



EMPLOYMENT TRIBUNALS

Claimants

Respondents

v

Ms MJ Caines

Key House Project (in liquidation)

Ms L Bryan

In chambers: Leeds

On: 22 January 2019

Before:

Employment Judge JM Wade

JUDGMENT

On a reconsideration pursuant to Rule 70

Upon the written application of Ms Bryan, and in the absence of objection from any other party, the Rule 21 Judgment sent to the parties on 3 December 2018 is varied as indicated below in bold and as explained in additional reasons in italics:

- 1 Ms Caines' complaint that she was unfairly dismissed is well founded: the principal reason for her dismissal was the making of protected disclosures.
- 2 Ms Bryan's complaint that her resignation was a constructive unfair and wrongful dismissal is well founded: the principal reason for her dismissal was her making of protected disclosures.
- 3 The claimants' complaints that they were subjected to detriments on the grounds of having made protected disclosures are well founded and succeed.
- 4 The respondent shall pay to the claimants the following sums:

Ms Caines

Basic Award:	£1425.00
Compensatory Award:	£55,083.75
Injury to feelings:	£33,000.00
Total:	<u>£89, 508.75</u>

Ms Bryan

Basic Award:	£2850.00
Compensatory Award:	£74, 983.89
Injury to feelings:	£19, 800.00
Total:	<u>£98, 108.89</u>

REASONS

1 This Rule 21 Judgment arises in unusual circumstances and following an application settled by counsel for the claimants, copied to solicitors for the respondent in administration and the Tribunal on 16 November 2018. There has been no opposition from the respondent. A brief summary of the proceedings below adopts, in part, recent reasons for a costs Judgment in this case.

2 The proceedings commenced in June and July of 2016. They were released from stay, following administration of the first respondent on 27 June 2017. Since then there have been a number of hearings before me to make arrangements for their disposal. The liquidators in the creditors' voluntary liquidation have not taken part in hearings, ostensibly on the grounds of cost, and there was no application for late responses to be accepted for Key House. The claims against Key House, as former employer, are therefore undefended. Solicitors for Key House are appointed and have been copied in on Orders and other correspondence arising.

3 The claims related variously to the ending of contracts of employment and other matters as between four claimants and Key House. Key House provided support to service users to access benefits and housing related matters. When Key House ceased operations, some services (for example accessing legal aid) transferred to Foundation Trust (the former second respondent).

4 On 28 September 2017 the two other claimants' claims were directed to be disposed separately; they were then litigants in person; their proceedings and have now been disposed.

5 The claimants are solicitors who were engaged in the provision of Key House services to service users. Ms Bryan resigned her employment on 2 March 2016 and Ms Caines was dismissed on or around 15 April 2016. They brought complaints, following amendment and further particulars of constructive unfair and wrongful dismissal (Bryan), unfair dismissal (Caines), and detriment on the grounds of having made protected disclosures to the Solicitors Regulation Authority (both claimants). The detriment complaints were pursued both against Ms Hauxwell their former line manager and director of Key House, and Key House, as employer. The proceedings against Ms Hauxwell have now been disposed in advance of a seven day hearing, expected to commence today, which has been vacated.

6 In its place, I have been allocated time in chambers to decide whether, pursuant to Rule 21(2), a determination can properly be made of the complaints **on the available material**. This is not the first occasion I have made such a decision in this case. Previously I have considered a determination could not properly be made for a number of reasons. Today the position is considerably different for the reasons set out in the claimants' application.

7 I am certainly satisfied that a determination of liability can be made on the undefended complaints. In doing so I have taken account of an amended response submitted on behalf of Ms Hauxwell which raised matters including limitation, before those proceedings were otherwise disposed. That response, not pursued, is not therefore a reason to refuse a Rule 21 Judgment on liability. With Ms Hauxwell no longer a respondent, any liability hearing will be undefended and the claimants are entitled to have their complaints upheld. I do not

consider the interests of justice are prejudiced at all by such a Judgment and it is permissible within the Tribunal's rules, as it would be in other jurisdictions.

8 As to remedy, in compliance with Orders I made, the claimants filed detailed Schedules of Loss in October 2017. They attached statements explaining the injury to feelings awards that they sought: the impacts on their lives, their professional integrity, and their mental resilience in the face of very difficult events at work. The schedules address both historic and future loss (anticipated at that time) and injury to feelings with full explanations applying the relevant principles to the information in the statements. The claimants both found other posts after leaving Key House, and they give full credit for those earnings; the Tribunal has not been informed of any material change in circumstances.

9 The claimants, though solicitors themselves, have sensibly been represented by solicitors and counsel throughout. Ms Bryan's schedule reserved the right to amend up to and including the final hearing. The hearing leading to the listing of this week's final hearing (as was) recorded that the Tribunal would be in a position to address all remedy matters unless there was an amendment application to pursue personal injury damages. There have been no amendments to the 2017 schedules, which were re-filed on 9 July 2018.

10 In light of the detail in those schedules and statements, the potential prejudice to the claimants in determining loss on the basis of the schedules filed is that their positions have worsened, or they would wish now to pursue interest which was not then pursued. I consider this prospect very unlikely: the application seeks an in chambers determination on those schedules.

11 As for the respondent, it too, is represented by experienced solicitors. There has been ample opportunity for it to seek a hearing of remedy in which consideration could be given to its participation. It has not done so in circumstances where the liquidator has had notice. As at today it appears from the public record that the creditors' voluntary liquidation continues, a charge remains over property, and the claimants will therefore rank as creditors in that liquidation. I cannot know whether any aspect of the financial judgment will be satisfied. I do know that "closure" in relation to these events is said by the claimants to be very important because of the impact on them they describe.

12 I also bear in mind that the pressure on Tribunal resources is now such that the withdrawal against Ms Hauxwell and application to vacate did not come before an Employment Judge until very shortly before the hearing was due to commence, albeit it had been made in good time. This simply illustrates that when the overriding objective involves consideration of all users of the Tribunal's limited resources, it is inconsistent with that to hold unnecessary hearings. In all these circumstances I consider I can properly determine liability and remedy on the basis of the application and schedules as filed.

13 *These reasons and original Rule 21 Judgment were sent to the parties on 3 December 2019, the day the Judgment was given. On 4 December 2019 there was an application to reconsider the Judgment only in respect of Ms Bryan, with a revised schedule and explanation as to why that had not been presented sooner. I directed a "red-line" version of that schedule and that the respondent be copied in to the application. There have been no objections to the reconsideration application, and it is in the interests of justice for the reasons sent out in the application (namely the prejudice to Ms Bryan anticipated above in the use of the filed schedule of loss) to reconsider the Judgment.*

**Case No. 1801006/2016
1801125/2016**

Employment Judge JM Wade

22 January 2019