Case No: 1301253/2018

EMPLOYMENT TRIBUNALS

Claimant: **Ms C Kerr-Spencer**

Respondent: **University Hospitals Birmingham NHS Foundation Trust**

Heard at: Birmingham Employment Tribunal **On:** 19 August-28 August 2019

Before: Employment Judge Butler
Mrs BE Hicks
Mr G Bagnall

Representation
Claimant: Mr N Caiden (Counsel)
Respondent: Mr C Kennedy (Counsel)

JUDGMENT

The unanimous decision of the employment tribunal is that:

1. the claimant succeeds in her complaint of a failure by the respondent in its duty to make reasonable adjustments

2. the claimant succeeds in her complaint of discrimination arising from disability

3. the claimant succeeds in her complaint of unfair dismissal

4. there is no finding of contributory fault on the part of the claimant

5. there is no finding of a Polkey reduction

6. The respondent is ordered to pay the claimant the sum of £32,709.89, which is made up of the net sum of £30,000 and the gross sum of £2,709.89.

REASONS

These are the reasons given at the request of the respondent following oral judgment and reasons delivered at the hearing.

7. The various claims in this case arise following the claimant having gone off sick on 14 December 2015. Which resulted in a lengthy absence, and it being unlikely that she would return to her role as a band five staff nurse in the coronary care unit. She was placed in the respondent's redeployment process. The claimant was within this redeployment process from April 2017 until 19th of December 2017, at which point she was dismissed. She was dismissed without notice.

8. At a case management preliminary hearing on 24 October 2018, before employment Judge Harding, the issues of the claim were agreed between the parties and set out in the note of that preliminary hearing.

9. The claimant claims that during the redeployment process, the respondent had failed to make reasonable adjustments which made it difficult for her to return to work meaning that she was at risk of dismissal. The claimant contends that the respondent ought to have:
    - extended the redeployment process for a further period;
    - provided suitable computer software and training;
    - provided a dedicated computer or workstation, and;
    - provided adjustments to lighting;

10. The claimant's view is that each of these were reasonable adjustments that the respondent ought to have made. There is no dispute as to whether a Provision Criterion or Practice was applied to the claimant in that she was required to use computers and display screen equipment in order to return to work. There was no dispute between the parties that the claimant was subjected to a substantial disadvantage by this PCP, in that due to her visual impairment she found it very difficult to use computers and display screen equipment. The only issue between the parties in relation to this claim, was as to the reasonableness of the adjustments that were contended for.

11. She also brings claims of discrimination arising out of her disability. There was no dispute between the parties that the claimant's dismissal was unfavourable treatment. There was no dispute between the parties that the claimant was dismissed because of her long-term sickness absence, inability to work in any clinical capacity and her inability to return to work as a nurse. There was no dispute that these arose in consequence of her disability. The respondent accepts that this unfavourable treatment was because of the claimant's long-term sickness absence, her inability to work in any clinical capacity and her inability to return to work as a nurse.

The only dispute between the parties in relation to this claim was as to justification. The respondent put forward as justification the legitimate aim of ensuring that staffing levels within the coronary care unit were appropriately maintained so as not to adversely impact on patient services and patient care. Counsel for the respondent appeared to add a further legitimate aim during the hearing.

12. The respondent sought to rely on a new pleading in relation to justification of the section 15 claim, without making an application to amend. The respondent referred to a further legitimate aim of '*applying its policies, including its sickness and absence management policies, fairly'*, which did not appear in the respondent's grounds for resistance (the relevant paragraph being paragraph 58), or in the agreed list of issues that were determined at the Preliminary Hearing, which took place on the 24 October 2018, before Employment Judge Harding. The tribunal was very critical of this approach. Despite no application to amend being made, the tribunal considered it prudent to deal with this matter in any event.

13. In terms of the unfair dismissal claim there is no dispute between the parties that the reason for dismissal was capability. The claimant essentially asserts that the dismissal was unfair as it was as a result of an act of disability discrimination, but that in the alternative that it was unfair in the ordinary sense.

14. We heard evidence from the claimant herself and from one supporting witness: Mr Astill, who was the claimant's trade union representative. This supporting evidence was largely to confirm the treatment of the claimant during the redeployment process and the subsequent dismissal. From the respondent we heard evidence from two witnesses. We heard evidence from Ms Kwok, who was the claimant's manager when she was working in the coronary care unit. Ms Kwok was also involved in the capability dismissal meetings. We also heard evidence from Mrs Garbett, who was the dismissing officer. Our understanding was that there was a third witness that was due to give evidence in this case, but who was not available due to being absent from work with a long-term illness. We do not have details of who that witness was going to be. As this is not important in the context of this decision no more will be said about this. We were assisted by a bundle of 1139 pages, although many of these pages were blank- a practice which the tribunal considered a waste of resource and one that ought to be reviewed in the future.

15. The claimant's request for a reasonable adjustment in terms of a plug socket for a lamp was accommodated. At the start of the hearing, all participants in the hearing were asked whether there were any further adjustments that would be needed. The claimant requested that she be able to use a tablet for reading documents, which she had brought with her, and that she be permitted to read from a witness statement that had enlarged font on it. These adjustments were made. No further adjustments were requested from any participant. However, being mindful of the strain that reading the documentation may have on the claimant, several breaks

were built into the hearing, at suitable times, with all parties reminded that if further breaks were required then all they needed to do was ask.

16. The first day of the hearing was used for reading time. The claimant's witnesses, the claimant herself and her supporting witness, were cross-examined across the following two days. The respondent's witnesses were cross-examined on day four of the hearing. Closing submissions were made on day five of the hearing. Deliberation of evidence by the tribunal panel took place over the duration of day six. Oral judgment on liability was handed down to the parties on the morning of day seven of the hearing. Submissions and a decision on remedy took place on the afternoon of day seven. The hearing concluded one day earlier than the time estimate for which the hearing was listed.

17. Mr Caiden, in line with the directions of employment Judge Harding on 24 October 2018, sent a copy of his skeleton argument and closing submissions to the respondent by 15 August 2019. The respondent did not do the same. The judge signalled that he would like the tribunal to have sight of the respondent's skeleton argument and closing submissions, in advance of closing submissions on the fifth day of the hearing, namely 23 August 2019. These were provided to the tribunal on the morning of 23 August 2019. The tribunal took time to read both sets of submissions. Both parties then also made oral closing submissions.

18. We are grateful for counsel on both sides having directed us to relevant case law on this matter.

Findings

19. We make the following findings of fact, on the balance of probability based on all the matters we have seen, heard and read. In doing so, we do not repeat all the evidence, even where it is disputed, but confine our findings to those necessary to determine the agreed issues.

On issue of whether there was a failure to make reasonable adjustments

20. There are four adjustments contended for by the claimant. The respondent understood the broad nature of the adjustments proposed, and had sufficient detail of them to enable them to engage with the question of whether they could reasonably be achieved or not:
    a. The respondent knew of the claimant's need for specialist software and training since the Sickness absence Meeting on 30 October 2017. The respondent was also made aware of these needs in meetings subsequent to the meeting of 30 October 2017.
    b. The claimant requested on 18 December 2017 an extension to the redeployment process as a reasonable adjustment to allow her to consider further redeployment opportunities given her current and updated understanding of the software she had access to and having received some training on it.

c. The claimant made the respondent aware of a potential adjustment of providing her with a dedicated workstation with the relevant software installed on it when being interviewed for a role as Administrative Assistant in the Renal Clinic on 16 November 2017.
d. The claimant made the respondent aware of a need for suitable lighting on 26 June 2017 when considering the potential role of Imaging Department Assistant.

These adjustments were contended for as both individual and as part of a collective adjustment, and as adjustments that would need to be made in advance of the claimant agreeing to a trial of an alternative role identified during the redeployment process.

21. The respondent did not consider the adjustments contended for by the claimant. However, the respondent did consider adjustments that could have been made after the claimant had agreed to trial a new role.

22. The claimant received some training on the use of SUPERNOVA software, during which she began to gain a deeper understanding of the capabilities of the software. However, this was provided through a volunteer of a charity and was not comprehensive training on the software.

23. The claimant would have been capable of engaging in computer-based roles if the adjustments contended for were made. There is evidence that when she had completed a period of training and had access to the relevant software that she was able to undertake appropriate computer work. This is evident, albeit in hindsight, through her current employment.

On the issue of whether justification of the section 15 Equality Act claim is established

24. The claimant had not been working as a nurse in the Coronary Care Unit (CCU) since 14 December 2015. The respondent knew by the beginning of January 2017 that the claimant was not likely to be returning to work as a nurse in the CCU.

25. The respondent had filled the CCU position previously occupied by the claimant in early 2017. The CCU, at this point was back up to the staffing level that was in place at the time when the claimant went off ill from work. The CCU was appropriately staffed and able to cope with the demands of work in the CCU without having to rely on agency or bank staff from early 2017.

26. The claimant was dismissed on 19 December 2017. The claimant had been unpaid from 20 July 2016, when her sick pay had run out.

27. The respondent operates a policy whereby they will only dismiss employees where there is no reasonable prospect of them returning to work at all, or where there is no reasonable prospect of them returning to gainful work within the trust.

28. In determining whether to terminate, in line with the respondent's own policies, the respondent will evaluate the worker against certain factors. Amongst other factors, this will include considering up to date medical advice and considering the realistic likelihood of any return to work in the foreseeable future.

29. The respondent dismissed the claimant without taken into account up to date medical advice of the claimant or considering the realistic likelihood of the claimant returning to work in the foreseeable future. This finding was supported by both documentary and oral evidence.

30. As part of the redeployment process, several roles were identified as potentially suitable for the claimant. On, or around 13 November 2017 two job vacancies as Renal Clinic Clerks were identified as potential roles to which the claimant could be redeployed. The claimant attended a meeting with Julie Griffiths, the person responsible for recruiting into the roles, on 16 November 2017.

31. In this meeting it was explained to the claimant that as part of either role she would be required to work in three different areas, and on up to five different computers.

32. The claimant rejected these roles because of her concerns about having to work at multiple workstations, with her understanding that she could only use the software that she was familiar with on two different computers. The claimant communicated this as being the reason that the role was unsuitable to Leah Lee in HR by email dated 20 November 2017. Leah Lee replied by email of the same date stating that '*location concerns could have been reviewed to ensure that the set up was right for you or the role adjusted to accommodate specific requirements*'.

33. On or around 6 December 2017, the claimant had acquired knowledge that she could have the SUPERNOVA software on a dongle, which would make it possible for her to transfer the software between different computers.

34. On 6 December, the claimant emailed Leah Lee in HR, first confirming that the reason why she had turned down the initial offer of a trial in this role was because of the software use being limited to two different computers, and to inform Leah Lee that she as this was no longer an issue that she was interested in trialling the role.

35. There were reasonable prospects of the claimant returning to work. This is evident in the occupational health reports, which was consistent on this matter, so long as suitable adjustments were put in place, and the claimant's correspondence/emails with human resources (HR) in relation to the renal positions.

36. The claimant engaged in the redeployment process as best she could. We accepted that the evidence showed us that the clamant was giving appropriate consideration to the various roles put forward to her, she completed a skills audit as part of the process, she attended meetings with the recruiting managers when they were arranged, she sought HR support and engaged in correspondence with HR when needed, and she raised questions of adjustment to positions where she thought it would enable her participation.

37. The claimant was willing to take a trial in the renal department, once it became clear that the barrier relating to her software needs, either in terms of potentially being able to work from a single workstation or through new knowledge of the portability of the software she used, could be overcome. The claimant satisfied the job and person specification for these roles, and was suitable for them. The claimant was capable and available to undertake this work.

In relation to the procedure that led to dismissal:

38. The respondent failed to fully investigate the claimant's position in terms of roles that she was being considered for, and reasons behind her turning them down. Ms Kwok, who presented the Management statement of case, provided oral evidence that she did not investigate or interrogate the advice she was given by HR, and did not investigate further information provided to her by occupational health. Ms Kwok took at face value the HR advice that she received in producing the statement of case.

39. The respondent failed to investigate whether the renal positions, that the claimant indicated an interest in trialling after discovering that there was potential for a single workstation or portability of the software between workstations via a dongle, were still available.

40. The claimant would have trialled one of these positions if she had been given the opportunity to do so after she had indicated her interest.

41. A manager responsible for an employee would follow up advice provided to them by occupational health. However, nobody followed up occupational health advice as part of their procedure in determining whether to dismiss the claimant, and this includes, but is not limited to:
    - The letter of 25/10/2017, where it was stated that the claimant '*remains fit to trial a suitable alternative role as part of the redeployment process. The use of suitable computer software and other devices may help Ms Kerr-spencer when trialling a suitable role as part of the redeployment process*' and that management may wish '*to consider liaising with the team at FOCUS for further advice in applying the software as part of Ms Kerr-Spencer's role*'.
    - The letter of 23/11/2017, where it was stated that the claimant '*remains fit to trial a suitable alternative role as part of the redeployment process'.* And that '*with the implementation of the*

appropriate software Ms Kerr-Spencer would be able to trial roles with computer-based duties'. Additionally, it is noted that the claimant was arranged for further review by Dr Alastair Robertson, Consultant Occupational Health Physician on Thursday 28th December 2017 at 10.30am.

42. The claimant was given the opportunity to appeal the decision to dismiss her. The claimant did not take up the opportunity to appeal the decision to dismiss her.

Applicable Law- Discrimination

43. Ms Kerr-Spencer brings her disability discrimination claim in two different ways, as a failure by the respondent in their duty to make reasonable adjustments, and as discrimination arising from her disability. The relevant statutory provisions are as follows:

> **20. Duty to make adjustments**
>
> (1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.
>
> (2) The duty comprises the following three requirements.
>
> (3)The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage. ...
>
> **21. Failure to comply with duty**
>
> (1)A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.
>
> (2)A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

44. The case of *Cosgrove v Caesar and Howie* [2001] IRLR 653 (EAT), amongst others, is an important case for the tribunal to consider in the circumstances before it. At paragraph 6, it was made clear that the duty to make adjustments is on the employer not the employee.

> **15.Discrimination arising from disability**
>
> (1) A person (A) discriminates against a disabled person (B) if—
>
> (a)A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

45. Elias LJ in *Griffiths v SWWP* [2015] EWCA Civ 1265, lays down some useful guidance when considering justification of a section 15 claim, in circumstances where the unfavourable treatment for the purposes of that claim is dismissal and that dismissal is linked to a failure in the duty to make reasonable adjustments:

> '[26] An employer who dismisses a disabled employee without making a reasonable adjustment which would have enabled the employee to remain in employment - say allowing him to work part-time - will necessarily have infringed the duty to make adjustments, but in addition the act of dismissal will surely constitute an act of discrimination arising out of disability. The dismissal will be for a reason related to disability and if a potentially reasonable adjustment which might have allowed the employee to remain in employment has not been made, the dismissal will not be justified.'

46. Further guidance is provided by the Equality and Human Rights (EHRC) Code of Practice, para 5.21:

> 'If an employer has failed to make a reasonable adjustment which would have prevented or minimised the unfavourable treatment, it will be very difficult for them to show that the treatment was objectively justified.'

136. Burden of proof

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

47. We were taken to the relevant case of *Project Management Institute v Latif* [2007] IRLR 579, EAT, by both Counsel. Of importance is the dicta of Elias P. Although Elias P is referring to the old Code of Practice under the Disability Discrimination Act, his words are still of relevance today. Elias P observed that:

> 'In our opinion, the Code is correct. The key point identified therein is that the claimant must not only establish that the duty has arisen, but that there are facts from which it could reasonably be inferred, absent an explanation, that it has been breached. Demonstrating that there is an arrangement causing a substantial disadvantage engages the duty, but it provides no basis on which it could properly be inferred that there is a breach of that duty. There must be some evidence of some apparently reasonable adjustment which could be made. We do not suggest that in every case the claimant would

have to provide the detailed adjustment that would need to be made before the burden would shift. However, we do think that it would be necessary for the respondent to understand the broad nature of the adjustment proposed and be given sufficient detail to enable him to engage with the question of whether it could reasonably be achieved or not'.

Unfair Dismissal

48. The test of unfair dismissal is set out in section 98 of the Employment Rights Act 1996:

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b)that it is either [conduct] or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held. ...

(4) 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.

49. The tribunal were taken to the judgment of Underhill LJ in *O'Brien v Bolton St Catherine's Academy* (Underhill) by Mr Caiden, and the judgment of Sales LJ in *York City Council v Grosset* by Mr Kennedy. We did not find *O'Brien* to be conclusive on the matter of Unfair dismissal. We accept that the *O'Brien* case does consider a s.15 Equality Act/Unfair Dismissal claim in the context of capability dismissal, however, as per *Grosset*, we accept that Underhill LJ did not lay down a general principle. This led us to assessing the *O'Brien* case against the current case. However, we found too many distinguishing factors between *O'Brien* and the case before us.

50. The essential question in cases of long-term medical absence is whether the employer can be expected to wait longer for the employee to return: *Spencer v Paragon Wallpapers Ltd* 1977 ICR 301, EAT. In that context, the size and resources of the employer is very relevant. Phillips J noted that relevant circumstances to be considered include 'the nature of the illness, the likely length of the continuing absence, the need of the employers to have done the work which the employee was engaged to

do'. And these are factors that have applied time and time again in such dismissals.

51. We also had to consider the procedure adopted in light of s.98(4). Under the case of *Polkey v AE Dayton* [1987] IRLR 503 HL, where the dismissal is unfair due to a procedural reason but the tribunal considers that an employee would still have been dismissed, even if a fair procedure had been followed, it may reduce the normal amount of compensation by a percentage representing the chance that the employee would still have lost her employment.

Conclusions

Duty to make reasonable adjustments

52. The burden in this case rested with the Respondent to discharge the duty in relation to s.20 and 21 of the Equality Act. They knew the PCP, they knew the substantial disadvantage and they knew of the adjustments being contended for as being capable of alleviating the disadvantage. Guidance to the tribunal is provided in the EHRC Statutory Code of Practice for the Equality Act 2010. Of particular importance are paragraphs 6.28 and 6.29, which lists factors to be considered, including the effectiveness of steps in preventing the substantial disadvantage, the practicability of the step, costs and disruption caused by making the adjustment, extent of employer's financial or other resources, availability of assistance to make adjustments, type and size of the employer. Bearing all of these in mind, the case put forward on behalf of the claimant, which took account of these factors, and the lack of objective evidence put forward by the respondent in respect of the reasonableness of the adjustments contended for, this tribunal had little choice but to find a breach in respect of this duty. Put simply, the claimant satisfied the initial burden of proof placed upon her by s.136 of the Equality Act, but the respondent failed to discharge that burden.

53. The respondent focussed their evidence on the need for a trial to be undertaken by the claimant, as an adjustment, followed by further adjustments based on barriers identified during the trial period. Although placing the claimant into a trial situation and assessing needs during that period is undoubtedly a potential adjustment that could and should have been considered by the respondent, this case was not about that, and as such we make no finding on this. However, what we do find is that the respondent did not engage with the adjustments contended for by the claimant. No objective evidence questioning the suitability of the adjustments to alleviate the disadvantage the claimant was subjected to or unreasonableness of them was presented.

54. For the sake of clarity, a substantial disadvantage may be alleviated by several alternative and differing adjustments, more than one of which can be deemed reasonable. The reasonableness of one, does not automatically determine the reasonableness of a different one.

Reasonableness of adjustments are not considered as a choice between options, with only one being possible to be found as a reasonable adjustment, with all others not.

Discrimination arising from disability

55. The adjustments contended for, in line with the comments Elias LJ in *Griffiths*, would have enabled the employee to remain in employment, therefore the dismissal was discriminatory, and therefore this is a dismissal that could not be justified by a legitimate aim.

56. Further, the respondent provides no evidence to support that there was a legitimate aim being applied at the time of dismissal. Whether that be of ensuring adequate staffing in CCU, or maintaining consistent application of policies and procedures, for which dismissal was a proportionate means of achieving. The respondent had already filled their staffing levels in CCU when the claimant was dismissed, and the decision to dismiss by the respondent was in any event inconsistent with their own policy, given our finding that the claimant was in a position to, and was willing to, return to work. Again, in these circumstances, the respondent simply has not discharged its burden, which rested firmly with them on this matter.

Unfair Dismissal

57. The starting point, as always with unfair dismissal claims, is to establish the reason for dismissal. The reason given, and not in dispute in this case, is that of long-term illness, which falls within the bracket of capability.

58. Turning to the question of reasonableness of the decision to dismiss. Applying the law as already set out in this judgment, on the approach to absence-related dismissals, the size of the organisation is a particularly important aspect of the present claim. This is a vast organisation with significant resources. There was no particular cost to the claimant's absence after her sick pay came to an end. There was no disruption to the CCU team once the respondent had employed a replacement in early January 2017, and as such there was no disruption to other members of staff in CCU. Although the claimant was absent from work for a significant period of time, the occupational health reports supported that the claimant was able to return to work in a suitable role, with adjustments. And this position was supported by the claimant's evidence, including giving an indication of a willingness to accept a trial of a role in the renal department.

59. We remind ourselves that it is not for the tribunal to substitute our view as to whether or not we would have dismissed the claimant in the same circumstances. In *Iceland Frozen Foods Ltd v Jones* [1983] ICR 17 it was held that:

> "...in many (though not all) cases there is a "band of reasonable responses to the employee's conduct within which one employer might reasonably take one view, another quite reasonably take another; ...the function of the [Employment Tribunal] ... is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair.

60. This approach applies to dismissals generally and is not limited to cases of misconduct. Overall, we conclude that the decision to dismiss the claimant by the respondent, based on the factors outlined above, does not fall within the band of reasonable responses.

61. There was engagement in the redeployment process by the claimant, and a willingness to trial a role once the barriers caused by the PCP had been resolved. No contributory fault was found in these circumstances.

62. There is no evidence to support a *Polkey* reduction, considering our finding that the claimant was willing to trial one of the two renal positions.

Remedy

63. The award is made as compensation pursuant to s.124(6) of the Equality Act 2010, with all the figures being a net sum. The respondent is ordered to pay the claimant the following:

    e. £13,000 for Injury to feeling It was agreed between the parties that an award for injury to feelings should made in the middle bracket of Vento. This award was arrived at having considered the submissions made on behalf of both parties and having considered the evidence of the claimant.

    f. £1,758.03 is awarded for interest on the injury to feeling award, calculated at 8% from the date of the discriminatory act, in accordance with the Employment Tribunals (Interest on awards on discrimination cases) (amendment) Regulations 2013.

    g. £3,514.42 for past loss of earnings, which reflects 13 weeks lost earnings for the period up to 31 March 2018, at the agreed net weekly pay of £270.34, in addition to the agreed sum of £8,750.99 for lost earnings from 1 April 2018 to 4 November 2018. The total net sum of lost earning is therefore £12,265.41.

    h. Benefits received was agreed at the sum of £3,216.40. Loss of earnings less benefits is the sum of £9,049.01. Interest on this sum was agreed between the parties at the sum of £611.86.

i. Pension loss was agreed between the parties at the sum of £2,409.01

j. Unfair dismissal basic award was agreed at the sum of £4,890

k. Loss of statutory rights award was agreed at the sum of £450.

64. The total award is the net sum of £32,167.91. As the first £30,000 is not subject to tax, the remaining £2,167.91 is grossed up by the agreed figure of £541.98.

65. The total sum the respondent is ordered to pay the claimant is **£32,709.89**. This is made of the net sum of £30,000 and the gross sum of £2,709.89.

66. The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 ("the Recoupment Regulations") do not apply in this case.

67.

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Employment Judge **Butler**

Date__03/09/2019___

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.