



# EMPLOYMENT TRIBUNALS

**Claimant:** Lucy Sabia  
**Respondent:** KeolisAmey Docklands Ltd  
**Heard at:** East London Hearing Centre (by Cloud Video Platform)  
**On:** 19 May 2021  
**Before:** Employment Judge Housego

## Representation

**Claimant:** Abou Kamara, of Counsel  
**Respondent:** Paman Singh, Solicitor

# JUDGMENT

**The Respondent is ordered to pay to the Claimant the sum of £16,255.30**

# REASONS

1. Ms Sabia seeks reinstatement or reengagement, or failing that compensation.
2. I heard from Ms Sabia and from Ms Barnes, who had much contact with Ms Sabia in her senior hr role. I accepted into evidence a payslip showing how much sick pay Ms Sabia had received before she left (2 weeks' pay), and her witness statement. Both were only tendered on the day of the hearing. Mid way through Ms Sabia's evidence Mr Kamara asked that a 96 page bundle of documents relating to attempts to mitigate be admitted. I make no criticism of him, for he did not know of the issue, which was that it had been retained until Ms Barnes' witness statement had been received.
3. Ms Sabia feels that reinstatement is entirely possible, and it can be seen from the liability judgment that it weighed with me that the dismissal was without further incident, and was 8½ months after event.

4. I give weight to the oral evidence of Ms Barnes, who was objective in the way she answered the questions asked of her.
5. I noted also Ms Sabia's oral evidence, and the way she gave it. It is very clear that she does still have an issue with management and her colleagues, accusing them of gross misconduct and being "*out to get her*" (page 88).
6. I note, and give weight to, the comments of Ms Sabia's colleagues that they felt that they were always "*walking on eggshells*" during the 8½ months before Ms Sabia was dismissed. I note that the one colleague who did not view the prospect of interaction with Ms Sabia with trepidation (for that is the word) is no longer with the Respondent, leaving 3 who do have that fear.
7. I note that the manager said that she had no issue with working with Ms Sabia, and that features in the liability decision. However, I accept that she said this in context of it being possible she was going to be asked to do so. I note also that this is consistent with the view, which permeates the papers, that her manager was supine, and failed to manage Ms Sabia.
8. It is clear that Ms Sabia has a very strong and forceful personality, and that her manager was not able, or willing to try, to contain her, and that this led to resentment from colleagues.
9. I note that Covid means that all the staff in this department are furloughed. There were 5, plus the manager, and now are 3 plus the manager. The role is that of community ambassador. At present there is no outreach being undertaken in person. Whether there will be is open to doubt. Such outreach as there is may continue to be by way of videos, and not be supplied in person.
10. Also, the budget of the Respondent budget has been very substantially affected by Covid-19. The Docklands Light Railway ("DLR") (which is the railway run by the Respondent, and is funded by Transport for London ("TfL"). TfL is now funded by the Government. There is an immediate requirement imposed on the DLR of £1.2m budget cuts. Inevitably there will be a review of all staffing levels. Whether the 3 remaining are to be reduced in number will inevitably be considered. It is plain that there will not be an increase in headcount.
11. If Ms Sabia was in the team there would be a redundancy situation. If there was a redundancy exercise, given the difficulties in relationships it is very likely that she would be the person selected for redundancy. This is not presently envisaged as all the team is furloughed, but it is clear the team could not stay at 5 or even 4, though all such decisions are postponed while furlough is possible.
12. Therefore, for interpersonal and budgetary reasons reinstatement is not practical.
13. I next consider re-engagement. However, there are no vacancies. Ms Sabia does not have any technical skills, and so would need a customer facing

role. There is no such role at her pay level. Reengagement to a substantial promotion would not be appropriate, and therefore I decide not to make a re-engagement order.

14. Therefore, the order is one of compensation. For the compensatory award I pay particular attention to the words of S123 of the Employment Rights Act 1996.
15. The calculation set out in the Schedule annexed was agreed by the parties. It includes notice pay for the contractual period of 3 months. This is a contractual right and is not subject to reduction for contribution.
16. The basic award 7½ weeks' pay based on the agreed annual salary of £27,734.71, reduced by 20%.
17. Compensatory award:
  - 17.1. The Claimant says that she was ill and could not work. The Claimant was not sick before the dismissal. The Respondent indicated that the compensatory award should be limited to sick pay – 12 weeks full pay less 2 weeks taken, plus half pay for a further 12 weeks. It was not argued that there was no loss by reason of the sickness.
  - 17.2. The Respondent also says that the Claimant did not try to find employment, and so failed to mitigate her loss.
  - 17.3. However, the Claimant left her employment on 20 March 2020, only days before the 1<sup>st</sup> lockdown.
  - 17.4. There have been no jobs in railways since then.
  - 17.5. There are few if any jobs in public facing customer services roles, because there are few businesses which have any customer facing roles.
  - 17.6. I conclude that the calculation has to be largely hypothetical in these extraordinary times. That part of S123 requiring the award to be assessed so as to be just and equitable in all the circumstances.
  - 17.7. I note that the Claimant says was looking for work by July 2020, though she provided no evidence of it.
18. I find that the inability to work by sickness is covered by the 3 months' notice period, and that it is just and equitable for the Claimant to receive compensation for a period of 6 months after the expiry of the 3 months' notice period (less the reduction of 20%). That period takes the Claimant through to the end of 2020, for not all of which there was lockdown, which would be time for her to consider and obtain alternative types or work.
19. There is also the loss of pension contributions that would have been made to the Claimant's pension scheme, and loss of statutory industrial rights.

20. The Claimant did not claim benefits and the Recoupment Regulations do not apply to this award.

**Schedule of compensatory award**

24,734.71	Annual salary (gross)	gross weekly pay
475.67	Weekly pay (gross)	
1,517.87	4 weekly pay (nett)	
71.53	4 weekly pension contribution	
1,589.40	total 4 weekly pay (net)	
397.35	Weekly pay (net)	
<b>Basic award (gross pay)</b>		
3,567.51	7.5 weeks' pay	
713.50	-20% contributory fault	
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<b>2,854.01</b>	<b>Basic Award</b>	
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<b>Damages for Wrongful Dismissal (net)</b>		
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<b>4,768.20</b>	12 weeks x net pay	
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<b>Compensatory Award - immediate loss (net)</b>		
10,291.37	25.9 weeks' net pay	
500.00	Loss of statutory rights	
<b>10,791.37</b>	<b>Total Compensation before adjustments</b>	
2,158.27	-20% contributory fault	
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<b>8,633.09</b>	<b>Total Compensatory Award</b>	
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<b>Summary totals</b>		
2854.01	Basic Award	
4,768.20	Wrongful Dismissal	
8,633.09	Compensation award incl statutory rights	
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<b>16,255.30</b>	<b>Total</b>	
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**Grossing  
up**

30,000.00	Tax-free allowance
2,854.01	Basic + additional awards
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27,145.99	Balance of tax-free allowance
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13,401.29	Compensatory award & wrongful dismissal
-	Figure to be grossed up
<b>£16,255.30</b>	<b>Total</b>

**Employment Judge Housego  
Date: 3 June 2021**