



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

AND

Respondent

Mrs J Waters

Connect Distribution Services Limited

RECONSIDERATION HEARING

HELD AT Birmingham **ON** 4th December 2020

EMPLOYMENT JUDGE Choudry

Representation:

For the claimant: In person

For the respondent: Mr J Heard - Counsel

RESERVED JUDGMENT ON REMEDY

1. The respondent is ordered to pay the claimant the total sum of £21,912.87 as detailed in the Appendix.
2. The Recoupment Regulations do not apply.

REASONS

Background

1. By a judgment dated 31st December 2019 which was sent to the parties on 3rd January 2020 ("the Judgment") the Tribunal determined that the claimant had been unfairly dismissed. The Tribunal determined that the claimant was not entitled to a basic award as the Tribunal was satisfied that the claimant had been dismissed by reason of redundancy and the claimant had already

received a statutory redundancy payment. The respondent was ordered to pay the claimant the sum of £450 for loss of statutory rights which has been paid by the respondent.

2. The "Code V" in the heading indicates that this has been a remote hearing which has not been objected to by the parties. The form of remote hearing was via CVP. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

Evidence and documents in relation to remedy

3. I was presented with an agreed bundle of 71 pages which included an updated Schedule of Loss from the claimant. I was also provided with some written submissions by Mr Heard.
4. I heard evidence from the claimant in relation to the losses she had incurred as a result of her unfair dismissal, the steps she had taken to mitigate her losses, the expenses she had incurred in seeking alternative employment and the bonus scheme in place by the respondent for both the Dyson and Hoover brand manager roles.

Issues

5. After explaining to the claimant the remedies available to her, the claimant confirmed that she was not seeking re-instatement or re-engagement and was only seeking compensation.
6. As such the issues for me to determine were:

- 6.1 what compensatory award should the claimant be awarded?
- 6.2 Has the claimant mitigated her losses?

Facts

7. The claimant's employment ended on 8th October 2018. On termination she received 6 weeks' pay in lieu of notice from the respondent. The claimant undertook some seasonal part-time work to tide her over whilst she tried to find a more permanent position that would provide her with sufficient income. The claimant earned £1,668 from such work.
8. The claimant applied for a number of vacancies from October 2018 until February 2019 and attended interviews in Belfast, Staffordshire, Birmingham, Luton and Coventry using her son's car to travel to interviews and by asking friends for lifts. She seeks £100 for loss of such expenses.
9. On 7th March 2019 the claimant commenced permanent employment with Electrolux earning £35,000 per annum but with a lower bonus potential than she had enjoyed with the respondent. The claimant confirmed during cross examination that since securing the Electrolux role she had not made any further attempts to seek alternative employment not least due to the fact that the job market has continued to decline since the claimant obtained this role. The claimant was of the view that she was more likely to increase her earnings through securing a promotion with her current employer than obtaining a higher paid role elsewhere.
10. The claimant did not claim any state benefits.
11. It was agreed between the parties that, in light of the Tribunal's findings in the Judgment that had the respondent not approached the claimant's redundancy with a closed mind the claimant would have remained working for the respondent in the role of Hoover Brand Manager beyond 8th October 2018, that her losses should be based upon the earnings she would have received as Hoover Brand Manager (£30,000 plus a bonus of up to £3,000 per month

- for hitting 120% of sales) and not based upon her salary as Dyson Brand Manager.
12. The claimant's period of loss for the purposes of loss of earnings and benefits (except for bonus and pension) commenced from 20th November 2018 and ended on 6th March 2019 (a period of 15.5 weeks) as she commenced alternative employment with Electrolux on 7th March 2019. Whilst the claimant enjoys a higher salary of £35,000 with Electrolux she has a lower bonus structure and therefore has a continuing loss in relation to her bonus. She was also not able to join the Electrolux pension scheme until 7th June 2019.
 13. It was agreed between the parties that the claimant's net weekly pay for the Hoover Brand Manager role would have been £419.86.
 14. In relation to the bonus the claimant earned the maximum bonus as Dyson Brand Manager. In the absence of any conflicting evidence I accept the claimant's evidence that had she undertaken the Hoover Brand Manager role she would have been selling Hoover products to the same customers as she did when selling Dyson products. As such, there would not have been any bedding in period and given the fact that the claimant was experienced in selling floor care that she would have earned some bonus. The claimant earned £3,000 per month in bonus as Dyson Brand Manager but whilst the bonus structure was the same for the Hoover Brand Manager role the claimant seeks £2,000 per month (£1,069 net) for loss of bonus to account for any potential bedding in time in the new role. The claimant seeks losses from October 2019 for the full amount of £1,609 net per month and then from 1st April 2019 (the first opportunity she had to earn a bonus with the role with Electrolux) for a further period 12 months based upon her net loss of bonus. The claimant earns a bonus of £465 per month net in her current role creating a net monthly loss of bonus of £604. Mr Heard accepted that the net of bonus for 12 months equated to £7,248.
 15. It was agreed between the parties that the claimant's loss of company car for the relevant period is £1,393 and for private fuel amounts to £1,303.
 16. The claimant seeks the sum of £270 for loss of private healthcare insurance. Under cross examination the claimant accepted that she had not taken out any private healthcare insurance herself.
 17. It was also accepted that loss of employer pension contributions for the relevant period is £442.04. The claimant also claims employee pension contributions in the sum of £495. She also seeks the sum of £35 in respect of loss of personal property which was not returned to her by the respondent on the termination of her employment.

Applicable law

18. Section 123 of the Employment Rights Act 1996 provides that:

"..the amount of compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer".
19. In accordance with Section 124 of the Employment Rights 1996 the compensatory award may not exceed the lower of a year's pay or the statutory cap from time to time. As the claimant's effective date of termination the statutory cap in place was £83,682.
20. The principles upon which the compensatory award is calculated are set out in the case of **Norton Tool –v- Tewson [1972] ICR 501**.

21. A claimant is under a duty to take reasonable steps to mitigate her losses. This is a question of fact for the tribunal. The case of **Wilding –v- British Telecommunications plc [2002] ICR 1079** made it clear that the burden of proof is on the employer and it is not enough for the employer to show there were other reasonable steps that the claimant could have taken but did not take. An employer must show that the employee acted *unreasonably* in not taking them as there is usually more than one reasonable course of action open to a claimant.
22. In **Window Machinery Sales Ltd t/a Promac Group –v- Luckey UKEAT/0301/14** the EAT indicated that when considering the issue of mitigation a tribunal should ask itself, firstly what steps were reasonable for the claimant to have to take in order to mitigate his or her loss; secondly whether the claimant did take reasonable steps to mitigate loss; and finally, to what extent, if any, the claimant would have actually mitigated his or loss if he or she had taken those steps.

Submissions

23. Mr Heard on behalf of the respondent argues that the claimant has failed to mitigate her losses since obtaining her role with Electrolux but did not produce any evidence of alternative roles that the claimant could have applied for. Mr Heard was of the view that the claimant's own admission that she had not sought alternative employment since obtaining the Electrolux role was sufficient to show that she had not acted reasonably in mitigating her loss.
24. Mr Heard also submitted that the claimant was not entitled to claim for employee pension contributions and compensation for loss of her personal property.
25. In relation to the loss of bonus Mr Heard argued that the claimant had no reasonable expectation of earning a bonus as Hoover Brand Manager as the Hoover role was different to the Dyson role.
26. Finally, Mr Heard argued that the claimant could not claim for loss of private health insurance on the basis that she had not sought to source alternative cover for herself.

Conclusions

12. In reaching my conclusions I have considered all the evidence I have heard and considered the pages of the bundle to which I have been referred. I have also considered the very helpful oral and written submissions made by the claimant and Mr Heard.
13. In relation to the issue of mitigation I am satisfied that the claimant has acted reasonably and mitigated her losses by seeking alternative employment and that it was not reasonable for her to continue to seek alternative employment once she had obtained her role at Electrolux.
14. I am also satisfied that the claimant would have been able to achieve a bonus of £2,000 per month as Hoover Brand Manager given that she earned a full bonus as Dyson Brand Manager, she would be selling to the same customers and was an experienced floor care specialist.
15. I agree with Mr Heard that the claimant is not able to claim compensation for loss of employee pension contributions nor for loss of her personal property. I

do not agree with Mr Heard's assertion that the claimant is not able to seek compensation for loss of private health insurance as she did not seek to procure her own insurance. This is a loss of benefit that the claimant suffered as a result of being unfairly dismissed and, as such, she is entitled to be compensated for it.

16. I am satisfied that the claimant should be entitled to her loss of earnings and benefits (except for pension and bonus) from 20th November 2018 to 6th March 2019 and that she should receive her pension losses until 7th June 2019. I am also satisfied that it is just and equitable to award the claimant the 12 months' loss of bonus which she is seeking in her Schedule of Loss. As such, the respondent is ordered to pay the claimant a compensatory award in the sum of £21,912.87 as set out in the attached Annex.

Employment Judge Choudry
6th December 2020

Annex

Compensatory Award

Losses from 20.11.18 to 6.03.19

(a) Loss of earnings from 20.11.6.03.19 – 15.5 weeks @ £419.85 per week	£6,507.83
(b) Loss of company car	£1,313.00
(c) Loss of private fuel	£1,303.00
(d) Loss of private health insurance	£ 270.00

Loss of bonus

(e) Loss of bonus- 1 st October to 30 th March 2019 6 months at £1,069.48	£6,417.00
(f) Loss of bonus –1 st April 2019 to 31 st March 2020	£7,248.00

Losses from 20th November 2018 to 7th June 2019

(g) Loss of employer pension contributions	£ 442.04
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Expenses

(h) Expenses in seeking alternative employment	£ 100.00
(i)	

Sub-total £23,600.87

Less mitigation (£1,688)

Total loss **£21,912.87**