



EMPLOYMENT TRIBUNALS

Claimant: Mrs Ann Murray
Respondent: Penelope Woodhead
Heard at: Middlesbrough **On:** 13 November 2017
Before: Employment Judge O'Dempsey

Representation:

Claimant: Mr McDermott. (Consultant)
Respondent: Mr Murray (Claimant's husband)

JUDGMENT

1. Compensation is ordered as follows for unfair dismissal:
 - (A) Basic element: £3,042.00
 - (B) Compensatory element: £300 (lost statutory rights) and £168.75 net pay 6-9 December 2016
 - (C) 15% uplift on the compensatory element: £70.31.
2. Non provision of written terms and conditions: £648 (two weeks' gross pay).

REASONS

- 1 These are brief oral Reasons for the award in this case.
- 2 The basic award is not in dispute and will be awarded at £3,042.00. I do not make any reduction of the basic award.
- 3 In relation to the compensatory element of the award I award £300 for loss of statutory rights. The claimant accepted that the dismissal took place on 6 December. I find that there was a reasonable offer of re-employment made on 9 December and the claimant failed to mitigate her loss by failing to accept that offer of employment. Accordingly her compensation is limited to the period 6 December to 9 December and thereafter I award no loss because in essence she should have accepted the offer of re-employment. Alternatively if she did accept that offer she was absent sick until she resigned on 22 January 2017. She received her entitlement to sick pay during that period and hence suffered no loss. She also did not

resign in response to any breach of contract during that period (or before) by the Respondent. Hence after 9 December she suffered no loss which can be attributed to the dismissal on 6 December 2016. She did not argue that 22 January 2017 was her date of dismissal.

- 4 For the avoidance of doubt I reject as completely incredible the suggestion that there was a phone call which was not recorded and which repeated most of the content of the first phone call of 9 December (that was recorded). I do not believe that such a call could have occurred without any additions whatsoever such as expressions of surprise that the material was being repeated. I regard it as highly improbable that such a call took place between that first call recorded by the respondent's husband and the second call (also recorded by the respondent's husband). I do not in other words accept that there was any aggression by the respondent's husband during phone calls either with the claimant or her sister (who gave evidence before me). I have heard both of the phone calls that were made. They were civilised. The claimant appeared to accept an offer of re-employment but then quite clearly changed her mind about it later on and communicated that she was going sick within a very short period of the first phone call. Looking at her behaviour in the round, I conclude that she did not in fact accept the offer of employment which required her to come back to work.
- 5 So for those reasons I find that she did not in fact accept the offer which would have mitigated her loss fully. If I am wrong about that and she did in law accept the offer of reinstatement, she suffered no loss between 9 December and 22 January 2017 when she resigned without contractual cause. Thereafter her loss cannot be attributed to the dismissal of 6 December in any event.
- 6 That normally would be the end of it and there would be no further award of damages. There is however an application for an award in respect of non provision of written terms. I am obliged to make an award where no written terms had been provided as it appears they have not been in this case and I am obliged to award two weeks' pay. The Schedule of Loss sets a week's gross pay at £324 so the award will be twice that. From that no reduction is to be made for the statutory sick pay which relates to a period outside the period 6 December to 9 December.
- 7 There is no reduction for contributory fault and no reduction to reflect a **Polkey** reduction in this case. Mr McDermott sought a 15% uplift on the compensatory element of the unfair dismissal. The compensatory element is £300 plus £168.75. I award a 15% uplift on that which is a figure of £70.31 which must be added

The total figures therefore for unfair dismissal are as follows:
Basic award and compensatory element together, are £3,870.75.
15% uplift on the compensatory element is £70.31.

The Recoupment Regulations apply to the three days' pay of £168.75.

I am obliged to make the award of £648 which is two weeks' pay for non provision of written terms and conditions.

Employment Judge O'Dempsey

Date 23 November 2017

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 or a written request is presented by either party within 14 days of the sending of this written record of the decision.