



EMPLOYMENT TRIBUNALS

Claimant Miss R Balkyte

Respondent More Seafood Limited

Heard at: Exeter

On: 6 August 2020

Employment Judge Goraj

RESERVED JUDGMENT

The JUDGMENT of the Tribunal is that pursuant to the Liability Judgment dated 18 December 2019: -

1. The claimant is awarded, and the respondent is ordered to pay to her, damages in the sum of £551.50 net (2 x £275.75 net week's pay) in respect of the respondent's breach of contract relating to notice.
2. The claimant is awarded, and the respondent is ordered to pay to her, the total sum of £8,104.72 in respect of her unfair dismissal.
3. The claimant's total award is therefore £8,656.22 which sum the respondent is ordered to pay to the claimant.
4. The Employment Protection (Recoupment of Benefits) Regulations 1996 ("the Regulations") apply in this case in respect of the claimant's unfair dismissal claim.
5. For the purposes of the Regulations: - (a) the total monetary award is £8,656.22 (b) the amount of the prescribed element is £4,963.50 (c) the dates to which the prescribed element is attributable are 28 February 2020 to 28 August 2020 and (c) the monetary award exceeds the prescribed element by £3,692.72.

CONDUCT OF THE HEARING

1. This hearing (a remedy hearing) was listed, with the consent of the claimant, as a remote hearing by cloud video platform (“CVP”). The claimant however experienced technical difficulties and this hearing was therefore, with the consent of the claimant, conducted by telephone. In the circumstances, it was agreed that the Tribunal would reserve the decision and issue the Remedy Judgment as a reserved judgment.

REASONS

BACKGROUND

2. By a claim form presented on 27 October 2019, the claimant brought claims of unfair dismissal and breach of contract (for notice).
3. The respondent did not enter a response to the claimant’s claims.
4. The Tribunal issued a default judgment (liability only) pursuant to Rule 21 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 on 11 December 2019 which was sent to the parties on 18 December 2019 (“the Liability Judgment”). The Tribunal held in the Liability Judgment that: - (1) the claimant had been unfairly dismissed by the respondent and (2) that the claimant’s claim for breach of contract in respect of her notice pay succeeded.
5. The matter was listed for this hearing to determine remedy. The respondent was served with copies of the notice of the remedy hearing. The original notice of the remedy hearing was dated 20 December 2019. This hearing was cancelled because of the Covid – 19 pandemic. The respondent was also served with a copy of the subsequent notice of remedy hearing dated 21 July 2019 (in which the parties were notified that the matter would be conducted by CVP).

DOCUMENTS

6. The Tribunal was provided with the following documents:- (a) the claimant’s schedule of loss dated 3 May 2020 (b) the documents provided to the Tribunal with the claimant’s email dated 5 August 2020 and (c) the further documents provided by the claimant with the claimant’s email dated 10 August 2020 (namely the claimant’s P60 for

the financial year ended April 2018) and the claimant's application for universal credit together with a summary statement of payments received between 25th April and 25 July 2020. The documents provided under cover of the claimant's email dated 10 August 2020 were submitted by the claimant at the request of the Tribunal. The Tribunal was unable to access the statements provided by the claimant relating to her claims for universal credit and sought further clarification from the claimant.

Witness evidence

7. The Tribunal received oral evidence from the claimant on oath.
8. Having given careful consideration to the claimant's claim form, the documentation provided by the claimant and the oral evidence of the claimant the Tribunal has made the following findings of fact for the purposes of the claimant's claim for compensation/ damages.

Findings of fact on remedy

9. The claimant was employed by the respondent as a factory worker in the respondent's fish processing operation between 15 February 2017 and 24 September 2019. The claimant's employment came to an end by summary dismissal on 24 September 2019. The claimant's date of birth is 15 January 1997.
10. The claimant was not issued by the respondent with written terms of employment/a statement of terms and conditions of employment as required by section 1 of the Employment Rights Act 1996 ("the Act").
11. The Tribunal accepts the oral evidence of the claimant that: - (a) it was orally agreed with the respondent at the commencement of her employment that she would be provided with work as long as there was work available for her to do (b) the claimant worked for the respondent every week during her employment and that she worked up to 40 hours per week on a regular basis.
12. The claimant states on her claim form (paragraph 6) that she worked on average for 40 hours per week for which she received £300 gross per week with a net weekly take-home pay of £280. The claimant was unable to provide any payslips. The claimant explained to the Tribunal in her oral evidence that she had calculated the above figures on the basis of her P60. Following the hearing the claimant provided the Tribunal, under cover of the email dated 10 August 2020, with a P60 for the year ended April 2018. Doing the best that the Tribunal was able to do with the available information the Tribunal is satisfied, on the balance of probabilities, that at the time of the termination of the claimant's employment she had an average gross weekly salary

(having regard to the figure of £15,015.36 stated on the P60) of £288.76 gross per week and an average weekly net salary (taking into account the deduction of £701 for tax stated on the P60 which gives a net annual salary of £14,314.36) of £275.75.

13. The Tribunal is further satisfied, in the absence of any statement of terms and conditions of employment/any evidence to the contrary that the claimant was entitled, in the absence of any gross misconduct, to 2 weeks' notice to terminate her employment (as she had two full years of employment at the date of the termination of her employment) pursuant to section 86 of the Act.

Alternative employment

14. The claimant secured temporary alternative employment with/ via Acorn Agency with effect from 22 October 2019 which employment continued until 6 January 2020 at which time no further work was available. The claimant received £330 per week during this period of employment.
15. The claimant secured further temporary alternative employment with/via the Paignton Job Shop from 6 January 2020 until 27 February 2020 at which time no further work was available. The claimant received a similar salary during that period to that which she had received from the respondent.
16. The claimant was unable to secure any further employment until 3 July 2020. During the intervening period the claimant received universal credit (between 25 April and 25 July 2020).
17. The claimant obtained a permanent position with effect from 3 July 2020 on comparable terms (including salary) to that which she received in the employment of the respondent and the claimant does not pursue any claim for any further losses after that date.

The circumstances surrounding the termination of the claimant's employment

18. The Tribunal is satisfied on the basis of the available evidence (including in particular the claimant's oral evidence and the letter of grievance/appeal dated 2 October 2019) that :- (a) the claimant's employment was terminated by the respondent summarily on 24 September 2019 (at which time the claimant was told that she was no longer welcome to work at the respondent) after the claimant tried unsuccessfully to get the respondent to resolve issues with other employees (b) the claimant was dismissed without any prior warning/ investigation or disciplinary process (c) the claimant raised a grievance / appeal by a letter dated 2 October 2019 (including to clarify the

position with regard to the termination of her employment) and (d) the respondent did not respond/ seek to address the issues raised in the claimant's letter of appeal/grievance dated 2 October 2019.

19. Further, the Tribunal is not satisfied in the light of the claimant's evidence regarding such matters and the absence of any evidence from the respondent that the claimant was guilty of any conduct entitling the respondent to dismiss her without notice.

THE LAW

20. The Tribunal has had regard in particular to (a) sections 1, 119, 122 and 123 of the Act (b) section 38 of the Employment Act 2002 and (c) section 207 A of the Trade Union & Labour Relations (Consolidation) Act 1992 ("the 1992 Act") together with the provisions of the ACAS Code of Practice 1: Disciplinary and Grievance Procedures (2015) ("the Code").

SUBMISSIONS OF THE CLAIMANT

21. The Tribunal has had regard to the contents of the claimant's schedule of loss and oral submissions of the claimant.

THE CONCLUSIONS OF THE TRIBUNAL

Breach of contract for notice

22. The Tribunal is satisfied in light of the above findings that:- (a) the claimant was entitled to receive two weeks' notice to terminate her employment in the absence of any gross misconduct (b) the claimant was not guilty of any conduct entitling the respondent to dismiss her without notice and (c) the claimant did not receive any monies from any alternative employment during her notice period (which would have run from 24 September 2019)/acted reasonably in not seeking/ securing alternative employment during her notice period whilst waiting for clarification of the position regarding her employment from the respondent.
23. The Tribunal is further satisfied that, in all the circumstances, the claimant is entitled to damages in the sum of £551.50 (£275.75 net weekly pay x 2) for breach of contract for notice which sum the claimant is ordered to pay to the claimant.

THE CLAIMANT'S UNFAIR DISMISSAL CLAIM

Basic award

24. The Tribunal is satisfied that it is appropriate to award the claimant a basic award in respect of her unfair dismissal pursuant to section 119 of the Act in the sum of £288.76 (two year's employment but one week's gross pay as the claimant was aged 22 at the date of her dismissal).

Compensatory award

25. The Tribunal is satisfied that it is appropriate, in all the circumstances of this case, having regard to the provisions of section 123 of the Act, to award the claimant a compensatory award as calculated below.

Losses from the date of the expiry of the claimant's notice (8 October 2019 to 21 October 2019)

26. The Tribunal is satisfied that the claimant is entitled to a compensatory award for the two-week period starting from the expiry of the claimant's notice entitlement (8 October 2019) until the claimant obtained alternative employment on 22 October 2019 including that the claimant took reasonable steps during such period to clarify her employment position with the respondent/seek alternative employment. The claimant is therefore awarded a sum of £551.50 net (two weeks' net pay £275.75 x 2) in compensation for that period.

22 October 2019 to 27 February 2020

27. The claimant was able to secure temporary alternative employment between 22 October 2019 and 27 February 2020 (as referred to above) and the claimant is therefore not entitled to receive any compensatory award for this period.

28 February 2020 to 3 July 2020

28. The claimant was unable to secure alternative employment during this period and claimed universal credit as referred to above. The claimant obtained permanent employment on comparable terms to that received at the respondent from 3 July 2020. Having given the matter careful consideration, the Tribunal is satisfied that it is appropriate to award the claimant compensation for the period between 28 February 2020 and 3 July 2020. When reaching this conclusion the Tribunal has taken into account in particular that: (a) the employment which the claimant was able to secure between 22 October 2019 and 27 February 2020 was of a temporary rather than a permanent nature and (b) notwithstanding the Covid pandemic the Tribunal has received no evidence from the respondent that the claimant could not have been provided with fish processing work during such period.

29. The claimant is not however entitled to receive any compensation for the period after 3 July 2020 as she was able to secure permanent alternative employment at a comparable level that enjoyed at the respondent from that date.
30. The claimant is therefore awarded a sum of £4,963.50 (18 weeks x £275.75 net weekly salary) in compensation for the period between 28 February 2020 and 3 July 2020. This aspect of the award is however subject to the recoupment provisions as the claimant received universal credit during this period.

Loss of statutory rights

31. The Tribunal is satisfied that it is appropriate to award the claimant a sum of £275.75 (equivalent to one week's net pay) in respect of her loss of statutory rights of unfair dismissal. When reaching this conclusion the Tribunal has balanced the requirement of the claimant to work for a new employer for 2 years to re-acquire rights of unfair dismissal with the fact that the claimant's period of employment with the respondent was of short duration (2 years).

The total compensatory award

32. The total compensatory award (subject to the adjustments referred to below) is therefore £5,790.75 net (£551.50 +£4,963.50 +£275.75).

Adjustments pursuant to section 207A of the 1992 Act.

33. The Tribunal has gone on to consider whether any adjustments should be made to the claimant's compensatory award pursuant to section 207A of the 1992 Act. Having given the matter careful consideration, the Tribunal is satisfied that it is appropriate, in all the circumstances, to increase the claimant's compensatory award by 25% pursuant to such provisions. When reaching this conclusion, the Tribunal has taken into account in particular: - (a) paragraphs 5 – 29 of the Code (b) the complete failure by the respondent to adhere to any of the requirements relating to the investigation and disciplinary processes contained in the Code prior to the claimant's summary dismissal and (b) the respondent's failure to respond to the claimant's letter of grievance/appeal dated 2 October 2019.
34. The claimant's compensatory award is therefore increased by 25 % to £7,238.44 (£5,790.75 +25% (£1,447.69)) (subject to the recoupment provisions).

The award pursuant to section 38 of the Employment Act 2002

35. Finally, the claimant is awarded a further sum of 2 week's gross pay in the sum of £577.52 (2 x £288.76 gross per week) pursuant to section 38 of the Employment Act 2002 in respect of the failure of the respondent to issue the claimant with a statement of terms and conditions of employment

as required pursuant to section 1 of the Act. The Tribunal is not satisfied that there are any particular circumstances in this case which make it just and equitable to increase the award by a higher amount.

36. The total unfair dismissal award awarded to the claimant is therefore £8,104.72 (basic award= £288.76 + compensatory award =£5,790.75 + uplift of £1,447.69 + compensation of failure to issue terms and conditions of employment = £577.52).
37. The total award (unfair dismissal and breach of contract for notice) is therefore £8,656.22 (£8,104.72 + £551.50).
38. The Employment Protection (Recoupment of Benefits) Regulations 1996 apply in this case.

Employment Judge Goraj
Date: 28 August 2020

Online publication of judgments and reasons

The Employment Tribunal (ET) is required to maintain a register of all judgments and written reasons. The register must be accessible to the public. It has recently been moved online. All judgments and reasons since February 2017 are now available at: <https://www.gov.uk/employment-tribunal-decisions>

The ET has no power to refuse to place a judgment or reasons on the online register, or to remove a judgment or reasons from the register once they have been placed there. If you consider that these documents should be anonymised in anyway prior to publication, you will need to apply to the ET for an order to that effect under Rule 50 of the ET's Rules of Procedure. Such an application would need to be copied to all other parties for comment and it would be carefully scrutinised by a judge (where appropriate, with panel members) before deciding whether (and to what extent) anonymity should be granted to a party or a witness