



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs A Jones

**First Respondent:** Executive Care Agency Limited

**Second Respondent:** Executive Care Agency Midlands Limited

## JUDGEMENT OF THE EMPLOYMENT TRIBUNAL

**Heard at:** Midlands West Employment Tribunal (by CVP)

**On:** 9 Dec 2020 and in chambers on 13 Dec 2020

**Before:** Employment Judge Kelly (sitting alone)

### Appearances

For the claimant: In person

For the respondent: No attendance

## JUDGEMENT

Further to considering the claims under rule 21 of the Employment Tribunal Rules of Procedure, it is ordered as follows:

1. The claimant's employer was the Second Respondent. The claim against the First Respondent is dismissed.
2. The claimant was unfairly dismissed. The Second Respondent is order to pay to the claimant compensation in the sum of £9914.00, calculated as set out in the Appendix.
3. The Second Respondent breached the claimant's contract of employment. The Second Respondent is ordered to pay the claimant the sum of £728.00 as damages for breach of contract.
4. The Second Respondent made a deduction from the claimant's wages. The Second Respondent is ordered to pay the claimant the sum of £269.00.
5. The claimant was due holiday pay at the end of her employment. The Second Respondent is ordered to pay the claimant the sum of £450.

6. The claimant's claim for detriment under s47B Employment Rights Act 1996 is dismissed because of the provisions in s47B(2) of that Act.

**Appendix – Calculation of award for unfair dismissal**

7. No basic award is awarded.

**Compensatory award**

Prescribed element

8. The claimant's gross average pay was £595.75 per week.
9. The period of loss is 17 January 2020 to 13 December 2020, being 47 weeks.
10. However, from mid April to the end of June 2020, the claimant would have been furloughed. Therefore, her pay would have been 80% of pay, that is £476.60 per week for 11 weeks.
11. She would have earned £95 for the last week of the period due to being paid SSP.
12. No compensation is paid for the first two weeks of the period after the termination of employment as it would duplicate the notice payment.
13. Therefore, the claimant would have earned the following gross (less the notice pay) for the Prescribed Period:
- a. 11 weeks @ £476.60 per week = £5242.60
  - b. 1 week @ £95 per week = £95
  - c. Remaining 33 weeks = £19659.75

Total: £24,997.

14. Less amount earned in alternative employment, being £15,152.

15. Total: £9845 gross.

16. Reduce for tax at rate of 11% (£1083)

17. Total: £8762

**Non prescribed period**

18. Future loss of earnings from 14 Dec 2020 to 16 Jan 2021, being 5 weeks, at a rate of loss of £595.75 gross per week = £2979.

19. Less earned in alternative employment: 5 x average gross pay of £437 = £2185

20. Total: £794.

21. Add:

- a. Loss of statutory industrial rights: £500

22. Total: £1294

23. Reduce for tax at rate of 11% (£142)

24. Total: £1152.

**ANNEX TO THE JUDGMENT OF THE TRIBUNAL**

Statement Relating to the Recoupment of Unemployment etc Benefit

25. The following particulars are given pursuant to the Employment Protection (Recoupment of Job Seeker's Allowance and Income Support) Regulations 1996, SI 1996 No 2349.

(a) Monetary award: £9914.00

(b) Prescribed element: £8762.00

(c) Period to which (b) relates: 18 Jan 2020 to 13 Dec 2020

(d) Excess of (a) over (b): £1152.00

26. The claimant(s) may not be entitled to the whole monetary award. Only (d) is payable forthwith; (b) is the amount awarded for loss of earnings during the period under (c) without any allowance for unemployment benefit or supplementary benefit received by the claimant in respect of that period; (b) is not payable until the Department of Employment has served a notice (called a recoupment notice) on the respondent(s) to pay the whole or a part of (b) to the Department (which it may do in order to obtain repayment of unemployment or social security benefit paid to the claimant(s) in respect of that period) or informs the respondent(s) in writing that no such notice will be served. The sum named in the recoupment notice, which will not exceed (b), will be payable to the Department. The balance of (b), or the whole of it if notice is given that no recoupment notice will be served, is then payable to the claimant(s).

27. The Recoupment Notice must be served within the period of 21 days after the conclusion of the hearing or 9 days after the judgment is sent to the parties, (whichever is the later), or as soon as practicable thereafter, when the judgment is given orally at the hearing. When the judgment is reserved the notice must be sent within a period of 21 days after the date on which the judgment is sent to the parties, or as soon as practicable thereafter.

28. The claimant(s) will receive a copy of the recoupment notice and should inform the Department of Employment in writing within 21 days if the amount claimed is disputed. The tribunal cannot decide that question and the respondent(s), after paying the amount under (d) and the balance (if any) under (b), will have no further liability to the claimant(s), but the sum claimed in a recoupment notice is due from the respondent(s) as a debt to the Department whatever may have been paid to the claimant(s) and regardless of any dispute between the claimant(s) and the Department.

IT31 (Rev)

**Employment Judge Kelly**

17 December 2020