



# EMPLOYMENT TRIBUNALS

## BETWEEN

Claimant  
MS E LAWS

AND

Respondent  
IMPERIAL CLEANING SERVICES  
LTD

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: BRISTOL      ON:    6<sup>TH</sup> AUGUST 2020

EMPLOYMENT JUDGE MR P CADNEY  
(SITTING ALONE)

MEMBERS:

APPEARANCES:-

FOR THE CLAIMANT:-      IN PERSON

FOR THE RESPONDENT:-    NO ATTENDANCE

## JUDGMENT

The judgment of the tribunal is that:-

- i) The claimant's claim of unfair dismissal is well founded and is upheld.
- ii) The claimant's claim of direct race discrimination is well founded and is upheld.
- iii) The claimant's claim for unpaid notice pay is well founded as is upheld.

The respondent is ordered to pay to the claimant the following sums:-

### Unfair Dismissal

- iv) Basic award - £1128.49
- v) Compensatory Award -£5352.76

Race Discrimination

vi) £6400

Notice Pay

vii) £1177.56

**Reasons**

1. By a claim form submitted on 3<sup>rd</sup> December 2019 the claimant brought the claims set out below. The respondent was identified as Imperial Cleaning and the address given was a part of the full address but was incomplete. The claim was served on the respondent, but no response was received. A Companies House Search revealed the full correct name and address and the claim was re-served. Once again, no response was received. EJ Midgely determined that the case was not suitable for a default judgment and the case was listed for hearing today. Both parties were notified by a letter dated 28<sup>th</sup> February 2020. This informed the respondent that as it had not entered a response it would only be entitled to participate in the hearing to the extent permitted by the Judge. No further correspondence was received from the respondent. On 6<sup>th</sup> July 2020 the tribunal notified the parties that the hearing was being converted to a CVP hearing. Presumably prompted by this on 15<sup>th</sup> July 2020 the tribunal received a completed ET3 in which the respondent set out a defence to the claims. It is apparent from this that the respondent must have received either or both of the copies of the claim forms served on it as it presented specific responses to at least some of the claimant's complaints, and that the address was correct. However, the response was rejected as it did not comply with rule 20 of the ET's rules of procedure in that there was no application for the response to be accepted out of time and no explanation for the delay. On 24<sup>th</sup> July the tribunal wrote to the respondent saying: "*The respondent must make an application for an extension of time to submit their ET3 response. This must be accompanied by a draft response and reasons for presenting their response out of time.*" No specific time limit was placed on this direction, but no such application has been received as of today's date and the respondent has not attended the hearing and not sought permission to participate.
2. The position today is therefore that as no valid response has been entered, and as the respondent has not attended today's hearing there is no defence to the pleaded claims and no challenge to the claimant's evidence.
3. Unfair Dismissal – The claimant's unchallenged evidence is that she had a contractual right to 12.5 hours work per week but that after she transferred via a TUPE transfer her hours were cut to 10 per week. In addition, she had a contractual right to an extra day's holiday by reason of long service and this was not honoured.

As a consequence, she resigned on 7<sup>th</sup> October 2019. She contends that these were fundamental breaches entitling her to resign.

4. It follows that she has claims for automatic unfair dismissal and/or “ordinary” unfair dismissal on the basis of a fundamental breach of her contract, that is to say the failure to adhere to her contractual hours and/or holiday entitlement. In any event as no response has been entered she is entitled to a default judgment. For these reasons judgment will be entered in her favour in relation to the claim of unfair dismissal.
5. Race Discrimination – The claimant’s unchallenged evidence is that she discovered that Polish employees were paid more than her to perform the same work. As above she is entitled to a default judgment in any event and, in addition that evidence, which is not challenged before me, is sufficient to satisfy stage 1 of the Igen v Wong test and transfer the burden of proof. In the absence of entering a response or attending the respondent can necessarily not satisfy that burden. For those reasons judgment will be entered in the claimant’s favour.
6. Notice Pay – The claimant also has a claim for unpaid notice pay. As her claim for constructive dismissal has succeeded it follows that she has established the right to be paid notice on dismissal; and above she is entitled to judgment in default of a response being entered.

### Remedy

7. Unfair dismissal – The claimant was employed by the respondent and its predecessors from 3<sup>rd</sup> April 2006 until 7<sup>th</sup> October 2019. She has been unable to find work until now. In the absence of the respondent participating in today’s hearing there is no allegation of a failure to mitigate her loss.
8. Basic Award – The claimant’s contractual pay was £7.85 per hour and she had a 12.5 hour week giving a weekly income of £98.13 (which is too low to pay any income tax). The claimant is entitled to a basic award of £1128.49 (11.5 x £98.13)
9. Compensatory Award – I accept the claimant is likely to be able to find work within a year of being dismissed, and as set out above in the absence of the respondent there is no allegation of any failure to mitigate her loss. In my judgment she is entitled to loss of earnings of £5102.76 (52 x £98.13) together with £250 for loss of statutory rights.
10. Discrimination – The discrimination claim will only attract an award of injury to feelings, and whilst I accept that the claimant was upset to discover that she was being paid less than comparable Polish workers, in my judgement the award falls towards the upper end of the lower bracket of the Vento guidelines, and I award £6,000.
11. Interest – The tribunal is obliged to award interest at 8% per annum from the date of the discrimination which the tribunal will take as the date of the resignation. The

calculation date is almost exactly 10 months from that point giving a figure of £400 (£6,000 x 10/12 x 8%).

12. Notice Pay – The claimant is entitled to statutory notice pay of £1177.56 (12 x £98.13).

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**EMPLOYMENT JUDGE CADNEY**

**Dated: 1st September 20**