



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

MS C ROMAIN-GARY (C1)
MS A COOPER (C2)

AND

Respondent

MR JOHN MURPHY

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: BRISTOL ON: 11TH JANUARY 2021

EMPLOYMENT JUDGE MR P CADNEY
(SITTING ALONE)

APPEARANCES:-

FOR THE CLAIMANTS:- IN PERSON

FOR THE RESPONDENT:- MS L TAYLOR (COUNSEL)

JUDGMENT

The judgment of the tribunal is that:-

Ms Romain Gary

The respondent is ordered to pay the claimant:

- i) Notice Pay - **£1252.80**
- ii) Wages - **£1440.72**
- iii) Holiday Pay - **£318.52**
- iv) Unfair Dismissal (Basic Award) - **£2067.12**

v) Unfair Dismissal (Compensatory Award) - **£250**

Total - £5329.16

Ms Cooper

vi) Notice Pay – **£1566.65**

vii) Wages – **£2,945.30**

viii) Holiday Pay - **£792.86**

ix) Unfair Dismissal (basic award) - **£1566.65**

x) Unfair Dismissal (Compensatory Award) **£250 + £1271.88 = £1521.88**

Total – £8393.34

Reasons

1. Following my earlier judgement as to liability the case has been listed today to determine remedy. In my earlier decision I determined that the claimants had made out claims for unfair dismissal, unpaid wages, unpaid holiday pay and notice pay. There is no dispute as to the claimants' entitlement to many of the claims; the only significant dispute being that in relation to any compensatory award. During the hearing Ms Taylor helpfully provided some figures. However, in some cases my calculations do not match hers. As a result, I have set out my calculations so that the parties understand how I reached the final figures. If any party thinks that I have made an error in respect of any of the figures they should notify me and I will reconsider them.

Notice Pay

2. In the figures provided by Ms Taylor she included four weeks' notice pay for each claimant which is the correct contractual notice. However, in each case statutory notice exceeds that figure. Ms Romain Gary started work at The Plough Inn on 14th October 2007 and was dismissed on 12th October 2018. Ms Cooper began work on 18th May 2013 and was dismissed on 12th October 2018. Accordingly the amounts awarded for notice pay are:-

i) Ms Romain Gary - £125.28 x 10 - **£1252.80**

ii) Ms Cooper - £313.33 x 5 - **£1566.65**

Unpaid Wages

3. Neither of the claimants was paid during the period from the pub closing on 22nd July to their dismissal on 12th October 2018 (11.5 weeks). Ms Romain Gary was not able to obtain alternative employment during this period, but Ms Cooper did. Accordingly the sums due are:-

i) Ms Romain Gary – $11.5 \times \text{£}125.28 = \text{£}1440.72$

ii) Ms Cooper – $11.5 \times \text{£}313.33 - (\text{£}200.57 + 457.42 \text{ earnings}) = \text{£}2,945.30$

Unpaid Holiday Pay

4. Both claimants accepted that the holiday year began on 1st April. Neither had taken any leave in the holiday year prior to 12th October 2018. Ms Romain Gary's full annual entitlement was 90 hours; and Ms Cooper's 224 hours. Accordingly, the pro rata holiday pay owed is:

i) Ms Romain Gary – $90/365 \times 165 \times \text{£}7.83 = \text{£}318.52$

ii) Ms Cooper – $224/365 \times 165 \times \text{£}7.83 = \text{£}792.86$

Unfair Dismissal – Basic Award

5. The amounts of the basic award (for the benefit of the claimants the equivalent sum in unfair dismissal claims to a redundancy payment) are:-

i) Ms Romain Gary – $11 \times 1.5 \times 125.28 = \text{£}2067.12$

ii) Ms Cooper – $5 \times \text{£}313.33 = \text{£}1566.65$

Unfair Dismissal – Compensatory Award

6. Loss of Statutory Rights - Although not referred to in either claimant's Schedule of Loss it is conventional to award a nominal sum to reflect the loss of statutory rights and I award **£250** to each claimant.

7. Loss of Earnings from 12th October 2018 – The specific awards in relation to each claimant are set out below but the respondent made one central point common to both. It is submitted that each claimant failed to mitigate their loss by not applying to be re-engaged at The Plough Inn after it opened on 14th October 2018. The respondent's evidence was that he, together with Mr Mills, has always taken on the existing staff when they have taken over any premises, and had they known either of the claimants was seeking work they

would have re-employed them as previous staff members are familiar the clientele and provide continuity. They had advertised staff vacancies and are surprised that the claimants did not apply. The claimants submit firstly that prior to the pub re-opening and on the advice of the CAB and ACAS they had notified the owners of their intention to bring tribunal proceedings and had had no reply, or indeed any contact at all. Whether or not the respondent was involved at that stage or whether it was the responsibility of the landlord EI they do not know; but whichever it is they submit that it is not unreasonable not to apply for work when they had had no contact for many weeks, and not even had the courtesy of a reply to correspondence. Each also says that in any event that they did not know that the premises had re-opened for some time after October 14th 2018, although at this distance in time neither can recall when they first became aware. In addition, as Ms Cooper pointed out the respondent could always have contacted them. In my judgement there is much merit in the claimant's submissions and I am not persuaded that there has been any failure to mitigate in this regard.

8. Ms Romain Gary – Ms Romain Gary's evidence is that she attempted for some time to find work but was not able to, which she attributes to her age. She was not eligible for state benefits as she was over state pension age. Accordingly, after some months she decided to take her pension. The effect of that was to completely extinguish her loss as the amount of her state pension was greater than the £125.28 she earned each week. She could not recall exactly when she had first taken her state pension. However, she claims two sources of ongoing loss. The first is that the combination of her income and working tax credits amounted to more than her pension and she has an ongoing loss of some £46.89 per week (according to my calculations). Secondly had she deferred taking her pension until she stopped working it would have increased in value (a deferral of one year produces a 10.4% increase in benefit).
9. Whilst I have some sympathy with Ms Romain Gary in my judgement there are a number of reasons of principle for which I cannot award any ongoing loss. Firstly, the respondent can only be responsible for the direct consequences of the dismissal in the loss of income, not the loss of associated benefits. Secondly if there is any ongoing loss caused by the loss of the combination of income and tax credits there is necessarily a continuing obligation to mitigate and there is no evidence before me of any attempt to find any work once Ms Romain Gary had decided to take her pension. In respect of the decrease in the amount of pension it appears to me firstly that it is not all clear that there is any overall loss in taking a smaller pension for a longer period, and secondly no evidence before me of when Ms Romain Gary would have taken her pension but for the dismissal and therefore simply no means of calculating any loss. It follows that in my judgement I cannot identify any loss extending beyond 12th October 2018.

10. Ms Cooper – As set out above Ms Cooper was able by early September 2018 to find alternative employment at Pets at Home Ltd although it was part time (contractual hours of 16 per week) as opposed to her full time job at The Plough Inn and there was a shortfall in her earnings until she got a second part time job at Sainsbury's in February 2020. This gives a total loss of £7101.33 (the weekly loss being £105.99).
11. In my judgement Ms Cooper clearly mitigated her loss by obtaining this work relatively quickly. However, given that there was an ongoing loss there was a continuing duty to mitigate either by seeking supplemental part time employment, or alternative full-time employment. Given that she is a young single woman, and that the work she was employed to do at the Plough Inn attracted the national minimum wage, and that she lives in a major city with innumerable sources of work in my judgement it should not with reasonable effort have been difficult to have fully mitigated any loss within three months of her dismissal which is **£1271.88**

Employment Judge Cadney

Dated:15 January 2021

Judgment sent to parties: 22 January 2021

For the Tribunal Office