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EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr B Kuppala

AND

HBOS Plc

HELD AT: London Central **ON:** 5 July 2019

BEFORE: Employment Judge Brown
Members: Mr R Lucking
 Ms G Gillman

Representation:

For Claimant: Ms A Thobarn, Union Representative
For Respondent: Ms E Wheeler, of Counsel

REMEDY JUDGMENT

The unanimous Judgment of the Tribunal is that:

1. The Respondent shall pay the Claimant a total of £17,343.88 gross notice pay for wrongful dismissal.
2. The Respondent shall pay the Claimant compensation for discriminatory dismissal totalling £29,173.23 comprising:
 - a. An injury to feelings award of £3,801.60, comprising £3,520.00 for injury to feelings and interest at 8% from the date of dismissal to the date of hearing, £281.60.
 - b. An award for economic loss totalling £25,371.63, comprising losses of £24,395.80 and interest of £975.83, calculated at 8% from the midpoint of the period from the date of dismissal to today's hearing.
3. The Respondent shall pay the Claimant an agreed basic award for unfair dismissal in the sum of £2,940.

REASONS

1. The parties agreed that the Claimant's notice period was three months. They agreed that the notice pay award should be made gross and that the employer should deduct the appropriate tax and national insurance before paying the net amount to the Claimant pursuant to this Judgment.
2. The parties agreed that the Claimant's gross annual pay was £55,591. That meant that his gross monthly pay was £4,632.58. The Claimant also received the following gross amounts monthly from his employer:
 - a. £184.38 in flexible benefits,
 - b. £340 car allowance,
 - c. £25.33 for health insurance.
3. The Tribunal accepted the Claimant's evidence that he received £599 in pension contributions from the Respondent per month, calculated at 13% of his gross earnings.
4. The total gross payment to the Claimant each month amounted to £5,781.29.
5. Three months' notice pay was therefore – $3 \times £5,781/29 = £17,343.88$ gross.
6. The Claimant also claimed compensation for discrimination, comprising economic loss and injury to feelings. The Tribunal does not allow double recovery for unfair dismissal losses and discrimination losses and it calculated the losses arising out of the discriminatory dismissal first.
7. The Tribunal accepted the Claimant's evidence that he would have been made redundant on 17 October 2018. The Tribunal found that the Claimant had not been placed in a job pursuant to the reorganisation exercise. It accepted the Claimant's evidence that the number of E grade managers had been reduced to 3 in his area and there had also been a reduction in grade D managers. It accepted the Claimant's evidence that, after the reorganisation, managers were now managing 3 banks, rather than one. The Tribunal concluded that there would be very few vacant positions available to those managers who had not been placed. The Tribunal considered that it was highly unlikely, in those circumstances, that a vacancy would have become available for the Claimant before he would have been made redundant on 17 October 2018 pursuant to the Respondent's redundancy timetable.
8. Furthermore, the Claimant had been given a poor grading by his Line Manager for the previous year and, even if a job had become available, the Tribunal considered that it was unlikely that the Claimant, rather than another displaced manager, would have been placed into it.

9. The Tribunal found that the Claimant would have been made redundant had he not been dismissed. He would have received a redundancy payment of £64,856 on the day that he was made redundant. That would have been after his notice expired for the wrongful dismissal period. It did not form part of his contractual losses for the wrongful dismissal, but it did need to be taken into account in considering his economic loss flowing from the discriminatory dismissal.

10. The Claimant also suffered a loss of net pay for 15 weeks from 3 July until 17 October 2018. The agreed net weekly loss was £748.00, including benefits. His net loss of pay was 15 weeks x £748 = £11,220. The Claimant also lost pension contributions of £599 a month. The Claimant lost 3 1/2 months pension between 3 July and 17 October and therefore also lost £2,096.50 pension contributions. His net loss over the period therefore totalled £13,316.50.

11. He also lost his redundancy pay. His total losses to 17 October, in terms of net earnings and redundancy pay, added up to £78,172.50. However the Tribunal has awarded the Claimant his notice pay for that period. Gross notice pay was £17,343.88. Doing the best that it could, the Tribunal deducted 40% from that gross notice pay and assumed that the Claimant would receive £10,406.39 net notice pay. That needed to be deducted from the £78,172.50 total figure for loss between 3 July and 17 October. £78,172.50 - £10,406.39 = £67,766.11.

12. The Claimant also lost his share values in a share match scheme. The Tribunal accepted the Claimant's evidence that the value of the shares at the time that he was dismissed was 60p; and that the value of his lost shares was £1,804.

13. His total loss for the period 2 July – 17 October 2018 was £69,570.11.

14. Regarding losses after that period, on the balance of probabilities, the Tribunal did not find that there would have been any ongoing loss after the Claimant would have been made redundant, resulting from his discriminatory and unfair dismissal.

15. On the Tribunal's liability findings, if the Respondent had acted fairly, it was likely that the Claimant would have been given at least a written warning, if not a final written warning, in relation to the part of the conduct which was not disability related. The Tribunal found that that was likely to have impeded his ability to obtain work in the future in the banking sector, in any event. Furthermore, it is well known that almost all banks have been undergoing restructuring exercises and are closing branches across London. The Tribunal considered that there were likely to be very few vacancies arising for bank managers. Seeing that the Claimant had undergone disciplinary proceedings, in which he was to a significant degree culpable, he would find it difficult to secure one of those jobs.

16. The Tribunal accepted the Claimant's evidence that he has looked for, and secured, other work. It did not find that his job trajectory would have been any different following redundancy exercise that it has been, if the Respondent had acted fairly and in a non-discriminatory way.

17. The Tribunal therefore found that there was no ongoing loss, as a result of the unfair and discriminatory dismissal, after the Claimant would have been made redundant on 17 October.

18. The Claimant's total economic loss flowing from the discriminatory dismissal was £67,766.11. The Tribunal needed to deduct the 10% Polkey assessment that it made that the Claimant would have been dismissed in any event. As stated in the Liability Judgment, the Polkey deduction applies in both unfair dismissal cases and discrimination cases, *Abbey National plc and Hopkins v Chagger* [2009] IRLR 86.

19. Deducting 10% gave £60,989.50.

20. From that sum 60% contributory conduct needed to be deducted. That gave a total of £24,395.80 economic loss flowing from the discriminatory dismissal.

21. The basic award was agreed at £2,940.

22. With regard to injury to feelings, the Tribunal took into account the case of *Prison Service v Johnson* [1997] IRLR 162. The Tribunal accepted the Claimant's evidence that he was very distressed by his dismissal to the extent that he had suicidal thoughts; he felt that he had lost everything. He has made efforts to make alternative work, supported commendably by his trade union representative and he has felt better having obtained a new job in March 2019. He is on medication for his depression according to his GP reports.

23. The Tribunal found that this was a one-off act, but with a very serious impact on the Claimant's feelings. It also had a serious impact on the Claimant's finances. The Claimant is in debt and has had to borrow money from family members.

24. Given that this was a one off act of discrimination, the appropriate band is the lower *Vento* band; but the appropriate award is at the very top of the lower band, £8,800.

25. Applying a 60% deduction gave a figure of £3,520.

26. The Tribunal awarded interest on the injury to feelings award at 8% from the date of injury, 2 July 2018, until today - one year's interest on £3,520 at 8% = £281.60 interest. It is also awarded 8% on the economic loss from the midpoint between the date of dismissal and today's date: 8% for half a year = £975.83.

Employment Judge Brown

Dated: 2nd August 2019

Judgment and Reasons sent to the parties on:

05/08/2019

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For the Tribunal Office