum was payable by the respondent not under a pension scheme.
7. Mr Patel on behalf of the claimant argued that the claimant did not try and find work in the first 12 months because of the outstanding appeal. He also pointed out that she can only do industrial type work and that she has limited command of English and has suffered from depression and anxiety. His case was that the ill health retirement lump sum only needed to be repaid if the claimant went back to work for the respondent.
8. Some issues were agreed between the parties at the outset of the hearing. It was agreed that the claimant's gross pay when employed by the respondent was £268.75 per week and that her net pay per week was £240.25. It was also agreed that the claimant's basic award should be £3,225.00 and that she was entitled to £450.00 by way of compensation for loss of statutory rights.
9. In so far as loss of earnings was concerned, 107 weeks had passed from the dismissal on 31 January 2016 until the remedy hearing. It was agreed that the losses to date before deductions were £25,704.16. It was also agreed that the claimant's notice pay in the sum of £2,343.00 had to be deducted as did the £200.00 she had earned in the summer of 2017. The respondent also argued that the ill health retirement lump sum of £8,854.00 required to be deducted. The claimant disagreed and this was a point that the tribunal was required to decide. It was also agreed that the claimant's pension loss for the period to the hearing was £287.56. The respondent's case was that the claimant had failed to mitigate her losses and that deductions were required to be made from the award for loss of past earnings and pension.
10. In addition, it was agreed that the claimant would have retired at the age of 65 but for her dismissal and that her annual net loss was £12,493.00. It was also agreed that the appropriate multiplier for future losses was 2.92. Accordingly, subject to deductions for the failure to mitigate, the amount of future loss was £36,479.56. It was also agreed that the claimant's future pension loss subject to mitigation was £1,052.21. Finally, the parties agreed that the claimant's current personal annual tax allowance is £11,500.00 and that she would have to pay tax at the rate of 20%.
11. The issues for the tribunal to decide therefore were whether or not the

lump sum for ill health had to be deducted and whether the claimant failed to mitigate her losses.

12. The tribunal's view was that the facts of the present case were indistinguishable from the case of Marsh v Ministry of Justice to which Mr Hartley referred in his submissions. The claimant was paid the lump sum in question pursuant to an ill health agreement entered into between the respondent and relevant trade unions. The agreement provided that where an employee who has at least one year's service makes the criteria for retirement on ill health grounds with a lump sum compensation payment, a payment equivalent to 34 weeks' pay will be made. The tribunal agreed that the circumstances of the present cases were therefore different from the case of Parry v Cleaver [1970] AC 1 because the sum in question was paid by the respondent pursuant to the collective agreement in question. It therefore falls to be deducted from the claimant's compensation - she is required to be put in the position that she would have been in but for the dismissal.
13. In so far as mitigation was concerned, the tribunal considered that the claimant had not been as proactive as she could have been when it came for searching for alternative work. She did not start looking until April 2017 and had only made eight applications. She had in addition to this looked at advertisements both in newspapers and online. She had not been to a job centre and she had not signed up with any agencies. Accordingly, the tribunal was prepared to accept that the claimant had failed to mitigate her losses. However, the tribunal considered that the claimant was virtually unemployable for the following reasons:-
 - 13.1 She is only able to work part time;
 - 13.2 She is disabled and is unable to take on a role which involves any significant standing, walking, driving, lifting and carrying or reaching. She is really only able to take on work which is seated;
 - 13.3 The claimant has a limited command of the English language and is unable to work in any role which involved significant communication skills.
 - 13.4 The claimant is restricted in terms of her own ability to drive. She is only able to take on work within a 30 minute radius of her home address.
 - 13.5 The claimant suffered from anxiety and depression over the material period;
 - 13.6 The claimant was born on 5 March 1958 and is nearly 60 years old;
 - 13.7 The claimant has no significant qualifications;
 - 13.8 She has been out of the labour market for a significant time.
14. The tribunal considered that had the claimant taken reasonable steps to mitigate her losses that there was only a 10% chance that she would have

found work. Further, the tribunal considered that in so far as future losses are concerned, there is only a 10% chance that the claimant will find work in the future over the next five year period. In the circumstances, the tribunal considered that it was appropriate to deduct from the claimant's past and future losses, the sum of 10% for failure to mitigate. The tribunal bore in mind when considering this matter that the burden of proof was on the respondent. The tribunal did not accept that any of the roles proposed by the respondent were suitable for the claimant. She was not and is not suitable for reception work or for any kind of administration work. The only jobs that she can do are the type of jobs that she has done in the past (sitting down, light industrial work). The tribunal considered that those jobs are likely to be hard to come by, particularly with the other issues outlined above such as the claimant's disability and her age.

15. In the circumstances, the tribunal considered that the appropriate compensation is as follows:

Compensation for injury to feelings in the agreed sum of		£5,000.00
Plus interest at 17% (from the date of dismissal to date)		£5,850.00
A basic award in the agreed sum of		£3,225.00
Compensation for loss of statutory rights in the agreed sum of		£450.00
Losses to date in the sum of (The agreed loss to date of £25,704.61 less notice pay, the lump sum for ill health retirement and the claimant's earnings.)		£14,757.61
The tribunal added interest to this sum using the rate of 8% from the midpoint. The appropriate rate was 8.5% which amounted to		£1,277.24
This gave a total of	£16,303.60	
From which the tribunal deducted 10% for failure to mitigate leaving the sum of		£14,673.24
Future losses were agreed at		£37,531.77
The tribunal deducted 10% to reflect the fact that there is a 10% chance that the claimant may obtain alternative employment in the future. The total award for future loss of earnings therefore is	£33,778.60	
The total award therefore before grossing up amounted to	£57,976.84	
The tribunal then grossed up to account for the incidence of taxation. It did this by taking out the £30,000.00 that the claimant will receive tax-free. This left		£27,976.84
The tribunal then applied the agreed personal allowance of £11,500.00 which left		£16,476.84
That figure was then grossed up based on the assumption that the claimant will pay tax at 20%. The grossed up figure is	£20,596.50	
The tribunal then added back in the sum of		

£30,000.00 and the sum of £11,500.00 which left a total award of	£62,096.50	
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Employment Judge Chudleigh

Date: 17 / 5 / 2018

Reasons sent to the parties on

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For the Tribunal office