



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs W Boyle

v

North Norfolk Limited

Heard at: Norwich

On: 7 November 2019

Before: Employment Judge Postle

Appearances

For the Claimant: Miss Davenport, Solicitor

For the Respondent: Mr Brundle, Director – No response entered

JUDGMENT on REMEDY

Pursuant to Rule 21 of the Employment Tribunal Rules of Procedure 2013

With reference to the Judgment sent to the parties on 10 April 2019

1. The Respondents are Ordered to pay total compensation amounting to **£25,365.50** made up as follows:

| | | |
|-----|---|--------------------|
| 1.1 | Basic Award | £ 450.00 |
| 1.2 | Compensatory Award | £ 14,515.50 |
| 1.3 | Injury to Feelings | £ 9,500.00 |
| 1.4 | Failure to consult and inform pursuant to Regulation 15 of the Transfer of Undertaking Protection of Employment Regulations | £ 900.00 |
| | | £ 25,365.50 |

2. The Respondents are Ordered to pay further awards amounting to **£11,128.88** which are made up as follows:

| | | |
|-----|---------------------------------|-------------------|
| 2.1 | Acas Uplift of 25% | <u>£ 3,628.88</u> |
| 2.2 | Legal costs due to the Claimant | <u>£ 7,500.00</u> |

**TOTAL AMOUNT DUE TO THE CLAIMANT,
PAYABLE BY THE RESPONDENT:**

£ 36,494.38

REASONS

1. This is a Remedy Hearing pursuant to a Default Judgment dated 10 April 2019 in which the following Claimant's claims were found to be well founded:
 - 1.1 the Claimant had been automatically unfairly dismissed pursuant to Regulation 7 of the Transfer of Undertakings Protection of Employment Regulations 2006;
 - 1.2 further the Claimant had been unfairly dismissed pursuant to the Employment Rights Act 1996;
 - 1.3 the Claimant had been subject to perceived direct discrimination, the protected characteristic being disability, pursuant to Section 13 of the Equality Act 2010;
 - 1.4 the Respondents had failed to inform and consult pursuant to the TUPE Regulations;
 - 1.5 the Respondents were in breach of contract: and
 - 1.6 the Claimant had suffered unlawful deduction of wages in respect of non-payment of shifts on 4, 5, 6 and 7 February 2018.
2. The Respondents had applied for the second time Reconsideration of that Judgment. There had been a previous Default Judgment in October 2018. That second application dated 18 April 2019 for the Reconsideration of the Judgment sent to the parties on 10 April 2019 was refused and the reasons were set out, together with the background of the whole claim, in 16 paragraphs by Employment Judge Postle.
3. The matter had previously been before Judge Laidler at a hearing on 30 November 2018 when Judge Laidler had overturned the Default Judgment dated 10 October 2018. It was noted at that hearing Mr Brundle, Director of the Respondents, would now prepare his response within the due date specified, although no such response was ever received and that is why the Judgment was entered on 10 April 2019.
4. In this Remedy Hearing, we have heard evidence from the Claimant and her daughter, both through prepared witness statements and the Tribunal had the benefit of a bundle of documents consisting of 59 pages. We had closing submissions from Ms Davenport, Solicitor for the Claimant and from Mr Brundle notwithstanding that no response had been entered, he was given an opportunity to address the Tribunal in closing. Mr Brundle still maintaining that he thought today's hearing was a Full Merits Hearing despite the wording of the Judgment on the Reconsideration which made it perfectly clear that the Respondents application dated 18 April 2019 for Reconsideration of the Judgment sent to the parties on 10 April 2019, is refused. The reasons were there was no reasonable prospect of the

original decision being varied or revoked and then the history of the matter, I repeat, had been clearly set out. It was clear as a pike staff at that stage to Mr Brundle and the Respondents that the Judgment that had previously been given against the Respondent company was not going to be overturned.

5. The Claimant was employed by the Respondents as a Chamber Maid from 1 September 2015 until her dismissal in or about early February 2018, when without warning, or any process or disciplinary or otherwise, the Claimant was simply dismissed on Monday 5 February 2018 by Mr Brundle a Director of the Respondent who had taken over the hotel on or about 1 or 2 February 2018. Mr Brundle had told the Claimant there was no need for a Chamber Maid as he was going to concentrate on the Restaurant business, notwithstanding the fact that an advertisement appeared shortly thereafter for a Housekeeper in the Respondent's business.
6. Mr Brundle had also informed some of the staff and indeed, the Claimant's Solicitor, that he perceived that she had dementia or Alzheimer's and that seems to have had a great bearing on the Claimant's dismissal. In fact, the reason for the Claimant's dismissal. That clearly would have been very upsetting and distressing for the Claimant to learn when she was informed of this by her daughter.
7. Moving on to the Remedy, the Claimant's average hours were 20 hours per week and she was paid at the national minimum wage. The basic award based on the Claimant's age, which at the date of dismissal was 60, she would have had two complete years of service which would have given her three weeks as a basic award at 20 hours at £7.50 which was the national minimum wage at the time, which was £150 per week x 3 weeks being the basic award of £450.00.
8. As for the compensatory award, we then go from 5 February 2018 to 31 March 2018, that appears to be 8 weeks at £7.50 x 20 which equals £1,200. The next rate we go to from 1 February 2018 to 31 March 2019, was a national minimum wage of £7.83 x 20 hours per week gives £156.60 per week x 52 weeks at that is £8,143.20. We then move to the last part which is from 1 April 2019 to 7 November 2019, the hourly rate had moved on the national minimum wage to £8.21 x 20 gives a weekly rate of £164.20 x 31.5 weeks at that gives you £5,172.30
9. Therefore, the compensatory award including the basic award is £14,965.50.
10. I then turn to Injury to Feelings and I remind myself that compensation should be just to both parties, they should compensate fully without punishing the discriminator. Awards should not be too low as that would diminish the respect and the policy of anti-discrimination regulation. Society has condemned discrimination and awards must ensure that it is seen to be wrong. On the other hand, awards must also be restrained.

Therefore, taking into account the matters that I must do, such as the subjective feelings of upset that the Claimant may have had, frustration, worry, anxiety, mental distress, fear, anguish and humiliation; taking all those matters into account, I assess the award at the middle band of Vento slightly nearer the top. Although it was a one off act, it is a serious act and had serious consequences for the Claimant.

11. I therefore make an award of £9,500 for Injury to Feelings, the failure to properly consult and inform under the TUPE Regulations six weeks at £150 is £900, therefore the total award made up as a basic award of £450, compensatory award of £14,515.50; Injury to Feelings £9,500; failure to consult £900 and I have included in those figures lost shifts and that would also include the notice pay. The total award is £25,365.50.
12. As regards the Acas uplift on the failure or the argument of the failure to follow any procedure in dealing with the Claimant's dismissal, I have heard further submissions from Ms Davenport and submissions from Mr Brundle, given the fact that the Claimant was dismissed without any warning, prior notice or procedure, that this is a case that you can properly assess that the total failure to follow Acas at 25%, so the Compensatory Award is uplifted by 25% which is £3,628.88.
13. With the Uplift this makes a total figure of **£28,994.38**.
14. The power to award costs arises under the Employment Tribunal Regulations 2013, particularly Rule 76,

“A Tribunal may make a costs order or preparation time order and shall consider whether to do so where it considers that a party, or that party's representative has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings or part have been concluded, or any claim or response has no reasonable prospect of success.”

15. In deciding whether to make a Costs Order it is a two stage process. Firstly, have any of the factors arisen under Rule 76(a) or (b) and if they have, should I exercise my discretion? I am satisfied on the contemporaneous documents and the way this matter has been run and what occurred before Judge Laidler at the previous hearing on 30 November 2018, that the Respondents have had a total disregard for the Tribunal's proceedings and the Orders made. For that reason, one could exercise one's discretion, but furthermore, the response, when one looks at the plain facts and how the Claimant came to be dismissed, appears that defending the claim was doomed to failure in any event. It had no reasonable chance of defending the claim, certainly for unfair dismissal and automatic unfair dismissal pursuant to a Transfer of Undertakings and the claim for direct discrimination. I therefore believe that the threshold has arisen and I do believe this is a case where costs should be awarded exercising my discretion on two grounds,

- i. Firstly, the way the proceedings have been conducted on behalf of the Respondent and the failure to have regard to what was required of them when it was spelt out very clearly by Judge Laidler at the previous hearing way back last year when she set aside the first Default Judgment. It appears the Respondents did not learn their lesson and gayly went ahead without entering a defence. And
 - ii. Secondly, that defence, had it been entered, would clearly have had little prospect of success. It was doomed to failure on the facts.
16. I therefore do exercise my discretion to award costs. I am satisfied that the costs on the Schedule are reasonable, I can assess them at that amount, the hourly rate is well below the County Court rate so it is a reasonable rate and allowing for this morning's hearing, a further 3 hours at £450 does take it to £7,500.
17. The Respondents are ordered to pay the Claimant's costs in the sum of **£7,500.**

Employment Judge Postle

Date:22 November 2019.....

Sent to the parties on:

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For the Tribunal Office