



# THE EMPLOYMENT TRIBUNALS

**Claimant:** Mrs L Brunskill

**Respondents:** The Trustees & Committee of Eston Labour Club

**Heard at:** Teesside Justice Hearing Centre      **On:** 25 February 2020

**Before:** Employment Judge Morris

**Members:** Mr S Wykes  
Mr KA Smith

***Representation:***

**Claimant:** Mr R Owen, Citizens Advice

**Respondents:** Mr J Taylor, formerly the respondents' agent

## REMEDY JUDGMENT

The unanimous judgment of the Employment Tribunal is as follows:

1. In relation to the claimant's complaint of unfair dismissal, the respondents are ordered to pay to her compensation in the sum of £10,994.05 comprising a basic award of £9,909.00 and a compensatory award of £1,085.05.
2. In relation to the claimant's complaint that the respondents made an unauthorised deduction from her wages, the respondents are ordered to pay to her the sum of £1,427.76.
3. The Recoupment Regulations do not apply to the award of compensation referred to above.

## REASONS

Representation and evidence

1. The claimant was represented by Mr R Owen of Citizens Advice who called the claimant to give evidence. The respondents were represented by Mr J Taylor who

at the relevant time had acted on behalf of their agent. Since that time, as set out in the Reasons arising from the liability hearing (“the Liability Reason), he has set up a company, Eston Labour Club Limited (“the Company”), which took over the respondents’ business on 6 April 2018; in respect of which the Transfer of Undertakings (Protection of Employment) Regulations 1981 were applicable. Mr Taylor did not call any evidence on behalf of the respondents but, in closing submissions, relied upon a statement from Mrs Hooson dated 3 February 2020, which is said to be made on behalf of the respondents.

2. The Tribunal also had before it an agreed bundle comprising 228 documents.

#### Compensation for unfair dismissal

3. In respect of her unfair dismissal the claimant sought the remedy of compensation. The Tribunal first addresses the calculation of the basic award.

#### *Basic award*

4. The claimant was dismissed on 28 March 2018. At that time she had been employed by the respondents for 29 complete years and was 62 years of age. On this basis the claimant would be entitled to the maximum basic award of 30 weeks’ pay. Her basic pay was £330.30 per week. Thus 30 x £330.30 totals £9,909.
5. On behalf of the respondents it was submitted that that basic award should be reduced on two principal bases. First, with reference to Section 122(2) of the Employment Rights Act 1996 (“the 1996 Act”) on the ground that the claimant’s conduct before her dismissal was such that it would be just and equitable to make such a reduction. In the circumstances of this case as more fully set out in the Liability Reasons the Tribunal is not satisfied that there was any such conduct on behalf of the claimant and, therefore, no such reduction is made.
6. The Tribunal has also considered the submission on behalf of the respondents that the claimant did not raise a grievance with regard to the circumstances giving rise to her dismissal and, therefore, that a percentage reduction should be made to the basic award in accordance with Section 207A of the Trade Union and Relations (Consolidation) Act 1992. While it is right that the claimant did not expressly write to the respondents raising a grievance regarding what she considered to be her entitlement to receive her full wage during her sickness absence, this issue was brought to the attention of Mr Taylor (who was then acting on behalf of the respondents as the consulting manager employed by their agent, Parker Barras Bar One Limited. That being so, in the context of this particular employment relationship, the Tribunal is not satisfied that the claimant “failed to comply with” the ACAS code of practice in relation to grievances. If the Tribunal’s decision on that point had been to the contrary, however, and we had been satisfied that the claimant had failed to comply with the Code of Practice, adverting to Section 207A(3)(c), the Tribunal is not satisfied that any such failure by the claimant was “unreasonable”. On either basis, therefore, the Tribunal does not make a percentage reduction pursuant to that Section 207A. It therefore awards to the claimant the full basic award of £9,909.

*Compensatory award*

7. As more fully set out in the Liability Reasons the Tribunal is satisfied that the claimant was contractually entitled to receive her full pay during any period of sickness absence up to a maximum of eight weeks. If that had been paid to her by the respondents, she would have used up her full entitlement to contractual sick pay by 20 March 2018. Her employment then continued for one week until it ended on 28 March 2018 when she was constructively unfairly dismissed.
8. The Tribunal is satisfied on the basis of the claimant's own evidence (and taking account also of the fact that she was in receipt of personal independence payment (PIP) and the content of the letter from her general practitioner dated 23 December 2019) that, had she not been dismissed, she would have been unable to return to work soon after the dismissal date and would have continued to have been absent for a period thereafter. By that time, as explained above, the Company would have been the claimant's employer. The Tribunal is satisfied that the Company would reasonably have considered that the claimant's employment could not continue indefinitely and, at some stage, it would have taken steps to consider the termination of that employment. The Tribunal is satisfied that such consideration would have been given to this issue after a further period of eight weeks following on from the end of the claimant's contractual sick pay period: ie on or around 15 May 2018. The Tribunal is satisfied that the Company would then have commenced a process relating to the possible termination of the claimant's employment and that that process would have been concluded approximately one further week thereafter: ie on 22 May 2018.
9. The Tribunal is also satisfied on the claimant's evidence (supported as it is by her receipt of PIP and the GP's letter referred to above) that at that time she would not have been able to demonstrate to the satisfaction of the Company that there was any reasonable likelihood that she would return to work in the foreseeable future. That being so, the Tribunal is satisfied that the Company would have fairly terminated the claimant's employment on grounds of her capability; the date of that fair dismissal being 22 May 2018.
10. Assessing the compensatory award on the above basis, therefore, if the claimant had not been dismissed she would have received statutory sick pay ("SSP") from the date of her actual dismissal (28 March 2018) to the date upon which the Tribunal considers she would have been fairly dismissed (22 May 2018). In March 2018 the rate of SSP was £82.35, which the claimant would therefore have received for approximately half a week. She would then have received a further 7.5 weeks' SSP at the higher rate in 2018/2019 of £92.05. Thus the total SSP that she would have received from the date of her dismissal to the date upon which the Tribunal is satisfied she would have been fairly dismissed is £735.05.
11. For the reasons set out above in relation to the calculation of the basic award, the Tribunal is not satisfied that it can be said that the claimant to any extent caused or contributed to her dismissal or that a percentage reduction should apply on grounds that she had not followed the ACAS Code of Practice.

12. The Tribunal also accepts (which was not challenged on behalf of the respondents) that the claimant is entitled to an award in respect of the loss of her statutory rights in the sum of £350.00.
13. Thus the total compensatory award comes to £1,085.05 (£735.05 + £350.00).

*Total award of compensation for unfair dismissal*

14. The total award of compensation for unfair dismissal is, therefore, £10,994.05 (£9,909 + £1,085.05).
15. The Recoupment Regulations do not apply to any part of that award of compensation.

Unauthorised deduction from wages

16. As set out above, the Tribunal found at the liability hearing that the claimant was entitled under her contract of employment to receive her full pay for the eight weeks during which she was absent due to sickness commencing on 23 January 2018. Instead, she only received SSP from the respondents from that date until the termination of her employment. She is therefore entitled under Section 24 of the 1996 Act to be paid the amount of that deduction, being the difference between the full pay that she should have received and the SSP that she did receive.
17. At the relevant time, it is agreed between the parties that the claimant's net pay was £267.82 per week and she only received SSP of £89.35. Thus there was a shortfall in each of the eight weeks of £187.47 and, therefore, the respondents made an unauthorised deduction from her wage totalling £1,427.76.
18. The respondents are ordered to pay that deduction to the claimant.

**EMPLOYMENT JUDGE MORRIS**

**JUDGMENT SIGNED BY EMPLOYMENT  
JUDGE ON 11 March 2020**

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