



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms. M. Smith

**Respondent:** JSB Healthcare Ltd t/a The Bay Nursing Home

**HELD AT:** Mold

**ON:** 5<sup>th</sup> October 2018

**BEFORE:** Employment Judge T Vincent Ryan

## REPRESENTATION:

**Claimant:** Ms. L. Badham, Counsel

**Respondent:** Mr. R. Morton, Solicitor

# REMEDY JUDGMENT & COSTS ORDER

The judgment of the Tribunal is:

1. The applicable rate of gross weekly pay for calculation purposes is £309.46;
2. As agreed, despite the claimant having been unfairly dismissed twice, the respondent is only liable to pay a Basic Award to the claimant in respect of her dismissal on 1<sup>st</sup> February 2017 (Dismissal #1) and that award shall not be subject to deduction on the basis of the claimant's conduct; the claimant's second dismissal was on 16<sup>th</sup> February 2017 (Dismissal #2);
3. As agreed, despite there being two dismissals the claimant is only entitled to receive one compensatory award for loss of statutory rights; the parties have agreed that award in the sum of £450;
4. As agreed, the claimant's financial losses "to date" forming part of her claim in respect of Dismissal #1 are those from 1<sup>st</sup> February 2017 to 5<sup>th</sup> October 2018 (the date of this hearing) or an earlier date to be determined by the tribunal (see paragraph 5 below);

5. The claimant mitigated her losses attributable to Dismissal #1 and Dismissal #2 until 31<sup>st</sup> May 2018; the claimant's claim for compensation for financial losses is limited to those incurred to that date and there shall be no award in respect of the period from 1<sup>st</sup> April 2018 onwards;
6. As agreed, the Compensatory Award in respect of Dismissal #1 is not liable to any reduction to reflect any risk of fair dismissal or contribution by the claimant;
7. The claimant's Compensatory Award in respect of Dismissal #2 shall be reduced by 60% to reflect the risk facing her of being fairly dismissed at that time;
8. The respondent failed to follow an applicable code of practice in respect of Dismissal #2, the ACAS Code of Practice 1: Disciplinary and Grievance Procedures; in consequence the claimant is entitled to a 25% uplift to an award made;
9. The claimant caused or contributed to Dismissal #2 to such extent that it would be just and equitable to reduce her compensatory award by 50%;
10. It is declared that the respondent breached the claimant's contract of employment by wrongfully dismissing her (Dismissal #1). No separate financial award is due in the light of the fact that the claimant continued to be paid by the respondent albeit at a reduced rate of pay until Dismissal #2 and the Award at paragraph 12 below;
11. In consequence of the above the parties have agreed that the sum due from the respondent to the claimant in respect of her unfair dismissal claims is £4,926.81 if the tribunal makes such award; it does. The respondent shall pay to the claimant the sum of £4,926.81 within 14 days of today's date by way of Basic and Compensatory Awards for her unfair dismissals.
12. The respondent made unauthorised deductions from the claimant's pay in the gross sum of £318.82; the respondent shall pay to the claimant £318.82 subject to the usual statutory deductions in respect of this judgment within 14 days of today's date.
13. The respondent, having acted unreasonably in the conduct of these proceedings and having repeatedly breached Case Management Orders, shall pay a contribution to the claimant's costs in the sum of £1,480 within 28 days of today's date.

Employment Judge T.V. Ryan

Date: 05.10.18

JUDGMENT SENT TO THE PARTIES ON

6 October 2018

FOR THE TRIBUNAL OFFICE

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 (and no such request was made) or a written request is presented by either party within 14 days of the sending of this written record of the decision.