



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Mrs N Speirs**

**v**

**BCS Cleaning Ltd**

## REMEDY HEARING

**Heard at:** Cambridge

**On:** 17 May 2018

**Before:** Employment Judge M Bloom

### Appearances

**For the Claimant:** Ms S Crombie, Solicitor.

**For the Respondent:** Did not attend and was not represented.

## JUDGMENT

The claimant is awarded the following amounts to be paid by the respondent:-

1.	Notice pay	£145.12
2.	Holiday pay	£597.67
3.	Basic Award for unfair dismissal	£217.68
4.	Compensatory award for unfair dismissal	£400.00
5.	Injury to feelings	£3,000.00
6.	Interest on injury to feelings award	£268.62
7.	Total sum to be paid by the respondent to the claimant	<u>£4,629.09</u>

## REASONS

1. The claimant and her solicitor appeared before me at this remedy hearing. A default judgment had previously been entered against the respondent who did not attend the remedy hearing.
2. The claimant gave evidence before me. I also heard submissions from Ms Crombie. I considered, in addition, the content of a bundle of documents which consisted, in the main, of the claimant's medical records.
3. The facts are fairly straight-forward. The claimant commenced working as a cleaner at a primary school in the Kettering area in September 2014. In January 2016 she went off sick. The claimant has a number of medical difficulties including a diagnosis in March 2015 of fibromyalgia. Her medical records and a medical report confirm that fact. The medical condition causes the claimant to suffer from bouts of tiredness, exhaustion and general body pain. These symptoms are worsened in times of stress and anxiety. The claimant did not work throughout 2016. In January 2017 her employment was transferred pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 [TUPE] to the respondent. The claimant submitted fit for work notes to the respondent post transfer. She submitted a fit for work note indicating that she would be unable to work between 29 March and 24 May 2017. Much to her surprise on 5 April 2017 she received her P45. This obviously resulted in her concluding that the respondent had terminated her employment. She telephoned a supervisor of the respondent to ask for confirmation of the position. She explained to me that the person who she spoke to was rude and in fact laughed when the claimant tried to explain the position to her. The claimant heard nothing more. Thereafter the claimant suffered from additional anxiety which worsened her medical condition. She said that this went on for a number of months post April 2017 although she did not go back and explain her difficulties to her doctor. The medication she was already on continued.
4. The claimant has been unable to work since April 2017 and has been frank and honest to me. She admits that even if she had not been dismissed in April 2017 it is highly unlikely she would have been able to return to her job in any event. Had the respondent adopted a fair procedure relating to the termination of her employment, she admits that she would have had no complaint.
5. The claimant worked part time and term time only. She earned £72.56 per week. At the time her employment was terminated she was 45 years old. She had been continuously employed for 2 full years.
6. The claimant's first claim against the respondent is non-payment of notice. The claimant was entitled to a minimum statutory period of notice of two weeks. This was not paid. Based on weekly earnings of £72.56 this results in a payment due to her of £145.12.

7. The claimant explained that throughout 2016 she did not receive any holiday pay, and equally she received no holiday pay for the period January-5 April 2017. I accept the figures set out in the claimant's schedule of loss in so far as non-payment of holiday pay is concerned, namely the sum of £597.67.
8. In so far as the finding of unfair dismissal is concerned the claimant is entitled to a basic award. The calculation is based on two years continuous service. The appropriate calculation is  $2 \times 1.5 \times £72.56 = £217.68$ .
9. In so far as the compensatory award, I determine that there should be no element in relation to any loss of earnings. This is based on the claimant's own admission that she would not have been well enough to return to work in any event. Under this heading however, she is entitled to the sum of £400.00 representing her loss of statutory rights.
10. The total award in respect of the unfair dismissal claim is therefore £617.68.
11. I turn lastly to any compensation applicable in respect of the claimant's claim of discrimination arising from her disability. The detriment is her dismissal. As I have explained she felt anxious following receipt of her P45. Her anxiety and consequent stress led to a deterioration in her health for a number of months thereafter. However, she continued to receive the same medical treatment as before and her prescriptions were not changed.
12. It seems to me that an award in the lower band of Vento is appropriate and I determine that the appropriate amount applicable to injury to feelings in this case is the sum of £3,000.00.
13. The claimant is entitled to interest at the prescribed rate of 8% on the injury to feelings award with effect from the date she received her P45, namely 5 April 2017 until the date of Judgment on 17 May 2018. That is a period of 407 days at a daily rate of £0.66 per day resulting in an interest award of £268.62.
14. The total sum payable by the respondent to the claimant is £4,229.09.

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Employment Judge M Bloom

Date: 29 / 5 / 2018

Sent to the parties on: .....

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For the Tribunal Office