



EMPLOYMENT TRIBUNALS

at a Remedy Hearing

Claimant: Miss E Malomar
Respondent: Strategic Facilities Management Ltd
Heard at: Nottingham
On: Friday 7 September 2018
Before: Employment Judge Britton (sitting alone)

Representation

Claimant: In person, accompanied by Aelki (her sister)
Respondent: No attendance

JUDGMENT

1. The Respondent is ordered to pay the Claimant for the unfair dismissal compensation totalling £4,215.62. The recoupment provisions apply.
2. The Respondent is ordered to pay the Claimant damages for the breach of contract (failure to pay notice pay) of £195.
3. The Respondent is ordered to pay the Claimant compensation for the unlawful deduction (non-payment) of wages of £262.50.
4. This makes a total award payable by the Respondent to the Claimant of £4,673.12.

REASONS

1. The claim (ET1) was presented to the tribunal by the Claimant on 5 January 2016. It is fully pleaded. She had been employed as a part-time cleaner by the Respondent from 25 May 2015 until she was dismissed without notice on 28 October 2017. She set out why she was unfairly dismissed and that there had been no process at all. That means of course that the tribunal has to consider the provisions at section 207A of TULRCA 1992 and in terms of uplift to the compensatory element of the unfair dismissal award, there having been no compliance with the relevant ACAS Code of Practice.

2. She also set out how she was not paid her wages outstanding between 22 September 2017 and the last full day worked of 11 October 2017. She quantified this at £262.50.

3. Finally, she set out how she had not been paid any notice pay and therefore correctly calculated her entitlement to 2 weeks' notice, namely £97.5 per week x 2 = £195.

4. The Claimant did not pay tax and national insurance because of her low earnings as is confirmed by the payslips before me.

5. Having been dismissed, the Claimant was never offered any right of appeal and has never received any letter from her employer as to why she was dismissed.

6. The claim was in due course served upon the Respondent, which did not provide a formal response. It tried to say that it being a small Company and the Director having been away when the claim was received, that it wanted to defend. Another Judge, quite properly, caused a letter to be written to the Respondent on 21 March to the effect that an application for an extension of time and a properly completed Response would need to be provided pursuant to rule 20 of the 2013 Tribunal's Rules of Procedure. This the Respondent never did. Accordingly what is known as a default Judgment was made on 4 July 2018 and served upon the parties together with notice of this remedy hearing today. The Claimant has attended with documentation such as payslips but there has been no attendance by the Respondent.

7. As to job seeking, the Claimant was handicapped on the labour market so to speak because she has to care for her 9 year old son. Thus, the job that she had with the Respondent, gave her part-time hours to suit her childcare needs. She has had difficulty finding another cleaning job which would offer her those hours and including flexibility out of term time. She was eventually able to get a cleaning job on 12 February 2018 but it pays less money because at present the employer can only offer her 8 hours per week. At present there is no offer of any further hours, although she lives in hope. The new job pays £208 a month whereas the old job paid £390 a month and therefore she has a continuing loss since she got her new job of £182 a month. Of course for the period between the dismissal and getting that new job, she has lost all the earnings she would have had with the Respondent for that period but for the dismissal.

8. In that latter she did receive job seekers' allowance and so the recoupment provisions apply.

9. That brings me to the provisions in section 207A of TULRCA. In this case, the employer has singularly failed to comply at all with the relevant ACAS Code of Practice relating to disciplinary issues. As I have no explanation from the Respondent as to why it did not do so, I accordingly find that it is just and equitable to increase the compensatory element of the unfair dismissal award by 25%.

10. That therefore brings me to the awards.

11. **Unfair dismissal**

Basic award

11.1 The Claimant having been employed between 28 May 2015 and 12 October 2017 she had 2 completed years of service. She was aged 35 when she was dismissed and therefore she is entitled to a basic award of £97.5 per week x 2 = £195.

Compensatory element

(a) The period 12 October 2017 – 12 February 2018.
This is the period when the Claimant did not have any alternative employment. It is a period of 17 weeks. Therefore, the compensatory element for this part of the award is $17 \times £97.5 = £1,649$. The recoupment provisions apply to this element of the award only.

(b) I am awarding a balance of 35 weeks shortfall in earnings on the basis that I find the Claimant has done her best to obtain alternative employment and at present the likely scenario is that she will remain at the hours she currently works. Thus, her loss can be calculated as follows: Earnings in the job with the Respondent £390 per month; earnings with the new employer £208 per month; shortfall equals £182 per month equals £42 per week x 35 = £1,470.

(c) Thus Part (a) £1649 + Part (b) £1,470 = £3,119

(d) I then award loss of statutory rights at the weekly equivalent pay of £97.5.

(e) I then make the uplift pursuant to TULRCA at 25% = £804.12.

(f) Thus, the total compensatory element of the unfair dismissal award becomes £4,020.62.

Total

Therefore unfair dismissal award is:

Basic award = £195 compensatory element = £4,020.62

Total payable by the Respondent **£4,215.62**

Breach of contract

12. The Claimant had a statutory entitlement to 2 weeks' net pay by way of notice. Thus, $£97.5 \times 2 = £195$. The Respondent must pay her that sum.

Non payment of wages

13. Finally, there is the non-payment of wages for the period between 22 September 2017 and 11 October 2017. The Claimant has provided the figure not paid, which is £262.50. The Respondent must pay her that sum.

Total

14. This means the total award payable by the Respondent to the Claimant is £4,673.12.

Employment Judge Britton
Date: 12 October 2018

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

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