



EMPLOYMENT TRIBUNALS

Claimant: Ms S Reyland
Respondent: Hanley Smith Limited
Heard at: East London Hearing Centre **On:** 13 August 2021
Before: Employment Judge Allen QC
Members: Ms A Berry
Mr P Quinn

Appearances

For the claimant: In person
For the respondent: Mr Brotherton

This has been a remote video hearing which was not objected to by the parties. The form of remote hearing was V: video - fully (all remote) by CVP. A face to face hearing was not held because it was not practicable and no-one requested the same and all issues could be determined in a remote hearing. The documents that I was referred to are in the tribunal file, and in the written statements, submissions, authorities and bundle of documents produced by the parties, which the tribunal had before it.

REMEDY JUDGMENT

1. The Respondent must pay to the Claimant the sum of **£3,993**.

REASONS

1. This remedy hearing was listed following the judgment of the tribunal sent to the parties with reasons on 8 July 2021 recording that the Claimant had been successful in her claim for unfair dismissal but that her compensatory loss would be reduced by 65% to reflect the chance of her being fairly dismissed by reason of redundancy if a fair process had been applied by the Respondent.

2. The Claimant had sought to persuade the tribunal to reconsider its decision on the reduction to compensation – but that application was refused and the parties were notified of that refusal by letter from the tribunal dated 11 August 2021.
3. The tribunal read witness statements and heard oral evidence from the Claimant and from Ms Bonfield for the Respondent. The tribunal was referred to pages in a bundle of 87 pages, which was once again not compliant with the Presidential Guidance – despite the case management order to that effect. Further document relating to medical issues were also referred to and are numbered pages 41A to 41F. The tribunal was assisted by a schedule of loss and a counter schedule of loss. The tribunal heard oral submissions from both parties.
4. In addition to compensation for unfair dismissal, the Claimant today sought an award relating to her allegedly not being given a statement of change to her terms and conditions when her hours were reduced by agreement to 10.5 per week in September 2019. In oral evidence she accepted that she had received both an original statement of terms and conditions and written notice of the change in hours. The tribunal considered that this satisfied section 4 of the Employment Rights Act 1996 and therefore that no award was payable under section 38 of the Employment Act 2002.
5. The Claimant did not seek reinstatement or re-engagement.
6. The parties were agreed that the Claimant's weekly pay as at the date of dismissal was £150.99 (both gross and net) and that during employment, she had received additional benefits in the form of employer pension contributions at £7.55 per week and healthcare plan at £6.74 per week, giving a total loss of £165.28 per week.
7. The Claimant queried whether she should be compensated at a higher weekly rate because she had been performing more hours up to September 2019, given that the tribunal in its earlier judgment, had not considered that her request which led to that reduction of hours had been a flexible working request compliant with the relevant statutory regime. The tribunal decided that this was not relevant to the question of the Claimant's pay as at the date of dismissal – which the tribunal decided would have remained at the same rate if she had not been made redundant.
8. The Claimant was not entitled to a further basic award – having already received a statutory redundancy payment in the same amount.
9. The Claimant sought damages for injury to feelings, personal injury and aggravated damages. The tribunal did not have jurisdiction to award anything for those heads of loss in an unfair dismissal claim.
10. The Claimant sought to claim an uplift due to non compliance with the ACAS Code of Conduct – but that code is not applicable to redundancy dismissals and therefore no uplift can be sought.
11. The parties were agreed that the award for loss of statutory rights should be £500.

12. The Claimant is expected to take reasonable steps to minimise the losses suffered as a consequence of the unlawful act. The burden of proving a failure to mitigate is on the respondent.
13. The Respondent did not challenge the Claimant's claim for loss of earnings to the date of the hearing (13 August 2021, agreed at 33 weeks). The total (before reduction) being £5,454.24.
14. The key point of dispute at the hearing was as to whether the Claimant should be awarded future loss of earnings and if so the period of time that the tribunal considered appropriate.
15. The Claimant contended for future loss for a period of 2 years from the date of the hearing. The Respondent contended that there should be no future loss and losses should be calculated only to the date of the hearing.
16. The evidence of Ms Bonfield for the Respondent did not suggest that if the Claimant had continued in employment that she would have been dismissed for reason of redundancy or any other reason or that any such reduction in workforce was being contemplated.
17. In support of her position, the Claimant relied upon the following factors:
 - a. She has been suffering from a very serious skin condition since the redundancy dismissal at the Respondent – which was making her very self conscious and inhibiting her search for jobs and the type of job that she could contemplate applying for (for example it was preventing her from searching for customer facing roles). The tribunal heard evidence about the cause of the condition, which was ultimately irrelevant – given that it was clear from the photographic and medical evidence before the tribunal that the Claimant has had and continues to have this condition.
 - b. The Claimant also told us that she suffers from fibromyalgia which restricted her from applying for physical jobs (e.g. in a warehouse) and also that her mental health has been affected and that she is to receive counselling, starting in the near future.
 - c. The Claimant has two children and her youngest child has suffered from poor health from a very young age. Both children will be at primary school from September 2021. The Claimant, as the primary carer, is restricted in the number of hours that she can work (she would consider a role between 10 to 20 hours per week); the time of day that she can work (she can contemplate working between 9.30am and 2.30pm); and the type of work (she would not wish to be in a role that involved very frequent interactions with a large number of people – such as retail – given the risk of carrying any infection back to her family and her youngest son in particular).
 - d. The Claimant had been absent from work at the Respondent from time to time due to her caring responsibilities for her son and she is wary of taking

another role with an employer who lacks understanding of her need to take care of her son if he is unwell.

- e. She is therefore able only to contemplate a narrow range of hours and roles.
 - f. The Claimant's partner is a commercial gas engineer whose work is spread over the UK geographically and who is working away from home from time to time, and who is at times on call over weekends and on some evenings. He is the primary earner in the family and the Claimant therefore needs to work during the times when her children would be at school.
 - g. The Claimant's evidence was that the jobs that she might be able to get in future may well require her to take a pay cut.
18. The Respondent accepted that the pandemic has had a considerable impact in the past on job vacancies and pay; but the Respondent contended that the job market was now healthier and contended that it would be healthier looking forward.
19. The Respondent produced a list of jobs which had been advertised but was unable to point to any specific job that it said that the Claimant should have applied for.
20. The Claimant had not registered or re-registered with any job agency since her dismissal. The tribunal found that she had not been relying, as she could have done, on any tailored search for a role via a job agency.
21. The Claimant told us and provided documentary evidence that she had unsuccessfully applied for two jobs (both in May 2021) and that she had telephoned in relation to a number of other advertised full time job vacancies to see whether they would contemplate taking someone part time (which they would not). She gave us a list of five but she said that there had been others and that she had called some of those five more than once. The Claimant said that she had very regularly checked for job vacancies but that little or anything was suitable for the reasons recorded above.
22. The Claimant had tried to claim benefits but she was ineligible because of total household income.
23. The tribunal accepted that the factors listed by the Claimant had been and would be going forward inhibitors on the Claimant's ability to find work and the tribunal had sympathy for the Claimant's position.
24. The tribunal considered that the job market in the future was likely to be healthier than it had been since the Claimant's dismissal and that there were additional steps that the Claimant could take to assist her in her search for a new job (albeit that registration with an agency does not guarantee success). The tribunal took into account that the Claimant's children would both be at Primary school from this coming September. The tribunal did however recognise that the restrictions

on the Claimant would make it likely that it would be some further period of months before she would hope to obtain new employment at the same or similar level of earnings. Such an assessment of future prospects is inevitably fraught with uncertainty. The Claimant could find work very soon or she might not find work for more than a year. The precise earnings level couldn't be predicted with any accuracy. However the tribunal, taking into account all the factors referred to by both parties, considered that it would be just and equitable to compensate the Claimant for a further period of 33 weeks which would take into account the difficulties that she would face.

25. Therefore. The tribunal awarded the Claimant a Compensatory Award comprising:
- a. £500 for loss of statutory rights
 - b. £5,454.24 for past loss of earnings
 - c. £5,454.24 for future loss of earnings 5454.24

Giving a total (before reduction) of £11,408.48

26. Upon application for the 65% reduction, this left a sum of £3,993 which was awarded to the Claimant.

Employment Judge Allen QC
Date: 13 August 2021