EMPLOYMENT TRIBUNALS

Claimant Ms J C Streitt

Respondent Teleperformance Limited

Heard at Bristol On: 25-26 March 2019

Chairman: Employment Judge M Ford QC

Representation
Claimant: Mr N Henry, Tribunal advocate
Respondent: Mr A Crammond, Counsel

JUDGMENT having been sent to the parties on 29 March 2019 and reasons having been requested by the Respondent in an e-mail of 12 April 2019.

REASONS

Issues and evidence

1. In a Claim Form received on 6 July 2018 the Claimant complained of constructive unfair dismissal under the Employment Rights Act 1996 ('ERA') and claimed various other payments. In its response dated 7 August 2018, the Respondent denied the claims, contended it had a fair reason for dismissal, and denied any other payments were due.

2. At the outset of the hearing, Mr Henry, for the Claimant, made clear that the only claim was for unfair dismissal or, to the extent it was not part of compensation for such a claim, unpaid notice pay.

3. The Tribunal heard evidence from the Claimant and another witness called by her, Miss Teddy Weiss. For the Respondent, Ms Agnieska Przykaza, a Senior Team Leader, and Mr Chris Gray, a Senior Resource and Relations Executive, gave evidence. All witnesses presented written statements and gave oral evidence.

4. There was an agreed bundle of documents, to which some documents were added in the course of the hearing. Both parties presented submissions at the conclusion of the hearing.

Facts

5. Based on the evidence I heard, I made the following findings of fact on the balance of probabilities. Further findings of fact, where relevant and convenient, are set out in the section entitled 'conclusions'.

6. The Claimant commenced employment with the Respondent on 3 February 2015, having worked there before through an agency.

7. The Claimant's initial written terms of employment, said to conform with s.1 ERA, are dated 9 February 2019. They gave her job title as Customer Services Advisor and set out her then basic salary of £12,675 per annum; referred to the Disciplinary Policy and Procedure (said to be non-contractual) in clause 13; and referred to the Respondent's right to make reasonable changes to terms and conditions by notification in writing (clause 25.1). There was a Capability Policy and Procedure which applied where an employee was performing below the standard required for the job (para. 8.3.1).

8. In July 2017 the Claimant was successful in obtaining a post as a Supplier Relationship Manager ('SRM') with a new client, called C2FO and which I refer to below as 'CF', which needed a German speaker,. She received letter dated 24 July 2017 which informed her that she had been awarded an increase in salary, stating that her 'new salary was £23,000.00 per annum' with effect from 17 July, and that all other terms remained unchanged.

9. On the CF 'campaign', as it was called, the Claimant was responsible for trying to sell over the phone a financial management product of CF, working within a team of employees of the Respondent. She also worked alongside three employees who were directly employed by CF: Tony Hines, Antony Hines and Andrew Ranzinger, the Operations Manager. They kept a close eye on the work done for CF within the Respondent. Her line manager within the Respondent was Matthew Naudi.

10. The Claimant, who had no experience in sales, received some training when she began her new role working on the CF contract (or campaign as it was called in evidence), including about 2.5 days in a classroom and 'on the job' training in her second week in the new role. In addition, Claimant received frequent 'one to one' meetings with Ms Przykaza, on call coaching and book management, details of which were recorded in e-mails to her.

11. Targets were set by CF for each SRM which were relayed to the relevant employees. These were, it seems, quite demanding. Two elements in particular were critical. The first was 'New Prospect' (usually shortened to 'NPs') which were a reflection of the new customers obtained for CF. The second, was Gross Marginal Revenue or 'GMR', based on the total revenue generated. The targets were more relaxed for new SRMs, but rapidly increased. They were generally published in around the first week

of each month by CF. In addition, employees were sent daily information by e-mail which they could use to track their progress against their monthly target.

12. The Claimant's targets, and those for most other members of the CF team, were set out in a document before the Tribunal. The Claimant's NPs, for example, increased from 6 for August 2017 to 18 by October (it seems that the target for November, of 23 NPs is a mistake, and should read 18 NPs). The Claimant's record of NP and GMR achievements as against targets was subsequently set out in the letter to her of 2 February 2018.

13. The Claimant's first target in August was for 6 NPs and 1300 GMR. C achieved the NP but missed the GMR.

14. The September target was for 8 NPs and 2400 GMR. The Claimant missed both (albeit only narrowly in the case of NP). This was not surprising as she was on holiday in Germany for three weeks; but it was not the practice of CF to make allowance for employees being on holiday. Nonetheless, at this stage no formal action was taken by the Respondent because Ms Przykaza took account of the Claimant being away on holiday.

15. The Claimant's October target was 18 NPs and 5100 GMR. The Claimant missed both, and by quite a large margin (she achieved 3 NPs and 1724 GMR). At the time she was working with Mr Ranzinger whom she found to be difficult to work with, and rather intimidating.

16. There was a small dispute about a conversation in October 2018. According to the Claimant, Ms Przykaza told her that her probation would be extended until end of January. Ms Przykaza accepted in her evidence that she must have said something about probation being extended. In the event, however, the resolution of this matter is not central to the issues in the case: the issue was soon dropped because Ms Przykaza discovered there was no probation period in the Claimant's new role and the matter did not figure afterwards.

17. As a result of the Claimant not hitting her targets, Ms Przykaza placed her on a 'Personal Improvement Plan' ('PIP'). This was initially recorded in an 'Action Form' dated 16 November 2017. It recorded that the client, CF, was not happy with her not meeting the targets. The PIP set out the support to be offered to the Claimant, explained that if she needed anything additional she should let Ms Przykaza know, and gave her a half-month target for November. The Claimant agreed in cross-examination that at this time she did not suggest to the Respondent that she needed additional training.

18. The PIP process continued in subsequent months. The December PIP was for 18 NPs. The Action Form again recorded the support and the action plan. In common with the November Form, it said that if the Claimant was unable to meet her target, she would be invited to attend a 'disciplinary meeting'. An up-dated December PIP was sent to the Claimant on 18 December. A further up-dated PIP was sent on 5 January 2018, congratulating the Claimant on meeting her NP and GMR targets for

December, but indicating she would be expected to achieve her NP and GMR targets for January.

19. In December, at one of the PIP meetings, Ms Przykaza told the Claimant that others, such as Daniel Beaumont, had experienced difficulties in their work. I consider this remark was made with a good intention, to support the Claimant.

20. By January it seems matters deteriorated for the Claimant. Once again, she did not meet her NP target for that month (though she did meet the GMR): she only achieved 5 NPs out of a target of 16. She became increasingly unhappy in her role. She spoke to Gareth Marshall, the employee of CF who replaced Mr Ranzinger at the end of December, who suggested she look for a more suitable role. In about early January, Matthew Naudi told her she could move to a different campaign on a lower salary or be subject to a disciplinary procedure.

21. Faced with these obstacles, the Claimant decided to start looking for another job. Her decision was that once she found another suitable job, she would leave the Respondent rather than remain on the CF campaign.

22. The Claimant told Ms Przykaza that she had decided to look for a different job, hoping that this would mean no further formal action would be taken against her. The Claimant confirmed to Ms Przykaza that she was not giving in her notice. After Ms Przykaza spoke to Mr Naudi, however, she told the Claimant that the Respondent would continue with the disciplinary process if the Claimant did not hit her targets.

23. Later on the same day, Claimant overheard a conversation between Ms Przykaza and Gareth Marshall, about which there is a dispute. According to the Claimant, she overheard Ms Przykaza say that 'she' – which the Claimant took to mean her – could not handle the pressure of the job and was not up to it. Ms Przykaza accepted she had some conversation of this sort but denied it was about the Claimant (though she could not recall who it was about). I prefer the Claimant's evidence on this point: Ms Przykaza's evidence was not very clear and, significantly, when the Claimant raised this matter at the hearing on 5 February, Ms Przykaza did not deny it.

24. Owing to the Claimant's failure to meet her targets on the CF campaign, on 2 February 2018 the Claimant was invited to a formal Capability Hearing, to take place on 5 February. The invitation letter set out details of her achievements compared with targets and, it should be noted, did refer to a Capability Hearing and not a Disciplinary Hearing.

25. At around this time, the Claimant consulted a lawyer in connection with her problems at work.

26. The hearing, now entitled 'Disciplinary Hearing' on the notes, took place at 1 pm on 5 February. The Claimant was accompanied by an employee representative. The hearing was conducted by Ms Przykaza and Mr Naudi was present. The notes are, I find, a reasonably accurate summary of the discussion. The Claimant's performance against targets was discussed, the Claimant said the targets were high, she had had little training and she

did not have enough accounts. Ms Przykaza said the Claimant had had the same coaching as other team members. Towards the end of the meeting, the Claimant mentioned the conversation she had overheard between Mr Marshall and Ms Przykaza. At the end of the meeting, Mr Naudi raised the potential options for the Claimant and told her he would 'safeguard' her salary with CF so that she would not need to go down to a campaign salary.

27. After that meeting, the Claimant was told that she was issued with a first written warning which would remain on her record for one year, as set out in the outcome letter of 5 February. The letter explained that she had not met the targets set by the client, CF, and that she had received the same training as her colleagues. It told her of her right to appeal, but she did not exercise it.

28. On the same day, in an e-mail timed at at 14:47, the origins of which were not clear, CF told the Respondent that it wanted the Claimant removed from the campaign 'at the next available opportunity' because her performance had not met the desired level. Following this, Mr Naudi met the Claimant and told her that, in accordance with the terms of the contract between the Respondent and CF, she would need to be removed from the CF campaign. He said he would investigate other campaigns to which she could be moved. He said nothing about a cut in salary, and arranged to meet with the Claimant on 11 February. Unsurprisingly, the Claimant was extremely upset about what she had been told.

29. A meeting in the event took place on 15 February, not with Mr Naudi (who was on holiday) but with Hannah Castledine from Human Resources (the Claimant attended an interview with an agency on 14 February). Ms Castledine told the Claimant that there were two other campaigns on which she might work. The jobs were a career advisory role and a customer service advisor role. The salary for each of these jobs was less than £16,500. Contrary to what Mr Naudi had told her at the meeting on 5 February, the Claimant was informed at the meeting that Mr Naudi would safeguard her salary at £16,500, and not her existing salary of £23,000. The Claimant considered this too low a salary on which to manage (she had to travel from Newport to Bristol each day on the train). I find that the Claimant was told by Ms Castledine at this meeting that for her to stay in the Respondent she would need to work in a different role and this would be at a 'safeguarded' salary of only £16,500 (and not her existing salary).

30. The advice of Ms Castledine was confirmed in an e-mail sent to the Claimant on 15 February, asking for a decision by Friday 16 February. In the e-mail Ms Castledine outlined the two campaigns on which the Claimant could work and confirmed that 'Matt Naudi has safeguarded your salary at £16,500 therefore please ignore the salaries listed on the advertisements' (which were lower). It was clear to the Claimant, therefore, that if she stayed at the Respondent, her salary would be £16,500 (and not her current basic salary of £23,000).

31. The Claimant returned home by 2 pm on 15 February. After consulting her legal advisors, she wrote her letter of resignation to the HR department, dated 16 February. The letter complained of what were described as

various 'fundamental and repudiatory' breaches of contract, including the imposition of targets. The letter also complained of 'unilaterally' varying her contract on 12 February – presumably meant to be 15 February – by cutting her pay and offering her alternative posts at a reduced salary, claiming this was an 'effective demotion'.

32. After receiving that letter, Ms Castledine wrote to the Claimant, mentioning the Claimant could raise a grievance. The letter did not suggest that the Claimant's salary, of £23,000, would not be reduced.

33. The Claimant set out a written grievance in a letter of 22 March. It again referred to the unfair targets and the decision to demote the Claimant and impose a significant pay cut. A hearing was arranged for 3 May but the Claimant did not attend because she had just started another job. The outcome of the grievance, which was not upheld, was set out in a letter 28 September. In relation to the complaint about a cut in pay, the letter said that 'at the time we were in discussion with you to move to a new role however you since resigned and this never happened'.

34. Meanwhile, the Claimant began another job in Cardiff on 30 April 2018. Her new salary is lower, at £18,000, but the Claimant's train fares are lower and partly compensate for this (£80 rather than £250 a month).

Law – Summary

35. I summarise the relevant principles of law below.

36. **Unfair dismissal – liability**. In order to bring a claim of unfair dismissal an employee must be dismissed within the meaning of s.95 ERA. This includes circumstances in which the employee is entitled to terminate the contract without notice by reason of the employer's conduct (s.95(1)(c)), generally referred to as constructive dismissal.

37. It is a requirement of constructive dismissal that the employer was in fundamental breach of contract. There is an implied term in a contract of employment that an employer will not, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence: see ***Malik v BCCI*** [1997] ICR 606.

38. The breach must be the cause of the employee leaving. If there is more than one reason, a tribunal must examine whether the breach of contract played a part in the decision to leave: see ***Wright v North Ayrshire Council*** [2014] ICR 77 (a decision to which I referred the parties). This is an essentially factual inquiry.

39. In relation to unfair dismissal, section 98(1) of ERA states that it is for the employer to show the reason for the dismissal and that that reason falls within subsection (2) or is some other substantial reason of a kind so as to justify the dismissal. For the purpose of a claim based on constructive dismissal, the reason means the reason for which the employer breached the employee's contract: see ***Berriman v Delabole Slate*** [1985] ICR 546.

40. In relation to the fairness of the dismissal section 98(4) states:

> where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –
>
> (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
>
> (b) shall be determined in accordance with equity and the substantial merits of the case.

41. It is well-known that a Tribunal should not substitute its judgment for that of a reasonable employer in deciding whether the dismissal was unfair for the purpose of section 98(4). Rather, the Tribunal should ask itself whether the decision to dismiss fell within the range of reasonable responses open to a reasonable employer. This applies equally to a claim of constructive dismissal where reasonableness is in issue.

42. Where dismissal occurs at the behest of a third party, this does not mean that the dismissal is unfair, but still the employer must act reasonably in the circumstances: see ***Henderson v Connect (South Tyneside Ltd)*** [2010] IRLR 466.

43. **Unfair dismissal – remedy**. No claim here was made for re-instatement or re-engagement. Compensation for unfair dismissal comprises a basic award and a compensatory award: see s.112 and s.118 ERA. The basic award is calculated in accordance with ss 119-122, and the provisions on the compensatory award are in ss 123-124A. Subject to the various adjustments, the compensatory award is such sum as the tribunal considers 'just and equitable in all the circumstances, having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer' (s.123(1)).

44. In each case the award may be reduced on the basis of the conduct of the Claimant which is to some degree culpable or blameworthy: see s.122(2) ERA and s. 123(6) ERA. In addition, in relation to the compensatory award and in accordance with the judgment in ***Polkey v AE Dayton Services Ltd*** [1988] ICR 12, a tribunal should assess whether a fair procedure may have resulted in the dismissal of the employee in any event, even if this involves a degree of speculation.

45. In accordance with s.207A of the Trade Union and Labour Relations (Consolidation) Act 1992 ('TULRCA') where there has been an unreasonable failure to comply with the ACAS Code of Practice on disciplinary and grievance procedures, a tribunal may increase or reduce an unfair dismissal award if it consider it just and equitable in all the circumstances to do so. In addition, where a tribunal makes an award to an employee and when the proceedings were begun the employer was in breach of its duty to provide written particulars of employment under s.1 or s.4 of ERA, the provisions of s.38 of the Employment Act 2002 apply, providing for an increase in the award unless there are exceptional

circumstances which would make an increase unjust or inequitable. Both of these adjustment only apply to the compensatory award: see s.124A ERA.

Conclusions

46. My conclusions are set out below, including any supplementary factual findings relevant to those conclusions.

47. **Breach**. The principal issue here was whether the Claimant was constructively dismissed for the purpose of s.95 ERA. The Claimant raised various allegations as to how the Respondent breached her contract in paras 11-12 of her claim form, which I deal with below.

48. The first complaint is that the Respondent shared personal details of her performance with one of its clients. This was a reference to the conversation which the Claimant overheard between Ms Przykaza and Mr Marshall in about January 2018, in which words were said to the effect that 'she' could not handle the pressure of the job and was not up to it. I accept this discussion took place and I consider it probably was about the Claimant. But there was reasonable cause for it – there were problems with the Claimant's performance (which were hardly a secret). In addition, I do not consider this isolated conversation was sufficiently serious to breach the implied term of trust and confidence and nor was it a factor in the Claimant's decision to resign.

49. It appears that the Claimant also relied on a further matter under this heading – that Ms Przykaza mentioned to her that other employees, such as Daniel Beaumont, had experienced difficulties in their work. I do not consider this remark, which was made in order to try and reassure the Claimant, was potentially relevant to a breach of trust and confidence.

50. The second and third complaints are linked: in essence, that the Claimant was unfairly required to attain unreasonable targets soon after her appointment as SRM and applied them unfairly to her (for example, taking little account of her holiday break). The targets here were imposed by the client, CF, and not the Respondent. It is clear that they were testing but it seems that other employees mostly met them, though on occasions they did not (there was little evidence on this aspect). In addition, they were lower for those who were newly-appointed to the CF work, as shown by a table before the Tribunal. Ms Przykaza did take account of the Claimant's holiday because she declined to take formal action as a result of the Claimant not meeting the September target (which she would have done otherwise). In the circumstances, I do not consider that the targets, challenging as they may have been, or their application breached the implied term of trust and confidence.

51. The fourth complaint is that the Claimant received little training for her new role. I do not accept this. The Claimant received initial training for the role, had reasonably frequent 'one-to-one' meetings with Ms Przykaza, received more guidance during the PIP process and did not ask for more training at, for example, the November or December PIPs.

52. The fifth allegation is that the Respondent unreasonably subjected the Claimant to a disciplinary procedure in circumstances in which she was not alleged to have committed any act of willful misconduct. The complaint, in essence, is that at times the Claimant was wrongly subjected (and told she was subjected) to a disciplinary procedure when she should have been subject to a capability procedure. The Respondent's procedures made clear that the Capability Procedure applied to problems with performance, whereas the Disciplinary Procedure applied to deliberate wrongdoing.

53. It is true that on occasions the documents provided to the Claimant wrongly referred to a disciplinary process: see, for example, the PIP documents which referred to a 'disciplinary process' and the notes of the meeting of 5 February, entitled 'Disciplinary Hearing'. On the other hand, the letter inviting the Claimant to that hearing referred to her being required to attend a 'Capability Hearing', and the letter following the 5 February hearing referred to the 'Outcome to Capability Hearing'. In the circumstances, I think it was reasonably clear to the Claimant that the process to which she was subject was the Capability Procedure, and I do not consider the occasional mistaken reference to 'disciplinary' amounted to a breach of contract or was a factor in her resignation.

54. The sixth allegation, that the Claimant was subjected to capricious and arbitrary treatment, adds nothing to the above complaints.

55. The final complaint is that the Respondent made a unilateral variation to her contract by cutting her pay and offering her only alternative posts at a reduced salary, said to amount to an effective demotion.

56. The reference in the claim form, para. 12, to this occurring on 5 February 2018 is accepted on both sides to be wrong. I consider what probably happened is that in early January Mr Naudi told the Claimant that she could either move to a different campaign on a lower salary or go through the capability process, but no more than that. Then, at the hearing on 5 February and in accordance with the notes, Mr Naudi told her that he would safeguard her current salary, of £23,000 (which merely reflected her contractual right). However, in the meeting with Hannah Castledine on 15 February, which took place after the Claimant had been told it was no longer an option for her to remain on the CF campaign, the Claimant was informed that the only option was to move to another campaign, on a reduced salary of £16,500. The Claimant. I think she was clearly told by Ms Castledine that if she was to remain with the Respondent this would be in another post and at a reduced salary, of £16,500 not £23,000. She was not told this was a matter of negotiation or consultation: it was presented to her as what would happen if she was to continue with the Respondent.

57. I consider this was a fundamental breach of contract, on two alternative bases. First, I consider it was an anticipatory fundamental breach. The Respondent, through Ms Castledine, told the Claimant in effect that it did not intend to honour an essential term of her contract, namely her right to a salary of £23,000. In addition, I consider it amounted to a breach of the implied term of trust and confidence. I do not consider the Respondent had reasonable and proper cause to tell the Claimant, without proper

consultation or discussion, that if she were to remain with the Respondent this would be at a lower salary when this was significantly lower than her contractual right. Indeed, it is notable that Mr Gray said that he would not expect an employee's salary to be reduced without her agreement, and he would expect discussions and proposals in documents before any such action were taken. In contrast, the Respondent treated the Claimant as if it had the unilateral right to reduce her salary, paying no regard to her contractual rights. (For completeness, I should record that Mr Crammond did not seek to rely on the power of unilateral variation in clause 25 of the Claimant's contract.)

58. **Cause of resigning**. I consider that the above repudiatory breach of contract, related to the meeting of 15 February, played a part in the Claimant's decision to resign. She was already looking for another job; but a significant cause of her decision to resign when she did, the day after the meeting of 15 February, was what she was told on that day by Ms Castledine: see ***Wright v North Ayrshire***, above.

59. **Reason for dismissal.** The reason for the breach here was a potentially fair because it related to the Claimant's capability; alternatively, it related to the demands of CF that the Claimant should be removed from the campaign, which could be categorized as 'some other substantial reason' for the purpose of s.98(1)(b) of ERA. But I consider the Respondent did not act reasonably in the circumstances. I accept that little was said about this in the pleadings, but this cuts both ways because the Respondent merely asserted that it acted reasonably and followed a fair procedure in its response (see para. 11.5 of the response).

60. I consider that no reasonable employer would simply have told the Claimant on 15 February that her only option was to leave the CF campaign and accept alternative employment in another post at a reduced salary. Any reasonable employer would inform the Claimant about the demands of CF, and engage in proper consultation with the Claimant about the options (and perhaps discuss the matter with CF). I consider it was outside the range of reasonable responses simply to indicate her pay would be cut if she remained with the Respondent. At the very least, a reasonable employer would have would have maintained her salary at its level while discussions took place about finding her an alternative role and any potential reduction in salary. Instead, the Claimant was presented with a *fait accompli*. There was nothing of the sort of reasonable procedure which a reasonable employer would engage in before reducing an employee's pay.

61. For these reasons, my conclusion is that the Claimant was unfairly dismissed.

62. **Remedy**. I first set out my decisions on the principles relevant to the calculation of the award, before referring to the actual figures.

63. As for the Claimant's remedy, I consider that no reduction should be made for contributory conduct under s.122(2) or s.123(6) of ERA. In particular, I reject Mr Crammond's argument that it was culpable or blameworthy of her not to ask CF for written justifications of why she needed more accounts (a

matter raised at the December PIP) or not to engage in the PIP process. I consider she did engage in that process and there was nothing blameworthy in her conduct generally.

64. The argument under s.207A for the Respondent is that there should be a reduction under s.207A because the Claimant unreasonably failed to lodge a grievance about her treatment during her employment. I consider that it was reasonable not to bring any grievance while the PIP process was continuing, and that the failure to bring a grievance immediately after the meeting on 15 February was not unreasonable, given what the Claimant had been told and the short time given to her to respond. In addition, the Claimant did later bring a grievance. In all the circumstances, I consider there was no unreasonable failure by the Claimant for this purpose.

65. In relation to any increase under s.38 of the Employment Act 2002, the argument of Mr Henry (which he categorised as 'weak') is that when the Claimant was told of her increase in salary in the letter of 24 July 2017 she was not also informed of her new job title, of SRM. The Claimant knew what her title was, never complained about this failure, and everyone knew her actual job title, so that the failure had no effect. I consider that these are exceptional circumstances which make any increase in the award unjust or inequitable for the purpose of s.38(5) of the 2002 Act.

66. As for the extent of the compensatory award, it is clear that from January the Claimant was already looking for another job and was increasingly unhappy working for the Respondent. In light of her evidence, I consider that she would have left the Respondent and would have taken up her current job on 30 April 2018 even if she had stayed with the Respondent and her salary had been maintained (at least in the short term). Once travel costs are taken into account, her new job is on a broadly comparable salary and, in light of the PIP process and the capability procedure outcome, the Claimant was not happy at the Respondent. Alternatively, I consider that the Respondent, had it acted reasonably, would eventually have fairly dismissed her by reducing her salary back to £16,500 by 30 April, following discussion and consultation with her. Given that she was no longer wanted by CF on the work for it, I do not consider she would have continued indefinitely on the higher salary of £23,000 associated with that work. On either basis, therefore, I consider that it is just and equitable that the Claimant's compensatory award should only reflect her losses between the date of her resignation and 30 April, when she started her new job (which is at a higher salary than £16,500).

67. Nor do I consider the Claimant's loss should include the bonuses, over and above the £23,000, which she would have received if she continued working on the CF contract. There was no real evidence on the contractual status of the bonus. I consider that, once she had been told by CF that they did not want her to work on their contract, the Respondent's only contractual duty would be to pay her the basic salary of £23,000.

68. In light of the above principles, the parties agreed that the relevant week's pay (excluding bonus) for the purpose of the basic award was £442.31. The Claimant had normal working hours so that is the amount which would have been paid to her under her contract if she worked those hours: see

s.221(2) ERA. Her basic award is therefore agreed at 3 x £442.31 = £1,326.93.

69. As for the compensatory award, no claim was made for pension loss. The parties agreed that assuming the Claimant's loss did not continue beyond 30 April 2018, her lost earnings were 10.4 weeks x £363.84 net, amounting to £3,783.96. In addition, she was awarded £350 for loss of statutory rights, so that the total compensatory award is £4,133.94.

70. Her total award for unfair dismissal is, therefore, £5,460.87. No separate claim was made for wrongful dismissal.

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Employment Judge Ford

Date 18 April 2019