



EMPLOYMENT TRIBUNALS

Claimant

Respondents

Miss J Seed

AND

Imperial College of Science,
Technology and Medicine

Heard at: London Central

On: 5 - 8, 11 - 13 March 2019

Before: Employment Judge Brown

Members: Mr D Schofield
Mr D L Eggmore

Representation

For the Claimant: In person

For the Respondent: Mr A Oringher, of Counsel

CORRECTED REMEDY JUDGMENT

The unanimous Judgment of the Tribunal on Remedy is that

1. The Respondent shall pay the Claimant 6 weeks' pay, amounting to £3,048, on account of its failure to comply with s.80G(1) Employment Rights Act 1996 in relation to the Claimant's application for flexible working
2. It is 50% likely that the Claimant would have voluntarily resigned in any event on 7 June 2018.
3. The Respondent shall pay the Claimant a grand total of £12,427.93 in compensation for unfair dismissal comprising:
 - a. Basic award £4,064
 - b. Compensatory award £8,363.93.

4. The prescribed element is £7,885.91. The prescribed period is 7 June 2018 – 13 March 2019. Recoupment applies.

REASONS

Findings of Fact

1. The parties agreed that the Claimant's net weekly wage was £571.38 and that her net pay per month was £2,476. Her gross pay per month was £3,227. It was not in dispute that the Claimant's annual travel costs to London were £5,708.
2. It was also agreed that the Claimant had been entitled to maternity pay under the Respondent's Maternity Pay Procedure and that, had she been employed when she went on maternity leave, she would have been entitled to 18 weeks' full pay' followed by 21 weeks' Statutory Maternity Pay.
3. It was agreed that the Claimant, in fact, received maternity pay from the Respondent in the following sum: £8,812.92, which represented 6 weeks at 90% pay and then the rest of the period at Statutory Maternity Pay.
4. The Claimant was due to go on maternity leave in early August 2018 and was due to return from maternity leave on 24 February 2019.
5. It was agreed that the basic award in this case was £4,064.
6. The Claimant sought one year's loss of earnings and produced Fit Notes from her GP, signing her off from work with anxiety and depression until 23 May 2019.
7. In light of the Claimant's reasonable approach to her loss of earnings, seeking one year's loss, and the Claimant's undisputed Fit Notes from the doctor, the Respondent did not argue that the Claimant had failed or would fail to mitigate her loss.
8. The Respondent argued that the Claimant would certainly have, or that there was a very high likelihood that the Claimant would have, resigned in any event on the day that she did resign, in response to the Claimant's other complaints about the conduct of managers which were in the Claimant's mind when she resigned and which she mentioned in her letter of resignation.
9. The Respondent said that the Employment Tribunal had found that these other matters did not constitute any breach of duty of trust and confidence.
10. It also contended that the Claimant was seeking flexibility to choose when she worked from home, but would not have been given this by the Respondent and that the Claimant would not have wanted to continue to work commuting 4 hours a day.

11. The Claimant gave evidence to the Tribunal at the remedy hearing. She said that, if she had been allowed two days working at home each week, she would have been happy and would not have resigned. She said she thought it was likely that the Respondent would have agreed to two days working from home because the Respondent knew that its processes had been badly handled at that point and would have wanted to resolve the matter amicably between them. The Claimant said she would not have resigned without another job to go to.
12. She said would also not have resigned because she would have had to return to work for three months after her maternity leave in order to retain her maternity pay. She also said that her view of all her managers was coloured by her experience of the treatment of her flexible working request.
13. She said that she would have been able to work with Mr Fontana and Mr Dickens if she had been granted two days' flexible working each week.
14. The Claimant confirmed, in evidence at the liability hearing and at the remedy hearing, that she had been disappointed in her job, she felt that her manager had been containing her since 2015 and that she had not progressed to managerial level in the way that she had hoped to.
15. The Tribunal found that Mr Dickens and Mr Fontana were not responsible for the Claimant's flexible working request, or the conduct of it, but that the Claimant still believed that they were taking work away from her and undermining her.
16. The Tribunal also found in its liability findings that, in the Claimant's flexible working request, the Claimant wanted to work most days at home and to attend work infrequently. Furthermore, in her appeal, she sought at least two days from home, but also additional days which she would decide from week to week. She was therefore continuing to seek additional flexibility beyond the two days a week which was mentioned. In her meeting on 30 May 2018 there was discussion about the Claimant working from home two days a week and the Claimant was invited to apply for a flexible working pattern of two days a week at home, but the Claimant did not pursue that, but continued with her original appeal and grievance.
17. The Claimant lived 60 miles away from the Respondent and commuted for four hours a day.
18. The Claimant told the Tribunal that she was not happy about the prospect of not seeing her baby awake when she was working and that her baby would be asleep when the Claimant left in the morning and when she returned at night.
19. On the evidence, the Tribunal found that the Claimant was consistently seeking autonomy in deciding her working arrangements on her return from maternity leave. She did not pursue her application for flexible working for two days a week.

20. The Tribunal found that, even if the Respondent had agreed to the Claimant working two days at home, it was highly likely that the Claimant would have remained unhappy at the prospect of only working two days at home and not having autonomy of decision making about the rest of her working week.
21. The Claimant resigned after the delays in the process were over and when her substantive application was being decided upon. The Tribunal found that this indicated that the Claimant's decision to resign was influenced, not just by her unhappiness regarding procedural flaws, but also the Respondent's ongoing failure to agree to her substantive flexible working proposal.
22. On the other hand, the Tribunal did accept that the Claimant's view of her working life before 2018 and her managers treatment of her were coloured by the treatment of her flexible working request. The Claimant had never given managers the impression that she was discontented in the work place before the flexible working process was undertaken.
23. On balance therefore, the Tribunal finds that it was as likely as not that the Claimant would have resigned on 7 June 2018, due to her ongoing unhappiness about the Respondent's failure to agree to allow her autonomy in working from home on her return from maternity leave. The Claimant clearly did not want to spend significant periods of time away, not seeing her baby, after returning from maternity leave.

Unfair Dismissal Award

24. The Claimant's loss therefore is calculated as follows:
 - a. 8 weeks full pay (7 June – 2 August 2018) – $8 \times \text{£}571.38 = \text{£}4,571.04$
 - b. 18 weeks on full pay $18 \times \text{£}571.38 = \text{£}10,284.84$ (18 weeks from 2 August – 6 December 2018)
 - c. 11.5 weeks at Statutory Maternity Pay $\text{£}145.18 \times 11.5 = \text{£}1,669.576$ (11.5 weeks from 6 December 2018 – 24 February 2019)
 - d. 14.5 weeks at full pay when the Claimant would have returned to work from maternity leave $14.5 \times \text{£}571.38 = \text{£}7,999.32$ (14.5 weeks from 24 February – 5 June 2019).
25. The total loss therefore over the period was $\text{£}24,524.77$ less the $\text{£}8,812.92$ received by way of Respondent's maternity pay = $\text{£}15,711.85$.
26. The Tribunal also award the Claimant loss of statutory rights: 2 weeks of the statutory maximum week's pay. The reason that the Tribunal awards two weeks is that it reflects that the fact that it now takes two years for an employee to gain statutory rights, rather than one, as was previously the case. $2 \times \text{£}508 = \text{£}1,016$.

27. The total loss would be £15,711.85 + £1,016 = £16,727.85.
28. That figure needs to be reduced by 50% to reflect the 50% likelihood that the Claimant would have resigned in any event. The compensatory award for unfair dismissal is therefore £8,363.93.
29. The prescribed element is the Claimant's loss of earnings which is £15,711.85, less 50% = £7,885.91.
30. The total award to unfair dismissal therefore is basic award of £4,064 + compensatory award of £8,363.93 = £12,427.93.

Flexible Working Award

31. The Tribunal can award between one and eight weeks' pay for a failure to comply with *s80G(1) ERA 1996*.
32. The Tribunal has found, both that the Respondent failed to consider the application reasonably under *s.80G(1)(a) ERA*, and that the Respondent failed to notify the Claimant of the decision within the statutory time under *s.80G(1)(aa) ERA*.
33. The Respondent is a large employer with substantial Human Resources assistance available to it. The Respondent's failures were extensive and repeated; even the original decision was not communicated to the Claimant within three months, never mind a decision on an appeal.
34. The Claimant felt stressed by the delays. She was pregnant at the time and justifiably wanted to know the outcome of her flexible working application.
35. Nevertheless, the Respondent refused the application on statutory grounds and was not at fault in that regard. It was not in breach of *s.80G(1)(b) ERA*. Taking into account serious breaches of *s.80G(1)(a)* and *s.80G(1)(aa)*, but a lack of breach in respect of *s.80G(1)(b)*, the Tribunal awards six weeks' pay. That is towards the upper end of the possible awards.
36. 6 weeks' pay x £508 = £3,048

Employment Judge Brown

Dated: 4 June 2019

.....
Amended Judgment and Reasons sent to the parties on:
13 June 2019

For the Tribunal Office