



# EMPLOYMENT TRIBUNALS

## Claimant

## Respondent

(1) Mr M Ford and  
(2) Mrs M Hickson Ford

v Sheffield and Ford Builders Limited

## REMEDY JUDGMENT

1. In respect of the First Claimant:
  - a. The Tribunal makes an award of compensation for unfair dismissal consisting of:
    - i. a basic award in the sum of £471.00; and
    - ii. a compensatory award in the sum of £8,164.00;
  - b. The Tribunal Orders the Respondent to pay to the First Claimant, damages for breach of contract in the sum of £314.00;
  - c. The Tribunal Orders the Respondent to pay to the First Claimant compensation of £351.68 in respect of the unlawful deduction from her wages;
  - d. Pursuant to Section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992, the awards under paragraphs b and c above shall be increased respectively by £78.50 and £87.92; and
  - e. Pursuant to Section 38 of the Employment Act 2002, the Tribunal makes an award in the sum of £314.00 to the Claimant in respect of the claims to which the Section relates.
2. In respect of the Second Claimant:
  - a. The Tribunal makes an award of compensation for unfair dismissal consisting of:
    - i. a basic award in the sum of £9,187.50; and
    - ii. a compensatory award in the sum of £500;

- b. The Tribunal Orders the Respondent to pay to the Second Claimant damages for breach of contract in the sum of £4,500.00;
- c. The Tribunal Orders the Respondent to pay to the Second Claimant, compensation of £825 in respect of the unlawful deduction from his wages;
- d. Pursuant to Section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992, the awards under paragraphs b and c above shall be increased respectively by £1,125 and £206.25; and
- e. Pursuant to Section 38 of the Employment Act 2002, the Tribunal makes an award in the sum of £750.00 to the Claimant in respect of the claims to which the Section relates.

## **REASONS**

1. The claims came before me on 1 July 2019. The Respondent did not attend and was not represented. In its absence I gave Judgment in favour of the Claimants, albeit I was not in a position to arrive at a detailed Judgment on remedy. I made various Case Management Orders and indicated that, unless the Respondent objected in writing within 7 days of being sent the Claimant's Schedules of Loss, I would determine the question on remedy on the basis of the parties' written submissions.
2. Subsequently, the Tribunal was notified that the Respondent had entered into administration and that CBA Business Solutions Limited had been appointed as administrators of the company. The proceedings were therefore stayed for 6 months and the matter was referred back to me following the end of that period.
3. In considering the issue of remedy, I have had regard to the written submissions on remedy from Mr Blitz, Counsel for the Claimants. In addition, there was a Remedy Bundle comprising 29 documents running to some 158 pages. The First Claimant had also made a statement in support of the Claimants' claim to a remedy.

### **Findings and Remedy**

4. I accept Counsel's calculations as to the Claimants' weekly, daily and hourly rates of pay. In the case of the First Claimant, her gross and net weekly pay was £157 (her income was below the threshold at which she would become liable for Tax and employee National Insurance contributions). On the basis of a twenty-five hour working week, the First Claimant's gross and net hourly rate of pay was £6.28. In the case of the Second Claimant, his gross weekly pay was £375. On the basis of a five-day working week, his gross daily rate of pay was £75.00. An hourly rate

of pay is not required for any calculation in respect of the Second Claimant.

5. The First Claimant commenced employment with the Respondent on 1 March 2015. She was dismissed with effect on 26 May 2017 and therefore had two complete years' service by the time of her dismissal. She was born on 1 April 1969 and accordingly above the age of 41 years throughout her employment with the Respondent.
6. The Second Claimant commenced employment with the Respondent in 1984 and had approximately 33 years' continuous service with the Respondent by the time of his dismissal, also on 26 May 2017. It is irrelevant for the purposes of remedy whether he had 32 or 33 years' continuous service as a maximum of 20 years' service is recognised for the purposes of calculating any basic award for unfair dismissal. The Second Claimant was born on 22 May 1967 and accordingly had 9 complete years' service aged 41 or over.
7. As at 17 October 2019, the First Claimant remained unemployed. She had enjoyed flexible part-time employment with the Respondent which had allowed her to continue to look after a small child and a dog while maintaining employment. Following her dismissal from the Respondent she attempted to set up as a self-employed trader offering secretarial services and as furniture painter; neither venture proved profitable. I accept Counsel's submission that the fact the First Claimant cashed in her pension (pages 119 – 129 of the Remedy Bundle) is a strong indication of her genuine difficulties in mitigating her financial losses. I accept Counsel's submission and conclude that 12 months is a reasonable and appropriate approximation of the Claimant's loss of earnings attributable to her dismissal by the Respondent and that she earned no net earnings from self-employment in the 12 month period following her dismissal.
8. In the case of the Second Claimant, following his dismissal he was able to secure alternative better remunerated work. Accordingly, he has suffered no loss of earnings (and indeed, makes no claim for loss of earnings arising from his unfair dismissal).
9. Having regard to paragraph 6 – 17 of the First Claimant's Grounds of Complaint (pages 11 – 13 of the Remedy Bundle), paragraph 7 – 20 of the Second Claimant's Grounds of Complaint (pages 26 – 28 of the Remedy Bundle) and paragraph 8 of the First Claimant's Remedy Witness Statement, I conclude that little, if any, meaningful attempt was made by the Respondent to follow a dismissal process, let alone a process that complied with the Acas Code of Practice on Discipline and Grievance Procedures and that there has been no explanation by the Respondent for its failings in that regard. In its Grounds of Resistance, the Respondent asserted that the Claimants agreed their employment would cease. However, no further explanation or details were provided by the Respondent as to the circumstances in which the Claimants' employment with the Respondent had ended, including any process followed by it. I

prefer the Claimants' account as to the sudden circumstances in which their employments were terminated.

12. With the exception of the basic award for unfair dismissal, the claims to which the proceedings relate concern matters to which a relevant Code of Practice applies, namely the Acas Code of Practice on Discipline and Grievance Procedures. The Respondent failed to comply with the Code in relation to those matters and its failure in that regard was unreasonable. On the basis that little, if any, meaningful attempt was made by the Respondent to follow a dismissal process, I consider it would be just and equitable in all the circumstances to increase the awards it makes to the Claimants by 25% pursuant to Section 207A(2) of the Trade Union and Labour Relations (Consolidation) Act 1992.
13. In view of the findings and conclusions above, I make a basic award in favour of the First Claimant in the sum of £471, namely  $£157 \times 3.5 = £471$ . I make a basic award in favour of the Second Claimant in the sum of £9,187.50 namely  $£375 \times 24.5 = £9,187.50$ . I accept Counsel's submissions at paragraphs 12 – 20 of his written submissions on remedy as to the calculation of the basic awards in this matter.
14. As regards the compensatory element of the awards to the Claimants in respect of their unfair dismissal, I accept Counsel's submissions at paragraphs 21 – 35 of his written submissions on remedy, save that I shall make an award of £157 (equating to one week's pay) in respect of the First Claimant's loss of her statutory rights. However, this will make no difference to the amount of the compensatory award in her case since the effect of Section 124(1ZA)(b) of the Employment Rights Act 1996, is that the compensatory award to the First Claimant is capped at 52 weeks' pay, namely £8,164. But for the statutory cap on compensation, the award would have been £8,164 for loss of earnings and a further £157 for loss of statutory rights, uplifted by 25%, to give an overall award of £10,401.25 (before the application of the statutory cap).
15. In the case of the Second Claimant, the compensatory element of the award for unfair dismissal is £500, namely to compensate him in respect of the loss of his statutory rights after 32 or 33 years' long service with the Respondent.
16. My Judgment on 1 July 2019 was that the First Claimant had been dismissed in breach of contract, having not been given two weeks' notice of termination of her employment. On the basis of the findings above, including that she did not mitigate her losses, she is therefore entitled to damages of £314 for breach of contract, that sum to be uplifted by 25% to reflect the adjustment made under Section 207A of the 1992 Act.
17. In the case of the Second Claimant, my Judgment on 1 July 2019 was that the Second Claimant had been dismissed in breach of contract, having not been given 12 weeks' notice of termination of his employment. I accept Counsel's submissions at paragraphs 37 – 39 of his written submissions

on remedy that the notice period in the Second Claimant's case is statutory and reflects Parliament's intention as to the minimum acceptable good industrial practice in relation to notice and notice pay. As such, I accept Counsel's submission that there is no basis for any deduction for mitigation. The appropriate award for wrongful dismissal is therefore £4,500 (£375 x 12 = £4,500).

18. In my Judgment of 1 July 2019, I declared that the Claimants' complaints that the Respondent had made unlawful deduction from their wages in respect of holiday pay, were well founded. Having regard to the findings and conclusions above, I award the First Claimant the sum of £351.68 in respect of the unlawful deduction from her wages (namely, 56 hours accrued but untaken holiday) and the sum of £825 to the Second Claimant in respect of the unlawful deduction from his wages (namely 11 days' accrued but untaken holiday). The awards shall be uplifted by £87.92 and £206.25 respectively pursuant to Section 207A of the 1992 Act.
  
20. Finally, the Claimants' complaints that, when the proceedings were begun, the Respondent was in breach of its duties to them under Section 1(1) of the Employment Rights Act 1996, were adjudged to be well founded and I made an award in their favour of an amount equal to two weeks' pay. In view of the findings above the award to the First Claimant is £314 and to the Second Claimant is £750.

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Employment Judge Tynan

Date: ...26 June 2020.....

Sent to the parties on: 14/07/2020

.Jon Marlowe  
For the Tribunal Office