



EMPLOYMENT TRIBUNALS

Claimant: Susan Coulson

Respondent: RentPlus UK Ltd

Heard at: Exeter (by cvp)

On: 20 November 2020

Before: Employment Judge Housego
Mr I Ley
Mr J Howard

Representation

Claimant: in person

Respondent: Sean Morris of Peninsula UK Ltd

JUDGMENT

1. The Respondent is ordered to pay to the Claimant the sum of £43,410.99 as a compensatory award for unfair dismissal.
2. The Respondent is ordered to pay to the Claimant the sum of £20,721.92 in relation to her successful claim for sex discrimination.
3. The Tribunal orders that the date for the payment of the award for sex discrimination is 7 days after the appeal against the Tribunal's decision on the sex discrimination claim is concluded, with interest running at 8% from 20 November 2020 to that date (7 days after the appeal is concluded).
4. The Recoupment Regulations do not apply to this judgment.

REASONS

1. The Tribunal heard oral evidence from the Claimant, who was cross examined by the Respondent's representative and answered questions from the Tribunal. The Claimant provided a substantial bundle of documents, and a detailed schedule of loss, and the Respondent filed a counter schedule.

2. The Respondent is appealing the Tribunal's liability decision on sex discrimination, but is not appealing the decision that the Claimant was unfairly dismissed by them. Earlier I refused an application to adjourn this hearing pending the resolution of that appeal because there is no reason to delay the remedy hearing for the (unappealed) unfair dismissal finding, and because if the appeal against the finding of sex discrimination is unsuccessful no further hearing will be needed. Further, if the Respondent wishes to appeal the award in respect of sex discrimination (or the award for unfair dismissal) that or those appeal(s) can be heard at the same time.
3. The facts found and the submissions made appear from the Tribunal's reasons and calculations, below.
4. The Tribunal awarded all financial loss as compensation for unfair dismissal, and not as an award for sex discrimination. There is no interest on that award, but the claim for unfair dismissal is not the subject of appeal, and this was Ms Coulson's request, to which the Tribunal acceded. Mr Morris did not oppose that request. It follows that the judgment for the unfair dismissal is payable now, and is unaffected in any way by the appeal against the finding of sex discrimination.

Basic award

5. There is no basic award as Ms Coulson was paid a statutory redundancy payment which extinguishes that entitlement.

Compensatory award

6. Ms Coulson obtained alternative employment after a second interview on 29 April 2019, and started at her new job on 17 June 2019. She is CEO of a substantial operation in London. Her pay is £5,000 a year more than at the Respondent, but she has needed to take a room in London at a cost of £450 a month, has travel costs to work, and to and from Devon weekly. She is, in reality, worse off, but seeks no loss from the point she started in that role, save 1 month's pension loss.
7. The Tribunal considered that the evidence of the Claimant, both oral and documentary showed that she made every reasonable effort to find employment. She did so from soon after she was given notice of dismissal. She sought permanent and temporary roles all over the country, her only limiting consideration being that the salary had to be sufficient to mean that she could cover her costs of travel and remote accommodation as well as provide her with an income. She did seek lower paid roles, provided they were consistent with her past experience. It would not have been reasonable for her to have lowered her sights in the time before she obtained her present position. Ms Coulson was successful in getting a CEO role, and in 9 months. This is reasonable.
8. In any event had Ms Coulson obtained a less senior, or less well paid, post there would be a claim for ongoing loss and the Respondent would be no better off. The Tribunal finds that the Claimant made every reasonable effort to obtain employment: indeed the fact that she succeeded is strong evidence of that fact. For these reasons the Respondent is in any event not

disadvantaged by that search taking from August 2018 to mid-June 2019.

9. The Tribunal accepts that it was hard for the Claimant as a woman in her later 50s to get employment, and that it would have been harder to get a less senior role in any event, because of being seen as overqualified, and less likely to stay long term. There is also force in the Claimant's argument that she is skilled at strategic roles, but is not up to date with the hands on work of, for example, rent collection or handling anti social tenants. The geographic search was almost the whole of England and Wales. From the start the Claimant did not restrict her search to her preferred region of the South West of England. This was all the Claimant could reasonably be expected to do.
10. Ms Coulson's effort to find employment is not said to have been less than required of her.
11. It is also relevant that there was nothing the Claimant could do to expedite her start date: she wanted to start as soon as she could, and so there is no point to be made about the 6 weeks from her successful interview on 29 April 2019 to her start date of 17 June 2019. Her total search time was therefore 02 August 2018 to 29 April 2019, 9 months.
12. There was no period when she was not actively pursuing employment, including interim roles. There were several occasions when she got through the longlist selection and made the shortlist. She registered with several agencies, and knew of some of them through using them in the past. She travelled around the country to be interviewed. There is nothing more that she could have done. She was entirely correct, for in the end her perseverance paid off. In particular Ms Coulson did not wait to the end of her garden leave before searching, but started straight away.
13. The Tribunal finds that the loss of pay from the end of garden leave, on 02 February 2019 to the start of new employment on 17 June 2019 is fully recoverable.
14. The loss of net pay for the period from 02 February 2019 to 16 June 2019 is agreed at **£24,926.46**.
15. There is pension loss of 2% of salary per month. The Tribunal awards 4½ months' contributions for this. The Claimant did not get a pension contribution from her new employer for the first month, but the Tribunal accepted Mr Morris' submission that this was a matter between her and them. The agreed figure is **£5,290.81** in total.
16. The Claimant claims expenses of seeking employment. She does not have documentary evidence of the costs. The Tribunal accepts that they were all incurred. When travelling to interview near London the Claimant stayed in the guest room at her mother's housing accommodation, which Ms Coulson rented from the housing company at the modest cost of £25 a night. The Claimant added costs of lunches, at modest cost, but the Tribunal did not feel that the Respondent should pay for those, and rounded the expenses down from £3,446.49 to **£3,000**. That figure is testament to the extensive efforts made by the Claimant to obtain work.

17. The Claimant seeks a figure of **£500** for loss of statutory industrial rights, which is not contested by the Respondent.
18. This brings the constituent parts of the compensatory award to £33,717.27.
19. Ms Coulson had other headings in her schedule of loss, but after discussion did not continue to assert them.
20. The hearing date is 20 November 2020, and the loss was incurred between February and April 2019, about 1½ years ago. Some of the expenses were incurred earlier. While interest is not payable on a compensatory award, Melia v Magna Kansei Ltd. [2005] EWCA Civ 1547 makes it clear (at paragraphs 38-43) that in assessing fair compensation the Tribunal may consider the effect of delay in receipt of payment. RPI (which the Tribunal considered more apt than CPI in part as it includes housing costs) has varied from over 3% pa to about 1.4% pa over that time. The Tribunal considers it reasonable to think the value of its award has diminished by about 2% a year, and so (as it is a 1½ years) augments that sum by 3% to maintain its value.
21. $£33,717.27 \times 3\% = \mathbf{£1,011.52}$. This brings the compensatory award to £34,728.79.
22. In its liability decision the Tribunal decided that an uplift of 25% was appropriate. That is **£8,682.20**, and it brings the total compensatory award to **£43,410.99**.
23. The Tribunal rejects the submission that Ms Coulson failed to mitigate her loss by not applying for benefits. Her partner works and it is not shown that she could obtain benefits. She would be likely to qualify for job seekers or employment support allowance, but probably not universal credit: but whether she would qualify or not this is not a sound objection. If she had received benefit the consequence would be that the Recoupment Regulations would apply and part of the award would reimburse the state. It would not reduce the size of the award payable by the Respondent.

Sex discrimination

24. The Claimant was given notice on 02 August 2020, and immediately placed on garden leave, her access to her computer and the work software blocked and she was required to have no further contact with her workplace.
25. The Tribunal found that this is the date from which interest should run, as this was the date she was subject to discriminatory action. Ms Coulson found this a particularly brutal and hurtful way to act. The Tribunal accepted this, and it is relevant to her award for injury to feelings. Ms Coulson had played a senior role in the Respondent and to be cast aside with no handover showed how she had been sidelined and marginalised and then cast aside summarily.
26. The claim was lodged on 28 May 2019 and so the Presidential guidance 2nd addendum is applicable (from 06 April 2019), which set the Vento bands as a lower band of £900 to £8,800 (for less serious cases) and a middle band

of £8,800 to £26,300. Tribunal does not consider this to be a less serious case. It falls into the middle band. The Tribunal agrees with the Claimant that the mid point of this band is appropriate, and awards **£17,500** for injury to feelings.

27. The Tribunal decided that the injury to feelings award lay in the middle Vento band for the following reasons. The dismissal was a single act, but it had a severe effect on Ms Coulson. This is in part because it was premeditated and effected over a period of time behind her back. She is a resilient individual not afraid of, and relishing, hard work, but the Tribunal fully accept her evidence that this was highly demoralising and depressing. She was cast aside in a way which made her feel that all her work was considered of no value. She was left at an age where she feared that she might never be able to get a similar role, and (rightfully in the Tribunal's view) considered that she was in an even more perilous situation than a comparable man because ageism is worse for women than men, and she would have the risk of double prejudice as a woman. It is not necessary for her fears to prove that her fears are a correct assessment: the Tribunal is fully satisfied that they were real, and genuine fears caused by the Respondent's actions, which had a great effect on Ms Coulson. There is no personal injury element to this claim, and that Ms Coulson did not say that she was obliged to visit her GP does not lessen the extent of the injury to her feeling. That is part of her ability to surmount that injury to her feelings. These were a combination of indignation, anger, sadness, despair at times, worry for the future, and deep hurt at her contribution being considered of no value, as well as a level of humiliation endured. The Tribunal finds that Ms Coulson's restrained demeanour in the two hearings is not indicative of any lack of injury to feelings but of inherent strength of character and dignity. As Ms Coulson said, the injury to feelings could, and would, have been reduced by a civilised parting of the ways, and the injury to feelings is not reduced as even now, although the unfair dismissal judgment has not been appealed, the Respondent has tendered no apology.

28. The interest on the injury to feelings is at 8% from the date of the event - 02 August 2018 when Ms Coulson was given notice and put on garden leave - until today. That is 2 years and 110 days. Two years at 8% is £2,800. £1400 divided by 365 x 100 = £423.92. Adding this the total is **£3,221.92**.

29. The award for the sex discrimination claim is therefore **£20,721.92**.

30. Mr Morris drew the attention of the Tribunal to Rules 65 and 66:

“When a judgment or order takes effect

65. A judgment or order takes effect from the day when it is given or made, or on such later date as specified by the Tribunal.

Time for compliance

66. A party shall comply with a judgment or order for the payment of an amount of money within 14 days of the date of the judgment or order, unless—

- (a) the judgment, order, or any of these Rules, specifies a different date for compliance; or***
- (b) the Tribunal has stayed (or in Scotland sisted) the***

proceedings or judgment.”

31. The Tribunal accepts that it would be unfortunate for the sex discrimination award to be paid if the appeal was subsequently successful. Accordingly, the Tribunal ordered as Mr Morris asked and the date for compliance is deferred, utilising Rule 66(a). As was made clear at the hearing that the date for compliance is deferred has no effect on the accrual of (simple) interest at 8% per annum. That is a daily rate of £3.84, from today. As set out above, the Tribunal rejected Mr Morris' request that the date for compliance with the award for unfair dismissal also be deferred, for which there was no coherent argument.

Employment Judge Housego

Date 21 November 2020