



THE EMPLOYMENT TRIBUNALS

Claimant
Ms K Angioy

Respondent
Hanif Premier Ltd

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT NEWCASTLE (by Cloud Video Platform)

ON 21 August 2020.

BEFORE EMPLOYMENT JUDGE GARNON (sitting alone)

Attendance

Claimant : in person

Respondent: Mr T Goldup of Avensure

JUDGMENT on REMEDY

I order the respondent to pay to the claimant

1. damages for wrongful dismissal (notice pay) of **£ 262.72**

2. compensation for unfair dismissal of **£2584.12** (being a basic award of **£656.80** and a compensatory award of **£1927.32**) The Recoupment Regulations do not apply. The are included in this award.

2. a 25% increase to the compensatory award and item 1 above under section 207A of Trade Union and Labour Relations (Consolidation) Act 1992 as amended (TULRCA) of **£ 547.51**.

3. compensation for untaken annual leave of **£735.62**

4. unlawfully deducted wages of **£1886.92**

5. a 25% increase under section 207A TULRCA on such wages being **£ 471.73**

6. an additional award under section 38 of the Employment Act 2002 of **£525.44**

The total payable by the respondent to the claimant is **£ 7014.06**.

REASONS (bold print is my emphasis and italics are quotations)

ISSUE AND FACTS

1. The only issue is what remedy should be awarded for unfair and wrongful dismissal, unlawful deduction of wages and failure to pay compensation for untaken annual leave upon which I gave judgment on liability on **12 November 2019** under rule 21 of the Employment Tribunals Rules of Procedure 2013.

2. The claimant worked at the respondent's convenience shop and post office franchise from January 2014. She raised a very detailed grievance on 11 July 2019 about various matters including under payment or late payment of wages and says it was ignored. She commenced Early Conciliation on 23 July. It lasted not the usual 4 weeks but until 6 September at the

respondent's request. After a meeting on 5 September which solved nothing she resigned on 16 September, confirmed in writing on 25 September and claimed constructive dismissal. The claim form presented on 1 October 2019 says she had given "both" directors every opportunity to deal with her concerns but neither was interested.

2. The claim was sent to the respondent on 14 October. A response was due by 11 November 2019 but none was received. Having checked the service address was correct by searching at Companies House, I gave judgment on 12 November. That judgment, sent on 14 November would have been received in the normal course of post by 16 November 2019 at latest.

3. The respondent applied on 28 November by e-mail to the Tribunal from Mr Roddy of Avensure, at 17:17, for a reconsideration saying it was unable to comply with the time limit to file the ET3 because "the respondent" had been caring for his disabled in India from 10 to 21 October 2019. On return to the UK he stayed in London for two days before returning to Middlesbrough on 24 October 2019. On return, he did not open the post until after the deadline as he was busy preparing for a divorce hearing. The email said ***The Respondent is a private individual with no previous experience of dealing with Employment Tribunal litigation.***

4. I did not refuse the application under Rule 72(1) though I was puzzled by the words emboldened above because the respondent is a limited company. By email on 9 December the claimant objected to reconsideration without a hearing saying:

I do not believe the Respondents are telling the truth about the reason for delays and I believe they should explain the reason for the delay in person.

*The Respondent is owned or managed by more than one Director. As well as Mr. Ravi Makkapati , **Mr Jehangir Durrani** also Director owns and manages the Respondent.*

I am aware of previous Employment Tribunal claims against the respondent by Nikki Smith and Kamran Mahmood and they do have experience in responding to these claims.

5. I ordered a hearing which I conducted on 7 February 2020. The parties repeated the above arguments. Mr Makkapati gave evidence. I accepted he went to India and London but there was no reasonable excuse for no-one opening post addressed to the respondent while he was away or himself not doing so soon after his return. He also in answer to the claimant confirmed the respondent had sold the shop on 1 December 2019. The remedy hearing had been fixed for 3 December and notice sent to the parties on 20 November. Still no contact with the Tribunal was made until so soon before that remedy hearing it had to be postponed.

6. As the claimant submitted, everything pointed to the respondent ignoring her grievances and her claim for long enough to divest itself of assets and deprive her of effective remedy. The claimant showed her grievances were ignored as were her efforts using Early Conciliation to avoid litigation. The proposed defence was very weak. Mr Roddy submitted the prejudice to the respondent of not being allowed to defend far outweighed that to the claimant. I wholly rejected that. I gave lengthy reasons I need not repeat including "*Under the 2013 Rules, the only ground for reconsideration is whether one is necessary in the interests of justice. That means justice to both sides and other litigants. To allow a respondent, who has not taken advantage of the opportunity to defend, to do so after a Rule 21 judgment would **make a mockery of the system.***" On reconsideration, I confirmed the judgment and said the respondent would be entitled to participate in the remedy hearing which would be listed for

half a day on 22 April 2020 ONLY on the question of remedy. As I said at the time , I saw the respondent as cynically evading payment of its debts.

7. On 7 April 2020, Mr Roddy emailed an application for a postponement of the remedy hearing on the basis “ *the Respondent is currently in India and unable to return to the UK due to COVID-19.* The postponement was granted due to the effects of the pandemic.

8. I conducted a telephone preliminary hearing on 12 June. A Company search I performed then revealed Mr Makkapati has **never** been a director of the respondent. Since 18 June 2018, Mr Jehangir Durrani has been a director, and the sole one since Mr Hanif resigned in December 2018. Its accounts to April 2019 showed it was insolvent. On 25 February 2020, Mr Durrani signed application for the company to be struck off the register certifying neither s.1004 nor s.1005 Companies Act 2006 applied. Whereas certain debts to employees of a company subject to formal insolvency proceedings as defined in Part 12 of the Employment Rights Act 1996 are paid by the Secretary of State , none are paid for a company which is struck off the register after an application by a director. Mr Goldup said Avensure had been receiving instruction on behalf of the respondent from Mr Makkapati. I advised the claimant to contact the Registrar of Companies urgently to object to the strike off, which she did..

9. Both parties had the technology for a remote video hearing so I ordered one to be listed as soon as possible . In preparation I required the claimant to do her best to provide information , and documents in support, needed for remedy. I gave leave to the respondent to reply **within 14 days thereafter.**

10. On 26 June 2020 she sent this and several documents supporting her calculations :

I have alternative work on 23 / 9/ 19 for 12 hours per week at minimum wage. Estimated hearing date 10/8/20

Basic award

5 weeks @ 131.36 = 656.80

Compensatory

Loss of Statutory Rights = 300.00

Loss of earnings from

16/9/19 to 23/9/19 = 16 hours = 131.36

Loss of earnings from

23/9/19 to 31/3/20 27 weeks x 4hrs @ 8.21 = 886.68

Loss of earnings from

1/4/20 to 10/8/20 19 weeks x 4hrs @ 8.72 = 662.72

Future loss of earnings

6 weeks @ 4hrs @ 8.72 = 209.28

Total = £ **2846.84**

Wages

52 hours @ 7.83 = 407.16

31 hours @ 8,21 = 254.51

Total = £ **661.67**

Minimum wage £7.83

02-09-18 paid £375.84. **16 hours unpaid** 03-12-18 paid £438.48. **8 hours unpaid**

05-02-19 paid £469.80 **4 hours unpaid** 03-03-19 paid £313.20 **24 hours unpaid**

Minimum wage £8.21

03-05-19 paid £459.76 **8 hours unpaid** 01-06-19 paid £451.55 **9 hours unpaid**

02-07-19 paid £509.02 **14 hours unpaid**

SSP from 16/6/19 to 16/9/19

13 weeks @ 94.25 = £ **1225.25**

Holiday pay

2 years 5.6 x 16 X 2 = 179.2 hours @ 8.21 = £ **1471.23**

Failure to provide written terms and conditions

4 weeks @ 131.36 = £ **525.44**

Plus a 25 % uplift for failure to follow Disciplinary/Grievance procedures

11. Nothing was received from the respondent until this email

From: Thomas Goldup [mailto:ThomasGoldup@avensure.com]

Sent: 20 August 2020 17:55

To: NEWCASTLEET <newcastleet@Justice.gov.uk>

Cc: kayleeangioy@gmail.com

Subject: URGENT: Miss K Angioy v Hanif Premier Limited - Case Number: 2503432/19 - Respondent's Representation - [ODC-3008537-106945] (HANI02)

Importance: High

Dear Sir/Madam,

Miss K Angioy v Hanif Premier Limited

Case Number: 2503432/19

We act for the Respondent in the above proceedings.

We refer to those proceedings and in particular to the hearing to determine remedy listed for tomorrow Friday 21 August 2020 at 10am.

We write to the inform the Tribunal that **the Respondent informed us late this afternoon** that a **Winding-up Order** has been issued against it and that a Mr R Gill of The Insolvency Service has been appointed Official Receiver. As a result we are now aware the Respondent no longer has the authority to instruct us in these proceedings and must take instruction from the Official Receiver. As we were not informed of the contact details for the Official Receiver until after office hours we have not yet been able to confirm what their position is in respect of the Claimant's claim and if they intend to instruct us in these proceedings.

We are urgently taking all necessary steps to establish clarity in this matter and will update the Tribunal just as soon as possible.

We have copied the Claimant into this email.

12. When a company ceases to trade, some directors simply do not pay debts due to employees ,or other creditors such as suppliers. In due course they apply to the Registrar of Companies to have the company struck off the register. If that happens the company is known as "**dissolved**". Creditors will almost certainly go unpaid. The alternative and proper route is for the directors and/or shareholders or some creditors to take steps to "wind up" the affairs of

the company. There are various forms of insolvency proceedings including receivership, administration, members voluntary liquidation (if the company has assets which exceed its liabilities) or creditors voluntary liquidation (if it does not). There is also **compulsory liquidation** in which a Court makes a **winding up order** Such proceedings are started by someone, usually a creditor but may be a shareholder or director, presenting to the Court a “winding up petition” well before a Court can make an Order. Proceedings against a company in compulsory liquidation may only be continued with the leave of the Court which granted the order. I searched at Companies House today and there is no sign of any such petition or Order, Though I accept Companies House records are not always updated quickly ,when I asked Mr Goldup today, it appears he only has the word of Mr Makkapati whose conduct of these proceedings has bordered on fraudulent, that a winding up order exists. It is inconceivable Mr Makkapati did not know well before contacting Mr Goldup late yesterday that there was a winding up **petition**. Mr Goldup was left today to deal with a disgraceful situation created by his client , not by him, and did so professionally by offering not resistance to the claimant’s well drafted claim. If **there are restrictions on proceedings continuing against the company, the Official Receiver can apply for this judgment to be set aside .**

13. The Employment Rights Act 1996 (ERA)sets out in sections 118-124A the compensation which can be awarded for unfair dismissal . The claimant’s schedule is flawless A claim of wrongful dismissal covers the pay during the notice period less sums earned in mitigation of loss . That sum is **£ 262.72 and reduces the compensatory award** . Only the basic award of **£656.80 and notice pay** will be paid by the Secretary of State.

14. Section 13 of the ERA , so far as relevant, provides

(1) An employer shall not make a deduction from wages of a worker employed by him unless—

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker’s contract, or

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

(2) In this section “relevant provision”, in relation to a worker’s contract, means a provision of the contract comprised—

(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker’s wages on that occasion.

The effect of ss (3) is that unpaid wages are deemed to be a deduction. **Some of that can be claimed from the Secretary of State.**

15. Regulation 14 of the Working Time Regulations 1998 says where a worker's employment is terminated during the course of a leave year, and on the date on which the termination takes effect the proportion she has taken of the leave to which he is entitled **in the leave year**

under regulation 13 and regulation 13A differs from the proportion of the leave year which has expired she may be paid in lieu of it . Although there are exceptions leave from earlier years cannot be awarded. The claimant was paid no holiday pay and I will award one year. **Some of that can be claimed from the Secretary of State.**

16. Section 207A of TULCRA provides

(1) This section applies to proceedings before an employment tribunal relating to a claim by an employee under any of the jurisdictions listed in Schedule A2.

(2) If, in the case of proceedings to which this section applies, it appears to the employment tribunal that—

(a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies,

(b) the employer has failed to comply with that Code in relation to that matter, and

(c) that failure was unreasonable,

the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 25%.

The Code on Grievance Procedures applies to the unfair dismissal and wages claims and it was wholly disregarded so a 25% increase is merited . the uplift

17. Section 38 of the Employment Act 2002 says if in the case of proceedings to which this section applies (which it does)the employment tribunal makes an award to the employee in respect of the claim to which the proceedings relate, and when the proceedings were begun the employer was in breach of his duty to the employee under section 1(1) or 4(1) of the ERA to provide a written statement of terms and conditions of employment and changes thereto (which it was) the tribunal must, unless there are exceptional circumstances which would make an award or increase unjust or inequitable. increase the award by the minimum amount of two weeks pay and may, if it considers it just and equitable in all the circumstances, increase the award by the higher amount of four weeks pay. This employer has made no effort to comply with any aspect of employment law of Tribunal procedure so the higher amount is merited . This too will not be paid by the Secretary of State.

18. I can only express the view that the Secretary of State, who in part may have to pay debts of the company , and/or the Official Receiver, if he becomes involved, should take whatever steps they can to deal with the way in which the director and manager of this company has conducted its affairs.

EMPLOYMENT JUDGE T M GARNON
JUDGMENT AUTHORISED BY THE EMPLOYMENT JUDGE ON 21 AUGUST 2020