Case Number: 2304115/2017

THE EMPLOYMENT TRIBUNAL

SITTING AT: **LONDON SOUTH**

BEFORE: **EMPLOYMENT JUDGE MORTON**

BETWEEN:

Ms L Tottman **Claimant**

AND

Jonathan C and Gillian P Jacquin
t/a Cornwallis House **Respondent**

ON: **25-26 February 2019**

Appearances:

For the Claimant: **Mr R Denman, Counsel**

For the Respondent: **Ms S Murphy, Solicitor**

REMEDY JUDGMENT

The judgment of the Tribunal is that Ms Tottman is awarded a total of £17203.90 by way of compensation for unfair dismissal made up as follows:

1. A basic award of £1956 calculated by reference to weekly pay of £489 (the relevant statutory limit on a week's pay) at the effective date of dismissal and four years' continuous service with the Respondent;
2. An award of £450 for loss of statutory rights;
3. A compensatory award of £14797.90.

Reasons

1. Following my judgment on liability the parties made written submissions on remedy and both parties indicated that they were willing for me to determine remedy without a further hearing. Having considered the parties' submissions I concluded that I could reach a just decision on the basis of written submissions alone. In light of those submissions I have reached the following decisions on the issues they identified:

2. **Mitigation.** The Respondent has not shown that the Claimant did not take reasonable steps to mitigate her losses. The Claimant resigned on notice on 7 September 2017. She claims loss of income from 15 September 2017 to 18 November 2018 – a period of 61 weeks. During that time, had she remained employed she would have received a total of £24357.30 in salary (£399.30 per week) and £232.41 in pension contributions, an overall total of £24589.71. She gives credit for £9791.81 in wages earned during that period, leaving a total net compensatory award of £14797.90.

3. The Claimant sought and obtained work soon after leaving her employment. She worked on zero hours contracts and I am satisfied that she did so because in the circumstances, that was the only work she could reasonably obtain. She gave credit for earnings in most months after the termination of her employment. Her claim for loss of earnings ceases in November 2018, when she obtained permanent settled employment comparable to the work she had carried out for the Respondent.

4. The Respondent asserts that the Claimant could and should have obtained comparable employment sooner than she did. I do not accept that argument, not least because the Claimant's search for a comparable role was to some degree thwarted by the decision by Mr Foster to provide a reference that was unhelpful to her when she applied for employment with ESCC (having previously given her a favourable reference that helped her obtain employment on a zero hours basis with Positive Homecare). Had she obtained the job with ESCC her losses, as Mr Denman submitted, would have been considerably lower. This is not a case in which the Claimant did not put effort into finding alternative work. Once a comparable role emerged she took it. The Respondent did not show that such opportunities had been available at an earlier date and as I have noted, the Respondent itself stood in the way of the Claimant obtaining the job at ESCC. No reduction in compensation is warranted in respect of an unreasonable failure to mitigate loss.

5. **Break in causation.** The Respondent submits that the Claimant having lost her job at Positive Homecare when her employer went into liquidation, the chain of causation was broken and any future loss could no longer be attributed to the Claimant's constructive dismissal by the Respondent. In my judgment that is not the right approach. The approach to be taken under s123 Employment Rights Act is to determine what compensation it is just and equitable to award the employee in light of the losses flowing from the unfair dismissal. It is too simplistic to suggest that the first intervening event breaks

the chain of causation. The authorities (for example Dench v Flynn and Partners 1998 IRLR 653, CA) furthermore do not support that approach. Until the claimant has achieved employment at a similar salary losses are ongoing. In this case that was very much the position that the Claimant found herself in – she could only find work on a zero hours basis and it is clear from the (unchallenged) schedule of her earnings that she was earning very much less at Positive Homecare than she had been with the Respondent. She has approached the issue correctly an in accordance with the statute by continuing to claim for ongoing losses after the employment with Positive Homecare came to an end and until she found work with equivalent remuneration.

6. **Contributory fault.** The Respondent submitted that the Claimant had in effect contributed to her own dismissal because had the incident on 30 June 2017 not occurred the Respondent would not have acted as it did in referring to the matter at the meeting on 15 August. That is not the right approach in my judgment. I prefer the Claimant's submission, that the Respondent had chosen to draw a line under the matter by issuing a warning and was itself at fault for raising the matter again at the meeting in 15 August and in the manner in which it did so. None of that culpability can be laid at the door of the Claimant who understandably thought that the matter was over and done with. Whilst on a strict "but for" test the Claimant brought about the state of affairs that led to the meeting on 15 August taking place, as the Respondent had chosen to deal with the issue by issuing a warning its conduct in raising the matter again was a repudiatory breach and the Claimant played no part in that. No reduction for contributory fault is appropriate in this case.

7. **S124 Employment Rights Act.** The Respondent submits that the Claimant is not entitled to seek more than 52 weeks' earnings by way of compensation under s 124. That is an incorrect reading of the statute. The total amount of compensation cannot exceed a year's pay, but as Mr Denman rightly submits, there is no limit on the number of weeks for which losses can be claimed under s 124.

8. In all the circumstances of this case I conclude that it is just and equitable to award the Claimant the sum claimed in her Schedule of Loss by way of a compensatory award (£14797.90). It is not disputed that she is entitled to a basic award of £1956 or an award for loss of statutory rights of £450.

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Employment Judge Morton
Date: 1 July 2019