



EMPLOYMENT TRIBUNALS

Claimant: Miss S Talbot

Respondent: Northgate Lighting Limited

Heard at: Leeds Employment Tribunal
Before: Employment Judge Deeley, Mrs Anderson-Coe and Mr Rhodes

On: 17 March 2021 and 19 March 2021 (in chambers)

Representation

Claimant: Mrs A Niaz-Dickinson (Counsel)

Respondent: Ms A Rumble (Counsel)

RESERVED REMEDIES JUDGMENT

1. The claimant is awarded £28,147.98 in respect of her claim for unfair dismissal, consisting of:
 - 1.1 a basic award of £1575; and
 - 1.2 a compensatory award of £26,572.98.
2. The Employment Protection (Recoupment of Income Support and Jobseekers Allowance) Regulations 1996 apply and their effect is set out in the Recoupment Notice:
 - 2.1 the total monetary award is £28,147.98;
 - 2.2 the prescribed element is £1259;
 - 2.3 the period to which the prescribed element relates is 1 June to 30 August 2020; and
 - 2.4 the balance of the unfair dismissal award is £26,888.98.

3. £1209 of the compensatory award is subject to the Recoupment Regulations (i.e. the jobseekers' allowance element of the claimant's Universal Credit benefit payments).

REASONS

INTRODUCTION

Tribunal proceedings

4. Neither party objected to holding this hearing as a remote hearing. The form of remote hearing was "V: video - fully (all remote)". A face to face hearing was not held because it was not practicable and all issues could be determined at a remote hearing.
5. The reserved judgment relating to this claim was promulgated on 23 February 2021 (the "**Liability Judgment**"). Our detailed conclusions regarding the claimant's complaint of unfair dismissal were set out at paragraphs 183 to 185 of the Liability Judgment.
6. We considered the following evidence during the remedies hearing:
 - 6.1 witness statements and oral evidence from the claimant and from Mr Adrian Lee (respondent's Managing Director); and
 - 6.2 a joint file of documents and other documents that were disclosed (without objection from either party) during the hearing.

REMEDY ISSUES

Unfair dismissal basic award

7. The parties agreed that the claimant was entitled to a basic award of £1575, which was calculated as follows:

Employment dates	22/5/17 - 23/3/20
Length of service	2 complete years
Age	52
Multiple	3
Weekly wages (capped at £525 per week)	£525
Basic award	£1575

Unfair dismissal compensatory award

8. The issues that we considered today related to the claimant's compensatory award, included:
 - 8.1 the claimant's loss of earnings period;

- 8.2 what would have happened if the claimant had not been dismissed on 23 March 2020, particularly in relation to furlough leave;
- 8.3 whether the claimant took reasonable steps to mitigate her loss; and
- 8.4 whether any ACAS uplift should be applied to the compensatory award.

RELEVANT LAW

- 9. The Tribunal has considered the legislation and caselaw referred to below, together with any additional legal principles referred to in the parties' helpful submissions.
- 10. The statutory provisions relating to the compensatory award are set out at s123 of the Employment Rights Act 1996 ("**ERA**"):

123 Compensatory award

- (1) ...the amount of the compensatory award shall be such amount as the tribunal consider 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.
- (2) The loss referred to in subsection (1) shall be taken to include –
 - (a) any expense reasonably incurred by the claimant in consequence of the dismissal, and
 - (b) ...loss of any benefit which he might reasonably be expected to have had but for the dismissal.
- ...
- (4) In ascertaining the loss referred to in subsection (1), the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales...

124 Limit of compensatory award etc

- (1) The amount of –
 - ...(b) a compensatory award to a person calculated in accordance with section 123 shall not exceed the amount specified in subsection 1ZA.
- (1ZA) the amount specified in this subsection is the lower of –
 - (a) [£86,444 – *for dismissal in 2019/2020*], and
 - (b) 52 multiplied by a week's pay of the person concerned.

11. A week's pay is defined by chapter II of the ERA. The Employment Appeal Tribunal in the case of *University of Sunderland v Drossou* UKEAT/0341/16 held that a week's pay included employer pension contributions.

FINDINGS OF FACT

12. The claimant was employed by the respondent as a Regional Sales Manager as at the date of her dismissal. She was 55 years old at the date of her dismissal. Her key terms and conditions of employment in this role were as set out in the table below.

Term	Amount
Monthly gross salary	£2333.33
Net monthly salary	£2075.00
Monthly gross car allowance	£423.33
Net monthly salary and car allowance	£2008.53
Monthly employer pension contribution	£70
Contracted working hours	40 hours per week

13. We find that the claimant's car allowance was a contractual benefit, having been paid by the respondent as a matter of custom and practice throughout her employment as a Regional Sales Manager.
14. The claimant was dismissed by the respondent by reason of gross misconduct on 23 March 2020, as set out in the Liability Judgment. On 23 March 2020, the United Kingdom was placed into lockdown due to the Covid-19 pandemic.
15. We note that the claimant received from the respondent:
- 15.1 two weeks' pay in lieu of notice, consisting of net salary only; and
- 15.2 a top up payment in respect of her February and March car allowance, such that she received her full car allowance for those two months (including a week at the end of March 2020 after her dismissal on 23 March 2020). This payment was paid to the claimant in settlement of her claim for unauthorised deduction from wages as part of these tribunal proceedings.
16. The claimant accepted that if she had remained in employment with the respondent she would have been placed on furlough leave (earning 80% of her salary only) from 23 March to 7 September 2020 inclusive. The respondent's two remaining Regional Sales Managers were placed on furlough on those terms for that period.
17. The claimant had been seeking alternative employment prior to her dismissal, because she felt that the respondent was treating her poorly. The claimant had

reached the advanced stages of one recruitment exercise, but the role was unfortunately put on hold due to the Covid-19 pandemic.

18. The claimant provided a detailed spreadsheet, setting out the roles that she had applied for since 23 March 2020. It is clear from the spreadsheet that the claimant has applied for over 200 roles since her dismissal across many different industries and has undertaken several interviews. She has applied for both full time and part time work, some of which was of a similar nature to her role with the respondent and some of which related to different roles, including in the retail, care and public sectors. The remuneration packages attached to those roles also varied.
19. We accept the evidence given by both the claimant and Mr Lee (respectively) that:
 - 19.1 the claimant was asked about her reasons for leaving the respondent during interviews and gave her honest account of the circumstances of her dismissal. We accept the claimant's evidence that, for example, many of the care homes with whom she spoke told her that they could not take her application any further because she had been dismissed for gross misconduct;
 - 19.2 the claimant did not in fact request a reference from the respondent and did not discuss any potential reference with the respondent. In any event, we note that Ms Julie Blackburn (the respondent's HR Manager) was on furlough leave during the first lockdown from 23 March 2020 and that there was a significant delay in processing the claimant's P45 during this period. The claimant believed that the respondent would not provide a reference to any prospective employer on her behalf because of the manner in which she was dismissed;
 - 19.3 the respondent would in fact have provided the claimant with a reference stating the dates of her employment and job title only in line with its standard reference policy. We accept Mr Lee's evidence that any reference would not state that either:
 - 19.3.1 the claimant was dismissed; or
 - 19.3.2 that such dismissal was due to gross misconduct.
20. The claimant received Universal Credit payment on 1 June, 1 July and 1 August 2020, totalling £2559. These consisted of:
 - 20.1 £450 per month housing benefit; and
 - 20.2 £403 per month jobseekers' allowance.
21. The claimant obtained alternative part time employment starting on 1 August 2020. She was continuing to work in that role as at the date of the Remedies Hearing. We accept the claimant's evidence that her position with her new employer is a temporary role. She has built good relationships within the business and hopes to

be able to increase her hours as the business grows. The claimant reports directly to the business' owners and there is little scope for promotion within the business.

22. The claimant's key terms and conditions of employment in this role were as set out in the table below.

Term	Amount
Monthly gross salary	£875.33
Net monthly salary	£865.29
Monthly gross car allowance	N/A
Monthly employer pension contribution	N/A
Contracted working hours	20 hours per week

23. The claimant envisages that she will continue working in her current part time role for the foreseeable future and hopes to increase her hours in that role. However, she will continue to apply for alternative work on a full time basis with a view to reaching a similar remuneration package to that which she was paid by the respondent.

24. In relation to the claimant's past losses, we find that:

- 24.1 the claimant suffered past loss of earnings from 23 March 2020 up to and including the date of the Remedies Hearing on 17 March 2021;
- 24.2 the economic uncertainty caused by the Covid-19 pandemic and subsequent lockdowns led to many prospective employers withdrawing or putting vacancies on hold. This economic background made it much more difficult for the claimant to seek alternative employment, than under normal economic circumstances; and
- 24.3 the claimant has taken reasonable steps to mitigate her losses. She was honest with prospective new employers when they asked for the reason why her employment with the respondent had ended and that 'put off' some prospective employers, particularly those in the care industry which is highly regulated. The claimant's mistaken belief that the respondent would not provide her with a reference did not have a material impact on her ability to find alternative work.

25. In relation to the claimant's future losses, we find that:

- 25.1 the government envisages that the current Covid-19 restrictions should be relaxed in stages, with the earliest projected end date for all such restrictions being 21 June 2021. However, even if this timetable is met, it is likely that the economic uncertainty arising out of the Covid-19 pandemic (and other current economic conditions, such as the impact of the UK's exit from the EU) will continue for some time after 21 June 2021;

- 25.2 the claimant's future losses are likely to continue until 7 September 2021. We find that it is likely that the claimant will continue to receive her current earnings from her part-time role until that date and will then find alternative full-time employment.
26. We have also awarded the claimant £500 in respect of her loss of statutory employment rights.

ACAS Code uplift

27. Our detailed conclusions regarding the claimant's complaint of unfair dismissal were set out at paragraphs 183 to 185 of the Liability Judgment. We have concluded that the respondent committed multiple breaches of the ACAS Code, including:
- 27.1 Paragraphs 5-7 – carrying out investigatory meetings before proceeding to disciplinary hearings where appropriate;
- 27.2 Paragraph 9 – providing written notice containing sufficient information about the alleged misconduct and its possible consequences to enable the employee to prepare to answer the case at a disciplinary hearing, including copies of written evidence;
- 27.3 Paragraphs 13-16 – permitting the claimant to be accompanied by a trade union official to the disciplinary hearing and postponing the hearing if necessary to allow arrangements to be made;
- 27.4 Paragraph 23 – following a fair disciplinary process before dismissing for gross misconduct;
- 27.5 Paragraphs 26 and 27 – providing an opportunity to appeal to an impartial manager.
28. We note that the respondent is a relatively small employer and that this is a factor to consider in deciding any uplift. However, we also note that Ms Blackburn was a dedicated HR Manager (CIPD qualified) who provided HR advice to the respondent throughout the claimant's disciplinary process.
29. We have concluded that a 25% uplift of the claimant's compensatory award is appropriate, given the respondent's numerous breaches of the ACAS Code.

CONCLUSIONS

30. We have concluded that the claimant should be awarded £28,147.98 in respect of her claim for unfair dismissal, consisting of:
- 30.1 a basic award of £1575; and
- 30.2 a compensatory award of £26,572.98.

31. £1209 of the compensatory award is subject to the Recoupment Regulations (i.e. the jobseekers' allowance element of the claimant's Universal Credit benefit payments).

RECOUPMENT NOTICE

The following particulars are given pursuant to the Employment Protection (Recoupment of Benefits) Regulations 1996, SI 1996 No 2349.

The Tribunal has awarded compensation to the claimant, but not all of it should be paid immediately. This is because the Secretary of State has the right to recover (recoup) any jobseeker's allowance, income-related employment and support allowance, universal credit or income support paid to the claimant after dismissal. This will be done by way of a Recoupment Notice, which will be sent to the respondent usually within 21 days after the Tribunal's judgment was sent to the parties.

The Tribunal's judgment states: (a) the total monetary award made to the claimant; (b) an amount called the prescribed element, if any; (c) the dates of the period to which the prescribed element is attributable; and (d) the amount, if any, by which the monetary award exceeds the prescribed element. Only the prescribed element is affected by the Recoupment Notice and that part of the Tribunal's award should not be paid until the Recoupment Notice has been received.

The difference between the monetary award and the prescribed element is payable by the respondent to the claimant immediately.

When the Secretary of State sends the Recoupment Notice, the respondent must pay the amount specified in the Recoupment Notice to the Secretary of State. This amount can never be more than the prescribed element of any monetary award. If the amount is less than the prescribed element, the respondent must pay the balance to the claimant. If the Secretary of State informs the respondent that it is not intended to issue a Recoupment Notice, the respondent must immediately pay the whole of the prescribed element to the claimant.

The claimant will receive a copy of the Recoupment Notice from the Secretary of State. If the claimant disputes the amount in the Recoupment Notice, the claimant must inform the Secretary of State in writing within 21 days. The Tribunal has no power to resolve such disputes, which must be resolved directly between the claimant and the Secretary of State.

Useful information

1. The reasons for this judgment were given to the parties orally during this hearing. Written reasons will not be provided unless a request was made by any party at the hearing or a written request is presented by any party within 14 days of the sending of this written record of the decision.
2. All judgments and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.
3. You can appeal to the Employment Appeal Tribunal if you think a legal mistake was made in an Employment Tribunal decision. There is more information here: <https://www.gov.uk/appeal-employment-appeal-tribunal>

Employment Judge Deeley
Date: 19 March 2021