



## THE EMPLOYMENT TRIBUNALS

Claimant  
Ms D Maxwell

Respondent  
Home Scents Ltd

EMPLOYMENT JUDGE GARNON  
MADE AT NORTH SHIELDS

ON 20<sup>th</sup> June 2018

### JUDGMENT (Liability and Remedy ) Employment Tribunals Rules of Procedure 2013 –Rule 21

1. The claims of wrongful dismissal (breach of contract), failure to pay compensation for untaken annual leave and unfair dismissal are well founded.
2. On the claim of wrongful dismissal, I order the respondent to pay to the claimant damages of £1792.
3. On the complaint of failure to pay compensation for untaken annual leave, I order the respondent to pay to the claimant compensation of £193.31
4. On the complaint of unfair dismissal I award compensation of £ 17115.87 being a basic award of £2513.03 and a compensatory award of £14602.84 . The Recoupment Regulations apply . The prescribed period is 3 January to 2 May 2018. The prescribed element is £5594.70. The difference between the total award for unfair dismissal and the prescribed element is £11521.17 .

The Total payable under this judgment is £19101.18. The Hearing listed for 28<sup>th</sup> June 2018 is cancelled

### REASONS

1. The claim ,presented on 6<sup>th</sup> March, was served on 8<sup>th</sup> March 2018 by being sent to an address which I have checked today corresponds precisely with the address of the respondent's registered office as revealed by a Companies House search. That same address appears on an Early Conciliation Certificate which shows the claimant contacted ACAS on 1 February 2018. ACAS issued the certificate on 8 February which would tend to suggest it contacted the respondent. A claim may be validly served on a limited company either at its registered office or its place of business. I am convinced the claim has been validly served on the respondent.
2. A response was due by 5<sup>th</sup> April 2018 but none was received. An Employment Judge is required by rule 21 of the Employment Tribunals Rules of Procedure 2013 (the Rules)

to decide on the available material whether a determination can be made and , if so, obliged to issue a judgment which may determine liability only or liability and remedy.

3. On 16<sup>th</sup> April 2018 I decided I had in the claim form sufficient information to enable me to find the claims proved on a balance of probability but not enough to determine the sums to be awarded. As I am empowered by the Rules, I sent written questions to the claimant in the form of an Order. Her solicitors replied by email of 24 April. Unfortunately due to administrative error that reply was not referred to me until 18 June when I noted it contained everything I needed to make a determination on remedy as well as liability albeit it contains some minor errors.

4. The common law provides a contract of employment may be brought to an end by reasonable notice. Dismissal without such notice is termed "wrongful" and damages are the net pay the claimant would have received during the notice period less any sums received in mitigation of loss. The claimant's net weekly pay was £329.10 . She was dismissed by email dated 15 November 2017 with immediate effect. She had started work for the respondent on 14 June 2010 and was therefore entitled to 7 weeks notice. During that period she received Employment Support Allowance (ESA) of £73.10 per week so her weekly loss was £256 multiplied by seven equals **£1792**.

5. The Working Time Regulations 1998 say in Regulation 14 that where a worker's employment is terminated during the course of a leave year, and, on the date on which the termination takes effect, the proportion she has taken of the leave to which she is entitled in the leave year differs from the proportion of the leave year which has expired, her employer shall make a payment in lieu of untaken leave. At the date of termination, the claimant's entitlement to annual leave exceeded that which she had taken by half a week . This award is based on gross rather than net pay. The claimant's gross weekly pay was £386.62. Compensation is therefore **£193.31**

6. The law of unfair dismissal is in Part X of the Employment Rights Act 1996 (the Act). Compensation for unfair dismissal comprises two elements. The first, called a basic award, is an arithmetic calculation based on the claimant's date of birth and length of service. Her date of birth is 26<sup>th</sup> August 1989 . She is entitled to one week's pay for each year of continuous employment during the whole of which she was over the age of 22 and half a week's pay for any year of continuous employment during which she was below that age. She is entitled to 6.5 weeks gross pay which comes to **£2513.03**.

7. The second element is the compensatory award. The first part of that is an award for loss of statutory rights which I fix at the normal rate of **£300**. The second is **£100** of expenses she incurred in job-hunting.

8. The next element is loss of earnings from the date the notice would have expired, which is 3 January 2018, to the date I make this decision 20 June. That is a period of 24 weeks. For the first 17 of those weeks the claimant remained in receipt of ESA at the weekly rate of £73.10. The Recoupment Regulations apply to that and require I award the full amount lost ie. £329.10 multiplied by seventeen equals **£5594.70**. The

recoupment notice explains how the State recovers the ESA paid. The dates for which they make recovery, known as the prescribed period, is 3 January to 2 May 2018 when she secured her new job paying net £225. I fully accept the submissions made by her solicitor that in the local job market the claimant has done well to secure any job. She made applications ranging from McDonald's to a cleaning company. Her job with the respondent was by local standards well-paid and her inability to get an equally paid job is not in my judgment failure to mitigate her loss. For the seven weeks 2<sup>nd</sup> May – 20<sup>th</sup> June her weekly loss is £104.10 = **£728.70**.

9. The most difficult area is future loss. The claimant's solicitors submit it will take at least 52 weeks for the claimant to find a job as well-paid as the one she lost. I agree with that assessment having regard to the local job market. During those 52 weeks her losses will continue at the rate of £104.10 per week = **£5413.20**. Thus far, the compensatory award is the total of the emboldened sums in paragraphs 7 -9 hereof £300+£100+ £5594.70+ £728.70+ £5413.20 = **£ 12136.60**.

10. The schedule of loss also claims uplift under section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 due to the respondent's unreasonable failure to comply with the ACAS Code of Practice on disciplinary procedures. The claim form contains sufficient information to convince me to make such an uplift which should apply to the basic award as well and the damages for wrongful dismissal . The total to be uplifted to the maximum of 25% is thus £16441.83. The suggested percentage uplift by the respondent solicitors is less than the maximum I could award. I think the suggestion of 15% is fair and it produces an increase, which I add to the compensatory award of **£2466.24** making the total compensatory award **£14602.84**.

11. Section 124 provides there is a cap on the overall amount of the compensatory award of 52 week's pay gross pay which would be £20104.24. The total I am ordering does not ordering exceed that sum.

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**TM Garnon Employment Judge**  
**Date signed 20<sup>th</sup> June 2018 .**