



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms S Cooke

**Respondent:** Poundland Limited

**Heard at:** Cardiff **On:** 17 September 2019

**Before:** Employment Judge S Moore (sitting alone)

**Representation:**

Claimant: Mr A Cash  
Respondent: Did not attend

**JUDGMENT** having been sent to the parties on 18 September 2019 and reasons having been requested by the Claimant in accordance with Rule 62(3) of the Rules of Procedure 2013:

## REASONS

### Background

1. The ET1 was presented on 16 May 2019. Further particulars of claim were submitted on 17 May 2019. Both were served on the Respondent on 28 May 2019 to the store address in Barry where the Claimant had worked. The Respondent failed to enter a Response on or before 25 June 2019. The Respondent was notified by letter of 12 July 2019 that no Response had been received. A Judgment (liability only) was promulgated on 21 August 2019 and a Remedy Hearing was listed for 17 September 2019. Both were copied to the Respondent.
2. The Tribunal heard oral evidence from the Claimant and two witness statements from Ms E Harwood, Ms A Huxter and Ms V Spiteri. The Claimant had produced a bundle of documents. The Claimant brought

claims of unfair dismissal, unpaid holiday pay, arrears of pay, other payments, failure to provide itemised pay statements and failure to provide statement of changes to the Claimant's particulars of employment.

### **Findings of Fact**

3. I made the following findings of fact on the balance of probabilities.
4. The Claimant has learning difficulties and also has stress related anxiety and depression. She commenced employment with the Respondent on 26 November 2015 and was provided with a fixed-term contract for 8 hours per week until 26 February 2016. This was the fixed-term end date specified in the contract. She was employed as a Sales Assistant at the Respondents' store in Barry, South Wales. Her rate of pay was £6.77 per hour. The fixed-term contract end expired and the Claimant continued to work for the Respondent on a consistent and regular basis of more than 8 hours per week.
5. The Claimant had sought details from HMRC to confirm her hours and pay due to the difficulties she experienced in accessing her pay statements which I return to below. The HMRC records showed that during 2016 she worked an average of 22.5 hours per week, during 2017 she worked an average of 17.39 hours per week and during 2018 she worked an average of 19.88 per week and her average hours in 2019 were 19.18 and at the time the Claimant's employment ended she was on an hourly rate of £7.83 per hour.
6. In November 2018 the Claimant was alleged to have attended work under the influence of alcohol. She was suspended on 23 November 2018 on full pay pending an investigation in respect of the allegation which was deemed to be potentially gross misconduct. The allegations were as follows, that on 22 November 2018 she came to work under the influence of alcohol. The suspension letter was signed by Mary Taylor, Store Manager on behalf of Poundland.
7. A disciplinary hearing was arranged for 17 December 2018. The Claimant was accompanied by a Ms V Spiteri who was the Claimant's Support Worker. The Claimant at the point of the disciplinary hearing had been signed off sick by her doctor due to ongoing depression. The Tribunal had sight of a witness statement from Ms Spiteri. Ms Spiteri described the hearing as completely one-sided. She described the manager conducting the hearing on behalf of the Respondent repeatedly asking the Claimant the same questions and not permitting the Claimant to defend herself. During the hearing Ms Spiteri described how she whispered to the Claimant to ask

- for evidence because at no time had the Respondent provided any evidence to support their allegation against the Claimant about her being under the influence of alcohol.
8. Prior to the disciplinary hearing the Claimant had not been provided with any evidence on which the Respondent intended to rely. She was not provided with any witness statements or any documentary evidence whatsoever. At the disciplinary hearing the Claimant explained to the best of her ability the reasons why she may have been considered to have been under the influence of alcohol. The Claimant explained that the one of the side effects of her prescribed medication was slurring. This was recorded on the disciplinary notes however this was not taken into consideration by the manager conducting the disciplinary hearing. The Claimant was summarily dismissed verbally albeit she did not receive confirmation of the summary dismissal in writing for a further 37 days.
  9. The Claimant in the meantime appealed her dismissal and on 23 March 2019 she was reinstated by the Respondent following successful appeal. In that appeal outcome letter dated 25 March 2019, Mr Gareth Alexander, Area Manager for and on behalf of Poundland confirmed that her appeal had been upheld and she was offered an alternative store to work in if required. Mr Alexander confirmed that he had instructed the payroll team to ensure back pay for her contracted hours was processed in the next pay run. Mr Alexander found as follows, (1) it had been highlighted that the Claimant had ongoing health issues and that she was supported by key health workers. The Claimant had presented evidence of a condition in which she took medication for and stated that the medication had a number of different effects on persons, one of them neurological complications of the Claimant's Vitamin B12 deficiency was slurring and Mr Alexander specifically noted that this was in the disciplinary notes (which the Tribunal did not have sight of) but not explored. (2) Mr Alexander records that the Respondent had no medical evidence that the Claimant was unfit for work due to alcohol and (3) it took 37 days to receive the outcome letter and this caused further stress and anxiety on her condition.
  10. Following the Claimant's reinstatement the Claimant attempted to return to work. She attended a return to work meeting with her manager but this was dealt with in an inappropriate manner. It took place in the staff room where other people were present and there was a reluctance by the store manager to provide the Claimant with a start date and/or give her hours of work. The Respondent failed to verify that the Claimant was well enough to be at work or have any regard to her ongoing medical condition or grievances. On 8 May 2019 the Claimant had sent a detailed report of her grievances to Natalie Wallace in HR Central Services and the Managing Director of Poundland, Mr Barry Williams. She received a telephone call on 10 May 2019.

11. Following numerous failed attempts to receive the back pay she had been promised by Mr Alexander the Claimant resigned on 15 May 2019.
12. According to a letter from Mr Renshaw of 25 July 2019 during the call on 10 May 2019 the Claimant was invited to attend a grievance meeting to discuss the grievance in more detail. By this point the Claimant had already attended five different meetings in an attempt to obtain her reinstatement and also the failed return to work meeting with the Store Manager at the Barry store. In the circumstances decided that after seeing her doctor on 10 May, and taking advice from her GP, she considered the impact and the toll on her mental health was such that she could not return to work for the Respondent.

### **Pay slips**

13. The Respondent provides access to pay slips for their employees via an on-line platform called MyView. This requires an employee to log in to a website and enter details in order to access their pay slip. I heard evidence from the Claimant which I accepted that when she would attempt to click on the button which should access the pay slip, she repeatedly received an error message stating report to be run and nothing further would happen. As well as hearing from the Claimant about the difficulties in accessing her pay slips I had sight of a number of other witness statements as follows.
14. Ms Adrienne Huxter submitted a statement signed on 21 August 2019 in which she also describes difficulties in obtaining her pay slip. Ms Huxter has never been able to obtain a pay slip or P60 since working for the company for more than 3 years. It is only possible to obtain a pay history. Furthermore the only way to obtain a password for the website is to request a password online but this also has difficulties. Ms Huxter reported when she is finally able to log in, she is not able to see a pay slip with tax and other deductions detailed and also she corroborates the Claimant's evidence that there is a box to click on for a pay slip nothing happens when they click the button.
15. The Tribunal had sight of another witness statement from Ms Harwood. Ms Harwood describes working for the Respondent for the last two years and was initially unable to access any pay information online at all due to not having any log in details from MyView. When Ms Harwood was able to log in to her account she also corroborates that it is not possible to access pay slips only to see a pay history. Both Ms Harwood and Ms Huxter do not have laptop or computers and therefore in order to access pay slips have to attend their local library to use the computer facilities there. This has caused both these individuals and the Claimant difficulties with their housing and council tax benefits claims as they are unable to provide proof of income.

16. In respect of the Claimant's position, she had only been able to obtain 20 pay slips over the duration of her employment, 4 of which were provided by the Respondent for the purpose of the appeal. In respect of the P60's the Tribunal had sight of an email from HR dated 1 March 2019 which confirmed that the Claimant was also unable to access her P60 on MyView but could request a statement of earnings from the HR Department.
17. Following the Claimant's dismissal she remained signed off sick and was referred to the mental health nurse and Mind and has been under their care since. She is not well enough to find work. During her employment she was in receipt of Universal Credit due to her low income. Her basic pay was £155.66 gross. At the time she left her employment she was on £7.83 per hour averaging 19.88 hours per week.

## **Conclusions**

### **Unfair dismissal**

18. I make a basic award of £466.98.
19. In relation to the compensatory award the period of loss is from the date of dismissal to the date of the Remedy Hearing (15 May 2019 to 17 September 2019) is 17 weeks and 5 days this equates to £2,724.05 (gross).
20. I have determined that I should apply a 25% uplift in the compensatory award pursuant to S207A (2) Trade Union & Labour Relations (Consolidations) Act 1996 for the Respondent's unreasonable failures to comply with the ACAS Code on Disciplinary and Grievance Procedures in that:
- I. The Respondent failed to establish the facts of the case. There was no investigation and they failed to take into account the Claimant's explanation that medication was the reason for her slurring;
  - II. They failed to provide the Claimant with any of the evidence upon which they relied in advance of the hearing;
  - III. The Claimant was not permitted to set out her case and answer allegations that had been made.
  - IV. The Respondent failed to provide the reasons for dismissal in a timely manner therefore denying the Claimant a reasonable opportunity to formulate her appeal.
21. I consider the failings of such a serious nature I apply the maximum uplift.

22. This equates to £681.00 on losses between date of dismissal and date of remedy hearing.
23. I award a future loss until 14 May 2020 which is 34 weeks at £155.66 per week which equates to £5,292.44 (gross) with a 25% uplift of £1,323.11. This is the period in which I determine just and equitable having regard to her loss likely to be sustained in consequence of the actions of the employer. I take into account that the Claimant is not currently fit to mitigate her loss and from the evidence before me namely the advice from her GP in May 2019, the reason she is not fit for work is the effect of her treatment by the Respondent and the impact on her mental health.
24. I award the Claimant the sum £108.00 for job seeking expenses already incurred.
25. I award the Claimant the sum of £622.64 under Section 38 Employment Act 2002 for failing to provide the Claimant with particulars of the change in her contract reflecting the hours worked and the expiry of the fixed term element.

#### **Arrears of pay**

26. I award the Claimant the sum of £3,066.25 (gross) for arrears of pay. This is based on unpaid wages for the period between the Claimant's dismissal and her reinstatement from 7 December 2018 to 24 May 2019. This period equates to 24 weeks at £155.66 per week. I have calculated the arrears of pay to total £3,335.84. I give credit for the £669.59 paid by the Respondent which leaves an award of arrears of pay of £3,066.25.

#### **Failure to provide itemised pay statements**

27. My reasons for finding that the Respondent has failed to provide itemised pay slips are as follows. The online platform provided by the Respondent to access pay slips was not fit for purpose. I had evidence from 3 witnesses about the difficulty they encountered in accessing pay statements. Firstly, if an employee does not have the resources to own a laptop or computer at home they have to go to their public library or other resource centre where they can access the internet to access the online platform. I accept that in principle an online platform would not in itself amount to a failure to provide itemized pay statements but only if the online platform is functioning and that accessing that platform by unfettered provision is maintained. Neither occurred in the case of the Respondent's online platform. Secondly, even when the platform could be accessed it did not work. Employees were not able to access pay slips let alone print or access copies which could then be produced. This had the potential to affect their benefit claims and caused financial hardship and stress. I accepted it had done so.

28. I was not however taken to any specific financial loss attributable.

**Holiday pay**

29. The Claimant has been paid holiday pay since the start of her employment based on 8 hours per week. HMRC records proved that she has averaged over 3 years 16 hours per week. Taking a broad brush approach to the calculation I award holiday pay on the basis of the shortfall between 8 hours and 16 hours.

30. In respect of 2017 the award is £522.00.

31. For 2018 the shortfall I find is £352.12 and for 2019 pro rate I find that the shortfall was £229.50 totalling £1,103.62.

---

Employment Judge S Moore  
Dated: 18 December 2019

REASONS SENT TO THE PARTIES ON

.....21 December 2019.....

.....  
FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS