EMPLOYMENT TRIBUNALS

Claimant: Mrs H L Price

Respondent: E S P Technologies (UK) Limited

Heard at: Manchester on 26 May 2020

Before: Employment Judge Warren
Mr D Wilson
Mr A J Gill

REPRESENTATION:

Claimant: In person
Respondent: Mr M Howson, Consultant

REMEDY

The unanimous judgment of the Tribunal is that:

1. The claimant was dismissed in breach of contract and is entitled to notice pay in the sum of one thousand seven hundred and forty two pounds and seventy nine pence. (£1742.79)

2. The claimant was unfairly dismissed and is entitled to a basic award in the sum of one thousand four hundred and sixty seven pounds. (£1467.00)

3. The claimant is entitled to a compensatory award in the sum of eight thousand six hundred and seventy four pounds and fifty five pence. (£ 8674.55)

4. The respondent is ordered to pay the claimant the total sum of eleven thousand and eight hundred and eightyfour pounds and thirty four pence (£11884.34) as calculated in Schedule A attached hereto

REASONS

Background.

1. The listing of this matter for Remedy was affected by the Covid 19 lockdown. The parties were offered the opportunity to make representations in writing to enable the Tribunal to reach a decision remotely on Remedy. Both parties consented and provided their representations. The panel met today by telephone conference to discuss the submissions, schedule and counter schedule and reached a unanimous judgement.

The Facts

2. The claimant was unfairly dismissed without notice. She had 3 years complete service. Her age at the date of dismissal was 40. She earned a gross weekly wage of £769.23 gross and £580.93 net. The statutory cap at the effective date of dismissal was £489.00. She was entitled to 3 weeks' notice. The claimant was dismissed on 18 January 2018 and commenced new employment on 21 March 2018. She earned £40.44 net a week less than she had with the respondent. She was dismissed for redundancy on 30 August 2019. She has subsequently found other work.

The Law

3. Section 118 Employment Rights Act 1996 explains that where a Tribunal makes an award for compensation for unfair dismissal, the award should consist of a basic award and a compensatory award.

4. Section 119 of the Employment Rights Act 1996 ("ERA") sets out the formula for calculating a basic award. In this case the parties have agreed the basic award and so this needs no further comment.

5. Section 123 and 124 of the ERA set out the calculation and matters to be considered in making a compensatory award. The amount should be the sum that the Tribunal considers just and equitable in all of the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer. The Tribunal must take into account the duty of the complainant to mitigate her loss.

6. We have considered the guidance in the case of *Norton Tool Co v Tewson [1972] IRLR 86 NIRC* that we should compensate fully but not award a bonus and the amount should be just and equitable in all the circumstances having regard to the loss sustained by the complainant. This does not include injury to feelings. The burden of proving loss lies with the complainant.

7. *Mabey Plant Hire Ltd EATRF/92/0565* prevents any compensatory award extending beyond a later dismissal from new permanent employment.

Submissions

The claimant

8. The claimant's extreme distress was manifest in her submissions. She describes herself as naïve and Mr Sissons as manipulative. She expresses concerns for Hallidays (Mr Paul Whitney) who worked hard for the Management Buy Out and are outstanding their fees. She describes obtaining work within 2 months of being dismissed at a slightly lower salary, but was made redundant 17 months later. She struggled to find alternative work because the descriptor of her as a financial director, without any qualifications, as given to her by Mr Sissons, to oil the wheels of the buy out, made it difficult to find similar work elsewhere. She sought relief for Hallidays, and Brabners Solicitors – the agents and solicitors acting for her in the buy out. She sought compensation for bullying and harassment in the workplace, and her job seeking expenses, estimated at £175.00. She sought future losses as she is re-employed at a much lower rate of pay. She argued that she should receive a 25% uplift on her compensatory award because the respondent failed to follow an ACAS procedure. Finally the claimant sought a payment of £500.00 to compensate for loss of statutory rights, along with interest at 6% on the whole award. She sought £25,000 for breach of contract, and loss of employer pension contributions at £56.88 for the 8 weeks before she obtained reemployment. The total award sought was just less than £80,000.

The respondent

9. The respondent had prepared a counter schedule of loss making the following points in support:- The Tribunal cannot award compensation for loss of earnings after the claimant had taken permanent employment for 17 months citing the case of Mabey Plant Hire v Richens in support of their contention that the chain of causation has been broken, and that future loss of earnings is then too remote. Neither the lawyers nor the agent involved in the buy-out have caused the claimant to incur costs in consequence of the dismissal, and these cannot be awarded. As unfair dismissal is not a tort action, no damages can be awarded for bullying and harassment. The respondent was prepared to concede the claim for expenses for job seeking subject to seeing proof of interviews and expenses incurred. The respondent argued that any uplift for failure to comply with ACAS guidelines should be limited to 10%, because there was significant compliance with the Codes of practice.

10. The respondent further argued that it needed to see proof of pension loss as there was no calculation or basis for the figure sought.

11. The respondent agreed that the claimant was entitled to 3 weeks' notice pay and pointed out that no interest is payable for any of the remedies to which the claimant is entitled under her heads of claim.

The claimant replied to the respondent

12. She agreed with the respondent's calculations on the basic award at £1467.00

13. She disagreed with most of the respondent's contentions about the type of loss for which she could seek compensation, without putting forward any new propositions..

Conclusions

14. The claimant is entitled to a basic award in the sum of 3 weeks gross pay subject to the statutory cap applicable at the time of £489.00 – a total of £1467.00. This was agreed between the parties.

15. The claimant is entitled to 3 weeks net pay by way of compensation for breach of contract amounting to £1742.79. This is notice pay. There were no other breaches of the contract for which the Tribunal could award compensation.

16. This sum must be offset from her loss of earnings to prevent double recovery. Her net loss of earnings from EDT to the date she commenced other employment amounted to £5091.24, less £1742.79 – a total of £3,348.45

17. Her ongoing net loss when she commenced work amounted to £40.44 for 75 weeks a total net loss of £3,033.00

18. We consider that as she had been employed by an alternative employer for 17 months and was then dismissed for redundancy, the length of her employment was such as to break the chain of causation. We did not consider it appropriate to extend the award any further, and have not therefore allowed any compensation for future loss either.

19. The Tribunal is a creature of statute, and only has jurisdiction to deal with remedy in so far as described in the ERA. We have no jurisdiction to consider an award for injury to feelings in an unfair dismissal case, nor for the claimant's costs for the management buy out – as these are not losses which flow from the dismissal, but were incurred before the dismissal. The claimant may choose to seek legal advice on whether alternative jurisdictions are available to her.

20. We have considered the issue of uplift for failure to follow the ACAS guidelines and have concluded that the compensatory award should be uplifted by twenty per cent. We have taken account of the fact that there were no allegations put to the claimant on her suspension, that she was called to a hearing within 24 hours, she was given no reasons, and when she was unable to attend, the hearing went ahead without her.. She was then advised of 13 allegations which were reduced to 2 before she was dismissed, and then 1 on appeal. We found the evidence was in stark contrast to the respondent's findings on that one allegation, and that she was dismissed for gross misconduct without any reasonable evidential foundation, or belief. In the circumstances we acknowledge that a procedure was followed but found the outcome to be predetermined – and so deduct 5 % for the procedure that was followed, but award 20% for the real disregard for the procedure set out in the AVAS guidelines which is designed to be fair and give the employee an opportunity to have their case properly considered. Our findings in this regard can be found at paragraphs 70 to 81 in the Judgement on liability.

21. The claimant is entitled to apply for her expenses in seeking alternative employment. She accepts that she cannot provide material evidence i.e. receipts etc. However we found her inherently credible in her evidence on liability. She has 'guesstimated' her expenses for attending 12 interviews before obtaining alternative employment at £175. When asked to provide anything further she said she had nothing. We have used our own knowledge of attending interviews and preparing for them to include travel, emails, telephone calls, clothes etc to be at an absolute minimum of £10.00 an interview and have reduced her award to £120.00 to ensure that there can be no element of profit or bonus for her

22. The claimant applies for pension contributions. The respondent said it had no evidence. In fact the PDF bundle sent to the Tribunal to consider the issue of remedy, contained one of the claimant's pay slips from December 2017 showing the employer's contributions at £28.44 a month and we considered we had sufficient evidence to award 2 months' worth to compensate for the period between dismissal and her obtaining new work.

23. The Tribunal has no jurisdiction to make interest awards on issues of unfair dismissal and breach of contract

24. There is no argument put forward to suggest the claimant failed to mitigate her loss. We agree. The claimant found alternative work promptly.

25. We found in the Judgement on Liability that she did not contribute to her dismissal in any way.

26. We have looked at the overall award and consider it is just and equitable and compensates the claimant for her losses arising from her dismissal, without awarding any bonus.

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Employment Judge Warren

Date 26 May 2020

JUDGMENT AND REASONS SENT TO THE PARTIES ON

3 June 2020

FOR THE TRIBUNAL OFFICE

Schedule A

Basic Award

3 weeks @ £489 £1467

Compensatory award

Loss of statutory protection

Agreed at £500

Breach of contract notice pay

3 weeks net earnings £1742.79

Loss of net earnings

18.1.19 to 21.3.18 £5091.24

Loss after notice pay deducted

£5091.94 – £1742.79 £3348.45

Pension loss

£28.44 x2 £56.88

Loss of earnings – 17 months pay differential

75 (weeks) x £40.44 £3033

Total compensatory award £8681.12

Plus 20% uplift £1736.22

£10,417.34

Total award including basic £1467 **£11884.34**

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: **2411411/2018**

Name of case: **Mrs HL Price** v **ESP Technologies (UK) Ltd**

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: **3 June 2020**

"the calculation day" is: **4 June 2020**

"the stipulated rate of interest" is: **8%**

For the Employment Tribunal Office