



EMPLOYMENT TRIBUNALS

Claimant: Dr Francesca Maresca

Respondent: Network Rail Infrastructure Limited

Heard at: London South **On: 21 September 2018**

Before: Employment Judge Fowell

Representation:

Claimant: Ms Sephton (lay representative)

Respondent: Ms Shephard, instructed by Womble Bond Dickinson

JUDGMENT

1. The claimant is awarded compensation of 71,695.76 as follows:
 - a. compensation for unfair dismissal of £40,003.06
 - b. unpaid wages of £1,501.44
 - c. damages for breach of contract of £13,512.96
 - d. uplift for tax of £16,678.30
2. The £40,003.06 compensation for unfair dismissal comprises:
 - a. a basic award of £2,155.50
 - b. a compensatory award of £37,847.56

REASONS

1. This hearing followed a hearing on liability on 26 April 2018. The claimant was found to have been unfairly dismissed following her resignation, to have suffered wrongful dismissal, and an unlawful deduction of two weeks' wages. No issue of contributory fault or any *Polkey* reduction (to reflect a risk of dismissal on other

grounds) arose.

2. The basis for calculation was largely agreed between the parties. Dr Maresca obtained other employment at a similar level from 13 October 2017, having left her former role on 24 March 2017. That employment is however in Burton on Trent, requiring her to live away from home during the week with extra costs for travel and accommodation.
3. Having considered the claimant's schedule of loss, the respondent's counter schedule of loss, heard evidence from Dr Maresca and considered submissions from the parties, I make the assessments set out below. The points which required a decision were as follows:
 - a. Applying the guidance in *Shifferaw v Hudson Music Co Limited [2016] ICR D23*, there is a discretion where damages for breach of contract and unfair dismissal overlap to consider the former first, which I preferred to do. This reflected the calculations done by the parties, so losses for unfair dismissal were essentially assessed from the expiry of the notice period.
 - b. As to the amount of any ACAS uplift, I concluded that although the outcome of the original grievance process was unfair, the process complied with the Code of Practice in that Dr Maresca did have a meeting before a decision was made. The appeal upheld her complaint and the only remaining concern as to the process was over the length of time it took. The history of the matter has already been set out in my decision on liability but this did not appear to me so extensive as to amount to a breach of the Code in the circumstances.
 - c. I accepted a loss of healthcare benefits of £8.98 per week.
 - d. I accepted the figures given by Dr Maresca for her ongoing travel and accommodation costs, which at less than £200 per week appeared modest.
 - e. I concluded that she will receive a 3% pay rise in her forthcoming pay review in October (4 weeks).
 - f. After that date, her ongoing losses are limited to a further 52 weeks, the period contended for.
4. Applying those conclusions the calculations are as follows.
5. The claim for unlawful deduction from wages was for 2 weeks' loss of net pay at £750.72 amounting to £1,501.44
6. The claim for breach of contract was for 14 weeks' loss of net pay at £750.72 amounting to £13,512.96
7. For unfair dismissal, the basic award of £2,155.50 was agreed.
8. Turning to the compensatory award, the first element is the loss to date, what is

know as the prescribed period. This runs from the end of the notice period to date, i.e. from 24 July 2017 to 21 September 2017, 59.5 weeks. The net pay from 1 July 2017 would have been £758.23. Applying this rate over that period the total loss would have been £45,114.69

9. Allowing for the 1% lower rate to July (£105.14) and some other earnings made (£144) the overall loss of earnings to date was £44,865.55
10. The benefits loss from employment with the respondent were as follows:
 - Healthcare at £8.98 per week (£534.31)
 - Pension at £122.38 per week (£7,281.61)
 - A net bonus missed of £2,347.80
11. This is a total of £10,163.72. Hence the total loss of earnings and benefits to the hearing was £55,029.27. Adding an agreed £500 for loss of statutory rights brings that total loss to £55,529.27
12. From this has to be deducted the earnings and benefits in the new employment, over the shorter period of 49 weeks.
13. The new net pay is £716.31, so over 49 weeks this amounts to £35,099.19
14. The benefits in the new job are as follows:
 - Pension at £57.74 per week (£2,829.26)
 - A net bonus of £347.26
15. This is a total of £3,176.52
16. As noted above, there were also extra costs in the new job:
 - attending interview, £93.50
 - retraining, £66.50
 - travel, involving 37 weeks by train at £40 per week (£1,480) and 12 weeks by car at £117 per week (£1,404), amounting to £2,884
 - accommodation at £65 per week, amounting to £3,185
17. This is a total of £6,229. Accordingly the net loss during the prescribed period was:

Loss of earnings and benefits	£55,529.27
(LESS later earnings)	(£35,099.19)
(LESS later benefits)	(£3,176.52)

Extra costs incurred £6,229.00

Loss to date £23,482.56

18. This is, I note, slightly lower than the respondent's calculation. Assessing the future loss, the ongoing losses were as follows:

- difference in wages of £41.92 per week
- difference in pension contributions of £64.84 per week
- difference in healthcare benefit of £8.98 per week
- difference in travel costs of £117 per week
- difference in accommodation costs of £65 per week

19. The total ongoing loss is therefore £297.74 per week.

20. With a 3% pay rise in October, the earnings will increase by £21.49 and so the difference reduce to £276.25.

21. Hence, the loss over the next 4 weeks will be £1,190.96, and the loss over the next 52 weeks will be a further £14,365.00, amounting to £15,555.96. This differs significantly from the respondent's assessment, which was based on six months' future loss, but I find this expense will continue.

22. Adding the losses to date to the future losses:

Losses to date £23,482.56

Future loss £14,365.00

Total £37,847.56

23. Adding the basic award of £2,155.50 brings the total award for unfair dismissal to £40,003.06

24. The total net award is therefore as follows:

Wages £1,501.44

Breach of Contract £13,512.96

Unfair dismissal £40,003.06

Overall total £55,017.46

25. This has to be grossed up for tax. The first £30,000 is tax free so the taxable amount is £25,017.46. All of this will attract tax at 40%, and so the gross-up figure requires this sum to be divided by 0.6. Hence:

Taxable amount £25,017.46

Grossed up sum £41,695.76

Uplift £16,678.30

26. Applying this uplift:

Previous total £55,017.46

Uplift £16,678.30

Gross Amount awarded £71,695.76

27. For completeness, this figure is 30.3% higher than the net award. Increasing each element of the total by that amount, the compensatory award would increase to £49,320.88. This is less than the statutory cap of one year's gross earnings.

Employment Judge Fowell

Date 21 September 2018