



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH

BEFORE: EMPLOYMENT JUDGE TRUSCOTT QC

BETWEEN:

Claimant Mrs A Herbert

AND

Browns Cake and Pies Ltd. Respondent

ON: 21 October 2019

Appearances:

For the Claimant: In person

For the Respondent: Mr T Chaudhry solicitor

JUDGMENT

The claimant is entitled to compensation of £16542.18 made up as follows:

Pursuant to section 118(1)(a) of the Employment Rights Act 1996, the respondent is ordered to pay the claimant a basic award of £9291.00.

Pursuant to section 118(1)(b) of the employment Rights Act 1996 the claimant is awarded a compensatory award of £4494.15. The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations do not apply to this award.

The Tribunal has determined that an uplift of 20% of the total award is appropriate in the circumstances which is £2757.03.

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REASONS

1. In relation to the basic award, parties were agreed that the amount of a week's pay for the calculation was £489. There was a difference between them as

to how the payment was calculated. The claimant based her calculation on a redundancy payment as at her age at the time. The amount proposed by the respondent was 7 weeks at 1 week's pay of £3423 and 8 weeks at 1.5 week's pay of £5868 making £9291. The latter is in accordance with section 119 of the Employment Rights Act and is the sum awarded.

2. In relation to the compensatory award, parties were agreed that the loss of wages amounted to £2049.35. Parties were also agreed that compensation for the loss of statutory rights was £500. Parties were not in agreement about the extent of future loss. The claimant argued for 26 weeks whereas the respondent argued for 12 weeks. The Tribunal determined that the claimant was entitled to future loss of 26 weeks as this loss was currently being sustained although the schedule of loss had not been updated, this amounts to £10,656.82 less £8711.82 which is £1944.80.

3. In relation to the application or otherwise of the ACAS Code of Practice, the respondent did not argue that the award should be reduced because of any failure by the claimant. The claimant sought an uplift because of the respondent's failure to apply the Code. The respondent pointed out that certain important breaches of the implied terms were not related to the Code of Practice such as the failure to pay wages on time and the imposition of new terms of employment. Whilst this is correct, the Tribunal reminded itself from the liability judgment that the respondent failed to conclude the disciplinary procedure and did not seek to apply any procedure appropriately or fairly to the claimant. The Tribunal considered the actions of the respondent to be near the top end of the scale permitted. In the circumstances, the Tribunal awards a 20% uplift in respect of these failures to apply the ACAS Code of Practice.

Employment Judge Truscott QC

Date 28 October 2019