



THE EMPLOYMENT TRIBUNALS

Claimant: Mrs B Ord

Respondent: Bel Valves Limited

Heard at: Newcastle upon Tyne Hearing Centre
On: Tuesday 29th June 2021

Before: Employment Judge Johnson

Members: Mrs S Don
Mr D Cattell

Representation:

Claimant: In Person
Respondent: Mr R Ryan of Counsel

RESERVED JUDGMENT ON APPLICATION FOR RECONSIDERATION

1. The claimant's application for a reconsideration of the judgment promulgated on 15th March 2021 is well-founded and succeeds. It is in the interests of justice for there to be a reconsideration.
2. The respondent's application for a reconsideration of the judgment promulgated on 15th March 2021 is well-founded and succeeds. It is in the interests of justice for there to be a reconsideration.
3. The amount of compensation payable to the claimant in paragraph 110 is amended as follows:-
 - (i) Basic award - £3,150.00
 - (ii) Compensatory award
 - (a) Loss of statutory rights - £500.00
 - (b) Loss of earnings (equivalent to 3 months notice) - £10,744.89

Total compensation - £14,394.89

The Recoupment Provisions apply to this award. The relevant period is from 8th November 2019 for the period of 12 weeks to 31st January 2020, in the sum of £877.20. The excess of the compensatory award over the relevant amount is £9,867.69.

REASONS

1. By judgment promulgated on 15th March 2021, the tribunal found that the claimant's complaints of unfair constructive dismissal and breach of contract (failure to pay notice pay) were both well-founded and succeeded. The respondent was ordered to pay compensation to the claimant for unfair dismissal in the sum of £22,946.63.
2. By letter dated 29th March 2021, the respondent made a formal application for a reconsideration of that judgment. The application was made under Rule 71 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. The basis of the respondent's application was that the issue of remedy had not been considered in detail at the main Hearing and that it was in the interests of justice for there to be a reconsideration of the calculation of compensation awarded to the claimant.
3. By letter dated 29th March 2021, the claimant made a cross application for reconsideration of that judgment. The claimant's application was based upon an alleged miscalculation of the award of compensation as the tribunal had not properly taken into account the level of pension contributions paid by or on behalf of the claimant and that the calculation of salary had been generally inaccurate.
4. By notice dated 1st May 2021, the parties were informed that there would be a hearing before the original employment tribunal panel to consider both applications for reconsideration.
5. The claimant again conducted this hearing herself. The respondent was again represented by Mr Ryan of Counsel, who called Ms Wendy Tatters to give evidence to the tribunal.
6. The main thrust of Mr Ryan's submission was that the employment tribunal had awarded loss of earnings to the claimant from the date of her resignation on 27th September 2019 up to 31st March 2020, that being the date by which the employment tribunal calculated the claimant would probably have been fairly dismissed for reasons of redundancy. In so doing, the employment tribunal had overlooked the fact that the claimant had been on long-term sick leave since 28th February 2019 and had exhausted her entitlement to contractual sick pay, as at the date of her resignation she was not in receipt of any earnings from the respondent. It is the respondent's case that the claimant would have remained on sick leave until her likely dismissal for reasons of redundancy. Accordingly, the claimant should not have been awarded any loss of earnings other than her

contractual entitlement to notice pay, which amounted to 3 months or 13 weeks in total.

7. The claimant alleged that the calculation of her compensatory award had failed to take into account both employee and employer pension contributions to which she would have been entitled had her employment continued until 31st March 2020. The claimant also made an application for an uplift on the basis that the respondent had failed to follow the ACAS Code of Practice in the manner in which they handled her grievance.
8. The tribunal heard evidence from Wendy Tatters on behalf of the respondent and from the claimant herself. The claimant conceded that, as at the date of her resignation, she had exhausted her entitlement to sick pay and was not at that time receiving any income from the respondent. The claimant sought to persuade the tribunal that she would have returned to work during the redundancy consultation period and would thus have been in receipt of income from then up until the date of her dismissal. The claimant submitted that the employment tribunal's original date of 31st March 2020 was the correct date. The claimant argued that the tribunal's use of her net pay in calculating her compensatory award was incorrect because it failed to take into account deductions made for the employees pension contributions and also the fact that the employer's pension contributions would not be made during the period from her resignation up to 31st March 2020.
9. The claimant's evidence was that she was the only person within the respondent's organisation who was capable of undertaking quality assurance work to the standard required by the respondent's customers and that, as a result, she would have been either retained by the company or have been one of the last to be dismissed for reasons of redundancy. Ms Tatter`s evidence was that the quality assurance work which had previously been performed by the claimant had been carried out by other employees during the period when the claimant was on long-term sick leave. The requirement for that amount of quality work to be undertaken had diminished and had been absorbed by a number of other employees who had been capable of undertaking that work.
10. The tribunal accepted the evidence of Ms Tatters in this regard. The tribunal found it highly unlikely that the claimant would have returned to work during the redundancy consultation period. The tribunal found that the quality assurance work which the claimant had been undertaking prior to going on long-term sick leave had been absorbed into the roles of other employees and was being performed by them to the satisfaction of the respondent and its customers.
11. The tribunal found it highly unlikely that the claimant would ever have returned to work for the respondent. The claimant's response to being formerly notified that she was at risk of redundancy and was to be placed in a pool of one from which selection would be made, was to resign with immediate effect. The claimant did not provide any evidence to the tribunal today to persuade the tribunal that she could or would have returned to work. Indeed, the claimant's case at the original hearing was that the respondent's behaviour towards her was such that she could

no longer be expected to put up with it and that as a result she resigned without giving notice.

12. The claimant's evidence to the tribunal was that, because she was on long-term sick and unable to attend her place of work, that it would have taken longer for the respondent to go through a fair consultation process with her. That process may have involved information being provided in writing, questions being asked and answered in writing and the answers to those questions being challenged in writing. Ms Tatters accepted that it may have taken a little longer to deal with an employee who was absent on long-term sick leave, but insisted that in the claimant's case it would have made no difference to the date by which the consultation would have come to an end. The tribunal found that it was more likely that the consultation process would have taken a little longer, but no longer than 28 days more than any other employee. For the reasons set out below, this makes no difference to the calculation of the compensatory award.
13. The tribunal's finding at the original hearing was that the claimant should be compensated for loss of earnings up to 31st March 2020. Mr Ryan submitted, and it was Ms Tatters evidence, that the claimant would have been fairly dismissed for reasons of redundancy by 1st November 2019. That is a difference of 5 months. However, the tribunal accepted that the basis of its original calculation of loss of earnings was fundamentally flawed. The tribunal failed to take into account the fact that the claimant had already exhausted her entitlement to contractual sick pay and was at the date of her resignation receiving no income from the respondent. The tribunal found that this would have continued up to the date when she could have been fairly dismissed for reasons of redundancy. Accordingly, the only loss suffered by the claimant is the 3 months contractual notice pay to which she was entitled. The tribunal is satisfied that the maximum for loss of earnings which should be awarded to the claimant as part of her compensatory award is 3 months or 13 weeks net pay. That is the only loss which has been suffered by the claimant. In addition, the claimant will be entitled to the sum of £500.00 for loss of her statutory rights and also to the basic award which was set out in the original judgment.
14. The tribunal accepted the claimant's arguments that the net weekly pay should take into account employee's pension contributions which would ordinarily be deducted from her monthly wages. Mr Ryan accepted that this sum should be included in the calculation. The net weekly pay was £769.16, to which should be added the employees' pension contribution of £57.37, giving a total of £826.53 per week. That comes to £10,744.89. To that should be added the sum of £500.00 for loss of statutory rights. The basic award should then be added, giving a total sum of compensation of £14,394.89.
15. The claimant confirmed that she had received benefits for 12 weeks following her dismissal, at the rate of £73.10 per week in the total sum of £877.20. The Recoupment Provisions will apply that amount.
16. The claimant in her application to the tribunal had asked that there be an uplift on the award of compensation to reflect the respondent's alleged breach of the ACAS Code of Practice. That allegation was never made as part of the

claimant's claim, no evidence was given to the tribunal by the claimant at the original hearing and no explanation has been given by the claimant as to why it was not raised before this application. The tribunal has not made any findings at the original hearing that there had been any breach of the ACAS Code of Practice.

17. For those reasons, the respondent's application for a reconsideration is granted. It is in the interests of justice for there to be a reconsideration because the employment tribunal had miscalculated the claimant's entitlement to a compensatory award.
18. Insofar as it relates to the miscalculation of her weekly income (by excluding the employee's pension contribution), the claimant's application for a reconsideration is also well-founded and succeeds. However, the number of weeks to be taken into account in calculating the compensatory award is reduced as per the respondent's application. That part of the claimant's application which alleges a breach of the ACAS Code is refused.

G Johnson
EMPLOYMENT JUDGE JOHNSON

**JUDGMENT SIGNED BY EMPLOYMENT
JUDGE ON
12th July 2021**

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