



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH

BEFORE: EMPLOYMENT JUDGE C HYDE (sitting alone)

BETWEEN:

Claimant

MS J ARMSBY-WARD

AND

Respondent

**MR S SIMMONDS
T/A THE PROPERTY SHOP**

ON: 25 September 2019

APPEARANCES:

For the Claimant: In person

For the Respondent: No attendance or representation
and no response entered

JUDGMENT

The Judgment of the Employment Tribunal is that:-

1. It was declared that the Respondent unlawfully deducted the sum of **£1860.48** from the Claimant's wages and the Respondent was ordered to repay that sum to the Claimant forthwith.
2. The unfair dismissal complaint by reason of whistle-blowing under section 103A of the Employment Rights Act 1996 was well founded.
3. The Respondent was ordered to pay to the Claimant the total sum of

£7676.17 as compensation for that unfair dismissal. The award was made up as follows:

- a. No basic award was payable under section 119 of the Employment Rights Act 2019. The Tribunal hereby corrected the award made in error at the hearing of £721.15.
- b. In respect of lost earnings, the average of £378.84 net per week was multiplied by 15 weeks of unemployment to 15 March 2019 = **£5682.71** net.
- c. In respect of loss of statutory employment rights, the sum of **£350.00** was awarded.
- d. In respect of accrued but untaken holiday pay outstanding at the termination of the employment the award was 9 days @ daily rate of £75.77 net = **£681.92** net.
- e. In respect of adjusting the award under section 124A(b) of the 1996 Act and section 38(3) of the Employment Act 2002, the award to the Claimant was two weeks gross pay x £480.77 = **£961.54**.

The Recoupment Regulations apply to this award for lost earnings.

REASONS

1. Written reasons for the Judgment above are provided as the Respondent did not attend the hearing. The reasons are provided only to the extent that the Tribunal considers it necessary to do so in order for the parties to understand why the Tribunal made the Judgment above. They are also provided only to the extent that it is proportionate to do so.
2. All findings of fact were reached on the balance of probabilities. The burden of proving that unlawful deductions had been made lay on the Claimant, as did the burden of establishing the reason for the dismissal, where she alleged an automatically unfair reason.
3. The Tribunal heard evidence from the Claimant and treated her letter to the Tribunal dated 19 September 2019 as her witness statement. She confirmed that the contents of it were true to the best of her knowledge and belief. She also gave supplementary oral evidence in answer to the Tribunal's questions.
4. In relation to the complaint of unlawful deduction of wages, the Tribunal was satisfied that the Respondent had unlawfully deducted the sum of £1860.48 in relation to an invoice which the Respondent presented to the Claimant on the final day of employment in relation to building work which had been done at the Claimant's private property. However, this

- was unrelated to her employment and she had not given the Respondent any prior written consent to deduct that sum. The Respondent deducted it from the final months' salary and the one months' notice net pay that was paid to the Claimant. I therefore ordered that the Respondent repay to the Claimant forthwith the sum of **£1860.48** in respect of that unlawful deduction of wages.
5. The next complaint was in respect of automatic unfair dismissal by reason of whistle-blowing. The Tribunal found that this complaint was made out.
 6. I accepted the evidence from the Claimant that she had made disclosures to the Respondent under section 43B(1)(a) and (b) of the Employment Rights Act 1996, in relation, primarily, to her reasonable belief that the Respondent was failing to comply with their legal obligations. The factual matters that these findings were based on were first, that the Claimant was registered with HMRC in relation to anti-money laundering so I considered that this provided an adequate knowledge base for her belief. She also had a number of years of experience in the lettings business.
 7. The first disclosure was reporting the director to HMRC in respect of concerns about money laundering; the second was raising with the Respondent potential breaches of regulations in respect of licences for houses of multiple occupation; and third was the report in October 2018 to HMRC in relation to the Respondent accounting to HMRC in respect of her own tax and national insurance.
 8. I was satisfied that the HMRC contacted the Respondent at about the same time the Claimant received a letter from HMRC. When she got home after being sacked by Mr Simmonds on the 30 October 2018, she found the letter. I was also satisfied that the reason why the Respondent dismissed the Claimant was because she had made these disclosures and taken the action that she had in relation to what she reasonably saw as being breaches of the law.
 9. In relation to the public interest, while it is most obvious in relation to the anti-money laundering and breach of the HMO licences disclosures, this Tribunal considered that it was also established in relation to the deductions of tax and national insurance. It was an allegation of non-compliance with the legal obligations owed to the State and it appeared to me that that was a matter of public interest.
 10. I found that after the Respondent received the notification from HMRC on or just before 30 October, the Claimant was dismissed and I was satisfied that that was an automatically unfair whistleblowing dismissal. I was satisfied, based on evidence from the Claimant, that there had been no concerns about her work up to that point. This was corroborated to

some extent by her evidence that she had considerable experience in the business. In all the circumstances, I was satisfied that there were no other valid grounds for terminating her employment. Thus, on the balance of probabilities I accepted her case that the reason for the termination was the fact of the Claimant having made the protected qualifying disclosures set out above.

11. When she was dismissed the Respondent paid her salary in respect of the month of October and one month's notice which they described as "severance". That meant effectively that the Claimant was paid until the end of November 2018.

12. I then considered her entitlement to compensation for unfair dismissal.

Correction to Judgment Announced at Hearing – Basic Award

13. At the hearing I awarded the Claimant a basic award of **£721.15** calculated by multiplying one week's gross pay which is £480.77 x 1.5 because she was aged over forty-one years at the date of termination. This award is not permissible under section 119 of the 1996 Act. Specifically, section 119(2)(a) provides that the basic award in these circumstances is calculated by using as a multiplicand 1.5 weeks' pay "for a year of employment in which the employee was not below the age of forty-one". It appeared to me on further consideration that this formulation referable to a year's service did not permit an award where the employee had less than one year's service. I therefore corrected the Judgment accordingly by making no basic award.

14. Next the Tribunal assessed the figure for loss of earnings. As set out in the attached notice, the Recoupment Regulations apply to this award for lost earnings.

15. The Claimant was off work for a period of just under six months from the date of dismissal, but her loss did not commence till after the end of November 2018. I was satisfied that although she was unable to find alternative employment for some time, she had taken reasonable steps to mitigate her loss. During the period covered by the notice and for a couple of months after that, she was also suffering from stress which also made it difficult for her to find alternative employment. She did, however, succeed in securing new employment from 18 March 2019 and she was paid thereafter at a rate which was comparable to that which she had earned with the Respondent. Although the Claimant reported issues in relation to deductions of her HMRC whilst she was employed, she subsequently found out that the Respondent paid the correct amounts of tax and national insurance to HMRC, and there was no suggestion that the calculations in the payslips for the period of her employment were wrong so the Tribunal used those figures to calculate what the net weekly pay was, averaging out the total figures which

- fluctuated and this yielded the sum £378.84 net per week. So, the Tribunal then applied that figure to the period of fifteen weeks to 15 March 2019. That gave a total figure of loss of earnings of **£5682.71** net.
16. Next the Tribunal made an award in respect of the fact that had the Claimant not been unfairly dismissed by the Respondent, she would have had statutory employment protection which she lost by way of the automatic unfair dismissal. I awarded the sum of **£350.00** for that.
17. The next figure was in respect of holiday pay. The Claimant had accrued nine days holiday during her period of employment through to the end of October 2018 but the Respondent did not pay her for that accrued but untaken holiday on termination of her employment. The Tribunal therefore awarded the Claimant nine days x a net daily rate of £75.77 per day = **£681.92** net.
18. The next issue which arose was whether the Respondent had complied with the duty under section 1 of the Employment Rights Act 1996 to provide a written statement of particulars of employment. The Tribunal is required to consider this in any case where the Claimant succeeds in her unfair dismissal complaint: section 124A(b) of the 1996 Act and section 38(3) of the Employment Act 2002.
19. The Tribunal found that the Claimant was not given a contract as such but in the letter dated 24 May 2018 informing her of her employment, the Respondent set out what they described as the details of the contract. However, it appeared to the Tribunal this did not fully comply with the compulsory parts of section 1 of the 1996 Act in that there was no start date stated. There was a slot for it in the formal letter but no dates were entered. The document simply stated: "to be confirmed". This appeared to the Tribunal to be a breach of the requirements. I took into account that it was not a major breach and also that the issues which the Tribunal had had to decide were not directly related to the failure to provide a statement of terms and conditions. It appeared therefore that the appropriate sum to award was two weeks gross pay which equals 2 x £480.77 = **£961.54**. I therefore made that award.

Employment Judge Hyde
Dated: 17 October 2019

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