



EMPLOYMENT TRIBUNALS

Claimant: Ms L Collard
Respondent: STS Storage System Limited
Heard at: Reading **On: 27 August 2021**
Before: Employment Judge Gumbiti-Zimuto

Appearances
For the Claimant: In Person
For the Respondent: Mr D Leach, counsel

JUDGMENT

REMEDY

The respondent is ordered to pay to the claimant the sum of £11,437.43 in compensation for unfair dismissal.

REASONS

1. The claimant in this case does not seek an order for reengagement or reinstatement by the respondent. The claimant seeks compensation for her unfair dismissal.
2. Where a tribunal makes an award of compensation for unfair dismissal the award shall consist of a basic award, and a compensatory award.
3. Where the reason for dismissal is redundancy, the amount of the basic award shall be reduced by the amount of any redundancy payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy.
4. The claimant received a redundancy payment in the sum of £4,304.
5. The amount of the basic award is calculated in accordance with section 119 if the Employment Rights Act 1996. In the claimant's case that result in a basic award of £3,766.¹

¹ Maximum week's pay of £538 x 7 complete years of employment

6. In the claimant's case the basic award is therefore £0.
7. The amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the claimant in consequence of the dismissal in so far as that loss is attributable to action taken by the respondent. The amount of any compensation awarded, in the claimant's case, shall not exceed the lower of £88,519, or 52 multiplied by a week's pay of the claimant.
8. The loss for which the claimant is entitled to recover includes any expenses reasonably incurred by the claimant in consequence of the dismissal, and the loss of any benefit which she might reasonably be expected to have had but for the dismissal.
9. The claimant must mitigate her loss.
10. Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding. This provision does not apply in the circumstances of this case.
11. If the amount of any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy exceeds the amount of the basic award which would be payable but for section 122(4) Employment Rights Act 1996, that excess goes to reduce the amount of the compensatory award.
12. The Claimant would have received: £1,933.33 per month (gross) in "furlough pay", plus £483.33 (gross) by way of "top up" pay, a total of £2,416.66 (gross) per month. This is equivalent to the net sum of £1,946.66. The employer's pension contributions were £120.83, giving a grand total of £2,067.49 net per month by way of financial loss. During the period of furlough the claimant would not have been paid commission after 1 July 2020, due to the lack of sales for her to be paid commission on.
13. The claimant commenced new employment on 1 February 2021, on a gross annual salary of £33,000. She receives a gross monthly salary of £2,750. Plus she received a "working from home" allowance of £23.60 on average for the first three months, making a total of £2,773.60 gross per month for the first three months. This produces a net monthly figure of £2,189.38 for the first three months. The claimant did not receive any employer's pension contributions for the first three months, but then receives £82.50 in employer's pension contributions. That gives a total of £2,750 to be netted down (£2,173.33), plus £82.50 = £2,255.83 net for subsequent months.
14. The respondent contends that the claimant's period of loss must therefore come to an end on the 1 February 2021. Taking into account sums already

received the respondent contends that the claimant's loss should be assessed at £8,588.97. The respondent concedes an award for loss of statutory rights and states that the total award should be £9,088.97.

15. I agree with the methodology used by the respondent and the figures arrive at up to 1 February 2021. However, in my view the claimant's loss should be calculated up to the date of the hearing. If this is done then in my view the claimant's losses are greater because I am of the view that the claimant's losses are greater after 1 May 2021 than they are in the period between that date and 1 February 2021.
16. The respondent's evidence is that they employed an administration clerk in May 2021. The respondent has also replaced an employee who left its employment. It seems to me that the evidence suggests that had the claimant remained in the respondent's employment she would on balance of probability have been taken off furlough by May 2021. There is in my view no reason why this employer would employ someone else to do a role that is in a significant part the role that she performed if she was available to do the work. It is to be borne in mind that the claimant's role went well beyond administrative work. Had the claimant's employment continued she would have been taken off furlough by May 2021.
17. In assessing the claimant's losses for the period from 1 May to the date of the hearing I take into account the figures that are contained in the claimant's P60 tax notice. This results in the claimant's continuing loss in contrast to her previous earning in the sum of £446.57.² There is a period of four months from the 1 May to the 31 August 2021 making a loss of £1,786.28.
18. I have considered whether I should make an award of compensation going beyond that date. I have come to the conclusion that such an award would not be just and equitable. The claimant's questioning of the respondent's witnesses left me with some reservations about some of the evidence which has been produced by the respondent but the evidence that the respondent is in a significantly different financial position to that which it was in when the claimant was employed has not been impugned and other than simply disbelieving it there is nothing to contradict what Mr Beill said in his remedy statement at paragraphs 18-26. Taking all the circumstances into account I do not consider that an award of compensation beyond the 31 August 2021 is just and equitable.
19. I am of the view that the claimant is entitled to a further award of £559.18. In my view such an award is necessary to put the claimant where she would have been but for her dismissal. The claimant had 5 days extra holiday when employed by the respondent. The claimant to recover those five day holiday would have to take five days unpaid leave. This results in a loss to the claimant of the £559.18. In coming to this conclusion I take into account the fact that the claimant is entitled to compensation in

² This is the difference between £2702.40 (see P60) monthly total and £2,255.83

respect of loss of any benefit she might reasonably be expected to have had but for dismissal. Awarding her five day's pay enables her to take five days unpaid leave without pay.

20. The claimant seeks and the respondent concedes that the claimant is entitled to an award in respect of the loss of her statutory rights. I make an award of £500 in respect of loss of statutory rights.
21. The evidence presented does not permit a conclusion that the claimant would have received an annual pay rise of 3.5%.
22. The evidence presented does not permit a conclusion that the claimant would have received a bonus of £1,800.
23. The fact that there was no consultation in my view does not merit an award of a discrete sum. The claimant was taken through a supposed consultation process but this lasted as long as a real consultation would have done. In the circumstances I am unable to conclude that the claimant's employment should have been treated as though it is extended by the period of the 6 weeks.
24. There is no pecuniary loss to the claimant by reason of the way that the redundancy package was calculated and recalculated by the respondent.
25. The claimant did not bring a complaint pursuant to section 11 Employment Rights Act 1996 and further the claimant is not entitled to an award of compensation pursuant to section 28 of the Employment Act 2002 because the claimant was provided with statement of terms and conditions of employment.
26. The respondent may have failed to follow their procedures as set out in the employee handbook. It is not clear that these give rise to any actionable right, in any event even if it did there is no such breach of contract claim before me, nor is there any indication of what pecuniary (money) loss results from such breach.
27. The claimant seeks an award for hurt feelings. The claimant did not persist in her application to amend the claim form to include a complaint of sex discrimination. Had she done so and such a complaint was successful she could have recovered compensation for injury to feelings. In a case of unfair dismissal an employee cannot recover compensation for injured feelings arising out of the manner of the dismissal.
28. The claimant is therefore entitled to an award of compensation in the sum of £11,434.43. Comprising of
 - a. Loss of statutory rights £500
 - b. Loss of earnings £10,378.25
 - c. Loss of Holiday days £559.18

Employment Judge Gumbiti-Zimuto
Date: 27 August 2021

Sent to the parties on: 16/9/2021

N Gotecha

For the Tribunals Office

Public access to employment tribunal decisions:

All judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the Claimant(s) and Respondent(s) in a case.