



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss A Rainbird

**Respondent:** Match Skin Salon Ltd

**Heard:** via CVP

**On:** 30/11/2020

**Before:** Employment Judge Wright

## Representation

Claimant: In person

Respondent: Ms J Johal - Director

# RESERVED JUDGMENT

The Judgment of the Employment Tribunal is the claimant is entitled to the following remedy by way of compensation:

|  |                  |
|--|------------------|
| Basic award  | £ 960            |
| Compensation for unfair dismissal                          | £5,409           |
| Unlawful deductions from wages                             | £1,466.77        |
| Failure to provide a written statement of employment terms | £1,920           |
| <b>Total due to the claimant</b>                           | <b>£9,755.77</b> |

# REASONS

1. The liability element of this claim was heard by Employment Judge Tsamados on 20/5/2019. He found the claimant was unfairly dismissed and that there will be a 60% reduction to any compensatory award, for the reasons set out in the Reserved Judgment.

2. A remedy hearing was conducted via CVP by Employment Judge Wright. Evidence was heard from the claimant and the Ms Johal for the respondent. The documents (which were quite limited) were considered and referred to.
3. The respondent agreed the claimant was paid until her accident on 20/4/2018. The respondent did not have the claimant's sickness certificate and it agreed the correct payment was: the first three days unpaid under the SSP rules and the claimant was then entitled to SSP at the weekly rate of £92.05 until the 18/5/2018 when the claimant was declared fit to return to work, albeit on light duties.
4. The claimant's employment was terminated on 5/6/2018. Employment Judge Tsamados found unlawful deductions were made from her wages until the date of dismissal.
5. The first three working days of the SSP period run from 23/4/2018 until 25/4/2018. There are then three more working days in April at a daily rate of SSP of £18.41,  $3 \times £18.41 = £55.23$
6. There are then 14 working days to the 18/5/2018  $\times £18.41 = £257.74$
7. The claimant's gross daily rate of pay is calculated as follows:  
$$\text{Annual salary of } £25,000 / 260 \text{ working days} = £96.15$$
8. There are 12 working days until the termination date  $\times £96.15 = £1,153.80$
9. The unlawful deduction from wages is therefore the gross sum of  $£55.23 + £257.74 + £1,153.80 = \mathbf{£1,466.77}$
10. The claimant is to account to HMRC in respect of the gross payment.
11. The claimant said her son was conceived around the time of her accident and he was born on 25/1/2019, which is 40 weeks from the 20/4/2018. She did not know she was pregnant at the time of the meeting on 10/5/2018 and it was after that meeting when the allegations arose as per the findings of the liability judgment. The claimant was asked what she had intended to do in respect of maternity leave and she was unable to say as the issue of her employment terminating arose prior to her knowing she was pregnant and being able to consider her options in respect of maternity leave.
12. The claimant was paid maternity allowance of £145.18 per week from 10/12/2018 until 8/9/2019.
13. The claimant applied for three jobs after her employment ended. Once she revealed her pregnancy, which she felt obligated to do, she said the employment discussions came to an end. The claimant could only carry out reduced services and she could no longer offer certain treatments.
14. The claimant set herself up as self-employed on 1/6/2018 until 7/12/2018. She experienced similar problems in this endeavour. She performed

treatments on friends and family, however offering the services from home was unattractive. Similarly, she experienced problems in visiting clients at their home, in terms of carrying her massage bench. The claimant said she had a difficult pregnancy and her baby was born quite small. The claimant declared turnover of £1734 to HMRC in her tax return and net profit of £782. Clearly, the claimant did set herself up as self-employed and she made a small profit. She ceased these activities approximately seven weeks before her son was born and taking judicial notice of when an expectant mother generally stops work, and factoring in the seasonal break, her actions were reasonable.

15. The requirement is for the claimant to take reasonable steps to mitigate her losses and the burden falls upon the respondent to demonstrate the claimant has failed to take reasonable steps. The respondent did not take issue that the claimant has failed to mitigate her loss.
16. The claimant claims a basic award of two weeks' pay at £480 and the sum of **£960** is awarded.
17. The claimant's losses are therefore 26 weeks until her maternity leave commenced. A net week's pay is £390 x 26 = £10,140, less her net profits as self-employed (£782) = **£9,358**. The claimant has not declared that she claimed any benefits until the Maternity Allowance.
18. In addition, the claimant claims the sum of **£500** for loss of statutory rights. That is a sum which is intended to compensate the claimant for the fact that she will have to be employed in a new role for two years, before she has statutory protection and is eligible to claim unfair dismissal; that sum is awarded.
19. Employment Judge Tsamados found there had been a failure to provide written particulars of employment as required by section 38 of the Employment Act 2002 and he allowed an award of four weeks' gross pay, (subject to the statutory cap on a week's pay) as extra compensation. That sum is therefore £480 x 4 = **£1,920**
20. In the liability judgment, Employment Judge Tsamados determined that the reduction under **Polkey v A E Dayton Services Ltd** [1987] IRLR 503 should be 60%.
21. He also decided that it would not be just and equitable for there to be a further reduction for contributory conduct.
22. Employment Judge Tsamados decided to increase any award of compensation by 25% for an unreasonable failure of the respondent to follow the ACAS code of practice, per section 207A of the Trades Union Labour Relations (Consolidation) Act 1992.
23. The overall calculation for losses flowing from the dismissal is therefore:

|             |       |
|-------------|-------|
| Basic award | £ 960 |
|-------------|-------|

|  |               |
|--|---------------|
| Prescribed element loss of wages<br>from 5/6/2018 to 7/12/2018 | £10,140       |
| Less net profits as self-employed                              | £ 782         |
| Statutory Rights   | £ 500         |
| Less <b>Polkey</b> reduction of 60%                            | £4,327.20     |
| Increased by Acas uplift of 25%                                | <b>£5,409</b> |

Employment Judge Wright

Date: 3/12/2020