



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs B Snowden

v

The Watercooler Warehouse Ltd

Heard at: **Sheffield**

On: **1 February 2019**

Before: **Employment Judge Brain**

Representation:

Claimant: **In Person**

Respondent: **Mr M Ward, Employee**
Assisted by Miss C Roper HR Adviser

JUDGMENT

The Judgment of the Employment Tribunal is that: -

1. There was a transfer of the undertaking carried out by Cool Coolers (UK) Limited to the respondent on or around 1 March 2016. The claimant commenced her employment with Cool Coolers (UK) Limited on 1 April 2009 and her continuity of employment was preserved upon the transfer of the undertaking to the respondent. The date of commencement of the claimant's employment with the respondent is thus deemed in law to be 1 April 2009.
2. The claimant was unfairly dismissed by the respondent.
3. The claimant contributed to her dismissal such that it is just and equitable to reduce the basic and compensatory awards by 10%.
4. The respondent shall pay a basic award to the claimant in the sum of **£4,121.65** (net of the reduction for contributory conduct).
5. The respondent shall pay to the claimant a compensatory award in the sum of **£2,568.71**. This is calculated as follows: -
Prescribed element (being the loss of wages to date of assessment by the Employment Tribunal)
 - 5.1. Loss of statutory sick pay 21 June 2018 – 7 September 2018 @ £92.05 per week £1,012.55

5.2.	Loss of wages in the sum of £299.39 net per week from 8 September 2018 – 24 October 2018	£1,496.95
	Total	£2,509.50
	less deduction for contributory conduct	£250.95
	Net prescribed element (loss of wages to date of assessment)	£2,258.55

5.3.	<u>Other losses (non-prescribed element)</u>	
	Loss of statutory industrial rights	£300.00
	Loss of pension rights	£44.62
	Total	£344.62
	Less 10% deduction for contributory fault	£34.46
	Non-prescribed element	£310.16
	Net compensatory award	£2,568.71

Grand total (£4,121.65 + £2,258.55 + 310.16) £6,690.65

5.4. The Recoupment Regulations apply. The grand total of the award for unfair dismissal is £6,690.65. The prescribed element for the period 21 June 2018 to 24 October 2018 is £2,258.55. The excess of the grand total over the prescribed element is therefore **£4,432.10**.

6. The compensatory award shall be increased by 25% to reflect the respondent's breach of the ACAS Code of Practice: Discipline and Grievance - **£642.18**
7. The respondent failed to give the claimant a statement of terms and conditions of employment. Accordingly, pursuant to section 38 of the Employment Act 2002, it is just and equitable to award the claimant two weeks gross pay in for that failure - **£678.46**
8. **Award £8,011.29**
9. Subject to the operation of the Recoupment Regulations, this amount is payable to the claimant within 14 days of today's date.

Note (forming part of the Judgment)

The Recoupment Regulations apply to the unfair dismissal award as the claimant received Income Based Job Seekers Allowance following her discharge from hospital. This means that the respondent is liable to pay the sum of £4,432.10 together with the uplift for breach of the ACAS Code of £642.18 and the award under section 38 Employment Act 2002 award of £678.46 within 14 days of the date of this Judgment. That totals £5,752.74. The award for loss of wages to the date of assessment (known as the prescribed element) and which covers the period from 21 June 2018 to 24 October 2018 is subject to the Recoupment Regulations. This means that the respondent must withhold the sum of £2,258.55 pending receipt from the DWP of the Recoupment Notice. The respondent shall then repay to the DWP the amount of the Job Seekers Allowance paid to the claimant and pay to the claimant the sum of £2,258.55 less the amount of the recoupment.

As the respondent was represented by Mr Ward who expressed himself disinterested in matters (in legal terms, he having no liability in the matter) I considered that the explanation about the Recoupment Regulations was best done in the judgment.

I also realised that my arithmetic when giving the judgment *ex tempore* was incorrect: the correct figures for the award are here set out.

Employment Judge Brain

DATE: 15 February 2019

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.

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