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# EMPLOYMENT TRIBUNALS

**Claimant:** Mr TO Egiarhuoyi  
**Respondent:** Barking Havering & Redbridge University Hospitals NHS Trust  
**Heard at:** East London Hearing Centre  
**On:** 1 February 2019  
**Before:** Employment Judge Brown  
**Members:** Ms M Long  
Mr ML Wood

## Representation

**Claimant:** Mr D Lamina (Lay Representative)  
**Respondent:** Mrs S Ramadan (Solicitor)

# REMEDY JUDGMENT

The unanimous judgment of the Tribunal is that: -

1. The Respondent shall pay the Claimant a grand total of £10,776.77 in compensation for unfair dismissal comprised of:
  - a. A basic award of £4,145.85;
  - b. A compensatory award of £6,630.92.

# REASONS

1 The parties agreed that the Claimant's wage in his Band 2 HCA role, excluding bank work, was £23,953.73 gross annually and that his weekly gross pay was £460.65. The parties agreed that the basic award in this case was therefore £4,145.85. The parties also agreed that the Claimant's net annual salary in his Band 2 HCA role, without bank work, was £19,570; £376.35 net per week. The parties agreed that the Respondent made

pension contributions to the Claimant salary at a rate of 14% of the gross salary. That was £3,353.92 per year or £64.49 per week. The Claimant's total weekly loss therefore from his HCA Band 2 role at full pay was £376.35 + £64.49 = £440.85.

2 The Claimant contended that he should be compensated for loss of his bank pay because he had previously worked on the bank, earning substantial sums of money. However, the Tribunal found that he had not worked on the bank for more than a year before his dismissal because of his disability. The Tribunal has specifically not found, in its liability judgment, that the Respondent caused the Claimant's back injury. The Tribunal concluded that the Claimant had been, and continued to be, unable to work on the bank, and, if he had not been constructively dismissed, he would not have been able to work on the bank, because of his disability, in any event. His loss of his bank work was not caused by his dismissal and therefore the Tribunal did not make an award for compensation for bank work.

3 The Claimant told the Tribunal that he has not worked since his constructive dismissal. The Respondent contended that the Claimant had not mitigated his losses and would have obtained alternative work at about the same rate of pay after about 6 months, had he made reasonable efforts to find alternative work. Furthermore, the Respondent contended that, if the Claimant had not been dismissed he would have continued to have been employed by the Respondent on half pay and was likely to have been dismissed after about 4 months, in any event.

4 The Claimant contended that the Tribunal should apply an ACAS uplift to any award made. However, the Respondent pointed out the Tribunal had found, in its liability judgment, that Ms Toney-Browne had not failed to deal with a grievance in November 2016. The Tribunal accepted the Respondent's submission on this. Furthermore, it found that, when the Claimant submitted his grievance on 11 September 2017, the Respondent did invite him by letter of 25 September 2017 to a grievance hearing to be held on 10 October 2017, but that the Claimant resigned before that hearing took place; paragraphs 104 and 105 of the original judgment.

5 The Tribunal concluded that the Respondent was not in breach of the ACAS Code of Practice on Disciplinary and Grievance Procedures regarding the September 2017 grievance. Accordingly, no ACAS uplift should be applied to the unfair dismissal award.

6 The Tribunal heard evidence from the Claimant. The Claimant told the Tribunal that he had applied for jobs since his constructive dismissal. However, he produced very little evidence of any applications for substantive roles in the NHS - for example, Band 2 ward clerk roles or out-patient roles suited to the Claimant's back condition. He produced some evidence of attempt to apply online for bank work. He said he had applied unsuccessfully to join NHS Provider in February 2018, but repeatedly failed the vetting process for suitability for NHS bank roles. He also applied, in July 2018, to the North East London Foundation Trust for bank roles in the community, but he told the Tribunal that the CRB checks had taken about 7 months to complete. The Claimant has not signed on with a local job centre.

7 The applied for various graduate roles - in HMRC, the prison service and MI5, for example. The Claimant does have a degree, but the Tribunal found that these were not reasonable attempts to find alternative work. There are many, many graduates with

excellent degrees looking for employment and the Claimant's application for these roles, in which he had no experience, was speculative at best.

8 The Claimant also told the Tribunal that he had previously tried a role, operating NHS computers, before his dismissal, but that he could not understand the NHS computer system and he was not very good with computers. He was clear that he would not be confident in undertaking such a role, because of patient safety.

9 The Tribunal found that the Claimant had not made reasonable efforts to find work in the NHS. He had not applied for substantive roles in the NHS and, even when he applied to work in bank positions, he did so months after his dismissal - at the earliest in February 2018. The Claimant had not even signed on with the Jobcentre, which could have assisted him in a realistic job search. People do not have to be in receipt of state benefits in order to obtain help from Jobcentres.

10 The Tribunal found that, at the time the Claimant resigned, there was a Band 2 ward clerk role which was available and would have been offered to him on trial basis. However, the Claimant's evidence was that he was not very good with NHS computers and disliked a similar role when he tried it previously. His assertion that he was unable to operate NHS computers was inconsistent with his assertion that he is employable at graduate level, which would inevitably require a high level of computer and administrative literacy. The Claimant's evidence, therefore, was inconsistent and unsatisfactory. If the Claimant was unable to undertake the ward clerk role operating an NHS computer, then the Tribunal found that it would have been very difficult for the Claimant to have remained in NHS employment at all, given that he was unable to undertake manual handling roles.

11 The Tribunal therefore found that, had the Claimant not been dismissed, he would have remained in the redeployment scheme, he would not have undertaken the Band 2 ward clerk role and, therefore, he would have remained on half pay. He would not have accepted the ward clerk role available to him. Furthermore, given his inability to do manual handling and his inability to operate NHS computers systems, the Tribunal decided that he would not have found another role in the hospital and would have been dismissed, in any event, within 6 months. Accordingly, his loss arising from his dismissal is 6 months' pay, at half pay. That is  $26 \times £440.84 \times \frac{1}{2} = £5,730.92$ .

12 The Tribunal awarded him loss of statutory rights. Loss of statutory rights is normally compensated at about one week's gross pay. However, historically that reflected the fact that an employee would have to work for a year in order to gain employment rights and it roughly equated to a basic award after 1 year's employment. Because employees now must work for 2 years in order to gain employment rights, the Tribunal awarded loss of statutory rights at about 2 weeks' gross pay;  $2 \text{ weeks} \times £450 = £900$ .

13 The Claimant asked for an award for loss of long notice pay. However, the Claimant's notice terms were one week's notice for each year worked. His notice rights were equivalent to statutory notice rights. He has not lost any particular right to long notice; for example, 6 months' notice, or another period which would take many years to build up in new employment. Accordingly, the Tribunal decided that an award for loss of long notice was not appropriate.

14 The Tribunal therefore ordered the Respondent to pay the Claimant a compensatory award which amounted to his loss of half pay for 6 months, £5,730.92, plus loss of statutory rights at £900 = £6,630.92. The Respondent shall also pay the Claimant basic award of £4,145.85. The Respondent shall pay the Claimant total compensation for unfair dismissal of £10,776.77.

Employment Judge Brown

Dated: 12 February 2019