



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case Nos: 4102702/12 and 4107069/12

Heard in Edinburgh on the 3rd July 2020

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Employment Judge J Porter
Tribunal Member Z Van Zwanenberg
Tribunal Member R Duguid

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Professor R Sheikholeslami

**Claimant
Absent**

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The University of Edinburgh

**Respondents
Absent**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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It is the Judgment of the Employment Tribunal to vary the Judgment of the 1st of June in the following respects:

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(i) In the Judgment, to delete section (v) and substitute therefor: “the sum of £31,250 with interest of £20,400 together with a monetary sum equivalent to 8 months’ NHS benefits with a 25% uplift plus interest in respect of the claimant’s claim of discrimination arising from disability”;

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(ii) In paragraph 71 of the Judgment to insert after the first sentence: “The 25% uplift awarded under s207A of TULRCA 1992 applies to this award in terms of Schedule A2 of that Act, bringing the award to the sum of £31,250.”

(iii) In the final sentence of paragraph 71 to delete the sum of “£16,200” and substitute the sum of “£20,400”.

(iv) In paragraph 77, to add after the first sentence: “The 25% uplift awarded under s207A of TULRCA 1992 applies to this award in terms of Schedule A2 of that Act.”

(v) In paragraph 89 to delete the penultimate sentence and to substitute therefore: “The Tribunal awards the claimant the sum of £31,250 with interest of £20,400 together with a sum equivalent to 8 months’ NHS benefits with a 25% uplift plus interest in respect of the claimant’s claim for discrimination arising from disability”.

Introduction

1. A Judgment on Remedy dated 1st June 2020 was sent to the parties in these proceedings on the 1st of June 2020. By letter dated the 11th June 2020 the claimant applied for reconsideration of that Judgment. The EJ, having considered the application, wrote to parties on the 15th June 2020 and requested the respondents’ response to that application under Rule 72 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 Schedule 1. At that time the EJ also asked parties to provide their views on whether the reconsideration application could be determined without a Hearing.

2. By letter dated the 19th June 2020 the respondents’ representatives provided their submissions on the claimant’s request for a reconsideration. At that time the respondents confirmed that they were content that the matter be determined by the Tribunal without a Hearing. By email dated 19th June 2020 the claimant’s representatives also confirmed that they were content that the reconsideration be determined without a Hearing.

3. The Tribunal convened on the 3rd July 2020 to determine the reconsideration.

Submissions

For the claimant

4. The claimant's application for reconsideration was confined to the issue of the application of the 25% uplift awarded by the Tribunal in paragraph 52 of the Judgment of 1st June 2020. The 25% uplift was awarded under s207A of the Trade Union and Labour Reform (Consolidation) Act 1992 (TULRCA). The Tribunal awarded an uplift of 25% after taking into account the fact that the respondents failed to follow any procedures in dismissing the claimant and, further, failed to deal with the claimant's grievances.
5. In the application for reconsideration the claimant submitted that that uplift should be applied not just to the compensatory element of the claimant's award for unfair dismissal but also to the awards made to her in respect of her discriminatory dismissal. To this end the claimant referred to the Judgment of 15th May 2019 in which the Tribunal found that the respondents were in breach of s15 of the Equality Act 2010 by dismissing the claimant, avoiding her dismissal and taking steps to avoid her dismissal.

For the respondents

6. In response to the application for reconsideration the respondents submitted that the Tribunal has a complete discretion under s207A of TULR(C)A. The respondents submitted that in paragraph 52 of the Judgment of 1st June 2020 the Tribunal chose to exercise that discretion only to award the uplift in respect of the compensatory award. In these circumstances the respondents submitted that there is no basis for granting the request for reconsideration of the Judgment of 1st June 2020.

The Law

7. S207A of the TULR(C)A provides:

“(1) This section applies to proceedings before an employment tribunal relating to a claim by an employee under any of the jurisdictions listed in Schedule A2.

(2) *If, in the case of proceedings to which this section applies, it appears to the employment tribunal that-*

- 5 (a) *the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies,*
- (b) *the employer has failed to comply with that Code in relation to that matter, and*
- (c) *that failure was unreasonable,*

10 *The employment tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 25%.”*

Schedule A2 of the TULR(C) Act 1992 provides:

15 “SCHEDULE A2
 TRIBUNAL JURISDICTIONS TO WHICH s207A APPLIES
 ...
 Sections 120 and 127 of the Equality Act 2010.”

20 8. Rule 70 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 Schedule 1 provides:

 “70 Principles
 A Tribunal may, either on its own initiative (which may reflect a request from
 25 the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision (“the original decision”) may be confirmed, varied or revoked. If it is revoked it may be taken again.”

30 **Discussion and Decision**

9. Firstly, the Tribunal noted that the claimant’s representatives are correct in stating that in terms of paragraphs 49-51 of the Judgment of the 15th May 2019 the claimant succeeded in part in her claim under s15 of the Equality Act 2010 in
 35 that her dismissal was found to be discriminatory. The Tribunal also agreed with the claimant’s representatives in stating that, in terms of Schedule A2, they have

a discretion to apply the 25% uplift awarded by them in paragraph 52 of the Judgment of 1st June 2020 to any award made by them in respect of the claimant's discriminatory dismissal.

5 10. The respondents are correct when they say that s207A of TULRCA 1992 gives discretion to the Tribunal to increase any award it makes to the employee by no more than 25%. However, the omission on the part of the Tribunal to extend this uplift to the awards made in respect of the claimant's discriminatory dismissal was not an exercise of that discretion. Instead, it was an error on the part of the
10 Tribunal and, more particularly, on the part of the Employment Judge in not bringing the terms of Schedule A2 to the attention of the Members.

11. In these circumstances the Tribunal are unanimous in their view that it is in the interests of justice to correct that error and to apply the 25% uplift to the awards
15 made by them in respect of the claimant's discriminatory dismissal.

Future Procedure

12. As stated in paragraph 90 of the Judgment of 1st June 2020 this case will now
20 be set down for a Preliminary Hearing on Case Management to determine future procedure on both the remaining elements of quantum and on the issue of the expenses in this long running case. The PH will take place by CVP/Kinly.

25 Employment Judge: Jane Porter
Date of Judgment: 03 July 2020
Entered in register: 07 July 2020
and copied to parties

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I confirm that this is my Judgment in the case of Sheikholeslami v The University of Edinburgh and that I have signed the Judgment by electronic signature.