



EMPLOYMENT TRIBUNALS

Claimants: Mrs M Edirisinghe

Respondent: Mrs A Sura t/a Pathway Independent Care and Autism Services

Heard at: East London Hearing Centre (Via Cloud Video Platform)

On: 5, 6 & 7 May 2021

Before: Employment Judge John Crosfill

Members: Ms S Harwood
Mr Duncan Ross

Representation

Claimant: Ashitey Ollennu of Counsel, instructed by Valchickwe Solicitors

Respondent: Brian Hendley a consultant from Avensure Limited

JUDGMENT

1. The Claimant's claim for unfair dismissal is well founded.
2. The Claimant's claims that she was directly discriminated against because of sex and/or pregnancy (specifically having availed herself of maternity leave) are dismissed.
3. The Claimant is entitled to, and the Respondent is ordered to pay the Claimant:
 - a. A basic award of **£1,518.00**
 - b. A compensatory award of **£6,060.92**

For the avoidance of doubt a total of **£7,578.92**. The said sums being calculated in the manner set out in the schedule to this order.

4. Upon the Claimant informing the Tribunal, and the Tribunal accepting, that she did not claim any state benefits during the period over which loss was calculated it is declared that the Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 do not apply to the said

award.

5. The Claimant's application for costs is dismissed.

Employment Judge John Crosfill
Date: 16 June 2021

Schedule

Basic Award

1. The Claimant was 33 years of age at the effective date of termination of the contract.
2. The Claimant had 8 full years of continuous service.
3. The Claimant's gross pay was agreed by the parties for statutory purposes to be £189.75 per week
4. Accordingly, the basic award = $8 \times £189.75 = \mathbf{£1,518.00}$

Compensatory Award

5. It is agreed that the Claimant was dismissed on 22 October 2019.
6. The Tribunal found that, because of a failure to mitigate loss, the period over which loss should be calculated should end on 4 March 2020.
7. The parties agreed that in the event that she had not been dismissed and had been offered shifts as the Tribunal found she would have been:
 - a. The Claimant's monthly gross pay would have been £1150 = £37.91 per day (average)
 - b. the Claimant's net pay = £1,098.28 per month = £36.107 per day (average).
8. The number of days between 22 October 2019 and 4 March 2020 is 135 (inclusive).

9. The loss of wages is $135 \times £36.107 = £4,874.56$
10. It is agreed that the Claimant earned £841.35 from alternative employment.
11. The loss of earnings claim = $£4,874.56 - £841.35 = £4,033.20$.
12. It is agreed between the parties that the Respondent made pension contributions equal to 3% of gross salary.
13. The loss of pension (over the same period) = $3\% \times 37.91 \times 135 = £153.54$.
14. The parties agree that the Claimant should be awarded the sum of £650.00 to reflect a loss of statutory rights.
15. The tribunal award the Claimant £12.00 in respect of the travel costs in seeking employment (but decline to make any further award in respect of the cost of purchasing local papers upon which the Tribunal heard no evidence)
16. The Total Compensatory Award (before any uplift) = $£4,033.20 + £153.54 + £650.00 + £12.00 = £4,848.74$
17. The Tribunal found that there was a substantial failure to follow the ACAS Code of Practice, Discipline and Grievances at Work which it held applied on the facts of this case and that it would be just and equitable to order an uplift of 25% on the compensatory award.
18. The Compensatory Award with uplift is therefore $£4,848.74 = \mathbf{£6,060.92}$
19. The Tribunal make no separate award for notice pay (wrongful dismissal) because (1) it was conceded by Mr Ollennu during the hearing that no such claim had been included in the ET1 as amended and (2) the compensation awarded in the unfair dismissal claim covers the same period of loss and the Claimant is fully compensated for any such claim in any event.