



EMPLOYMENT TRIBUNALS

Claimant: Ms C A Charlton

Respondent: Active Cleaning Limited

HELD in Sheffield (attended)

ON: 14 May 2021

BEFORE: Employment Judge Little

REPRESENTATION

Claimant: Mr A Crammond of Counsel (instructed by Thompsons Solicitors LLP)

Respondent: Mr A Ross, Director

JUDGMENT (LIABILITY)

My Judgment is that:-

1. The claimant was dismissed and the effective date of termination was 2 October 2020.
2. The complaint of unfair dismissal (which was resisted solely on the basis that there had been no dismissal) succeeds.
3. The dismissal was also in breach of contract (failure to give notice or make a payment in lieu) and accordingly the claimant was also wrongfully dismissed.
4. The respondent has conceded that at the date of dismissal the claimant was entitled to payment in respect of accrued but untaken holiday in the amount of £52.99.
5. The complaint in respect of failure to provide written reasons for dismissal fails.

RESERVED JUDGMENT IN RESPECT OF REMEDY

6. In respect of compensation for unfair dismissal the claimant is to receive a basic award of £353.16 and a compensatory award of £6492.80 – calculated as per the schedule below.
7. The Recoupment Regulations do not apply.
8. The claimant is awarded damages for wrongful dismissal representing two weeks' notice pay - £235.44.
9. Accordingly the respondent is to pay to the claimant forthwith the total amount of £7134.39.

REASONS FOR REMEDY AWARD

1. There was insufficient time at the hearing for me to determine remedy. After hearing the claimant's evidence on remedy issues and submissions from the parties I therefore reserved judgment in respect of remedy.
2. Although the respondent has not really raised the issue of the duty to mitigate her loss, I am satisfied that the claimant did so. Having been dismissed she was unable to increase the hours she worked for her other employer. I have considered the documents in the bundle at pages 41 to 44 in section 2 of the bundle which give examples of the claimant's job search. I have also accepted that the claimant's ability to obtain new employment was inhibited by some family problems.
3. When calculating the award for immediate loss of earnings for unfair dismissal purposes I have taken into account that as the wrongful dismissal complaint also succeeded, with the result that the claimant receives damages for two weeks' notice pay, this means that the calculation period for immediate loss for unfair dismissal purposes commences two weeks after the effective date of termination.
4. Whilst the claimant had in her schedule of loss sought a further 26 weeks loss of earnings from the date of this hearing, I have limited the award to 12 weeks. I have taken the view that the claimant has been looking for unskilled work for seven months and now that her family problems have hopefully been resolved, I anticipate that she will be able to obtain a new job which pays no less than the old job no later than three months hence.
5. Under the provisions of the Trade Union and Labour Relations (Consolidation) Act 1992 section 207A I have the power to increase the compensatory award for unfair dismissal if I find that the employer has failed to comply with a relevant ACAS Code of Practice and that that failure was unreasonable. In the present case the relevant code is the ACAS Code of Practice 1: Disciplinary and Grievance Procedures

2015. That Code imposes on all employers basic minimum requirements of procedure and fairness when the dismissal of an employee is being considered. It is clear that in this case, where the respondent dismissed the claimant, but had adopted no procedure whatsoever before doing so, that the Code was breached. I am permitted to make an increase of up to 25%, taking into account what I consider to be just and equitable in all the circumstances. In this case I consider that a 25% increase or uplift is appropriate.

6. Towards the end of this hearing Mr Ross mentioned Polkey. What is commonly called the Polkey principle means that if a dismissal is found to be procedurally unfair but the evidence shows that if there had been a fair procedure, dismissal would either have been inevitable, or at least probable, then a Tribunal can decide that it is just and equitable to award no compensation, or to award only reduced compensation. The respondent had never raised Polkey as part of its very brief grounds of resistance. Those grounds were limited to the assertion that there had been no dismissal because the claimant had “simply resigned her position”. Even if a Polkey defence or argument had been properly put forward in this case I would have found it to be without merit. The claimant’s dismissal was unfair substantively and procedurally. Naturally no reason was put forward for a dismissal which the respondent completely denied had taken place. Accordingly there is nothing to suggest that a fair procedure could have made a dismissal without reason fair.

SCHEDULE

Unfair dismissal

Basic award

The claimant had two complete years of service and was 43 years of age at the date of dismissal. It is agreed that the claimant’s gross pay (and also for that matter net pay) was £117.72 per week.

The appropriate multiplier is 2 and so the basic award is £353.16

Compensatory award

Immediate loss

16 October 2020 (taking into account two weeks’ notice pay awarded under wrongful dismissal) to 14 May 2021 (date of hearing):

30 weeks at £117.72 = £3531.60

Future loss

12 weeks at £117.72 = £1412.64

Loss of statutory rights - £250.00

Subtotal £5194.24

ACAS uplift (Trade Union and Labour Relations (Consolidation) Act 1992 section 207A - 25%

£1298.56

Total **£6492.80**

Holiday pay

Agreed at £52.99

Wrongful dismissal

Damages representing two weeks' notice pay - £235.44

Grand total

£7134.39

Employment Judge Little
Date 26th May 2021

Date 1st June 2021