



EMPLOYMENT TRIBUNALS

Claimant: Ms N Coleman
Respondent: Highcroft Care Home Limited
Heard at: East London Hearing Centre
On: 17th September 2021
Before: Employment Judge Reid

Representation

Claimant: in person
Respondent: Mr Chand – owner

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was originally video V by Cloud Video Platform but the hearing was converted to a telephone hearing (audio (A)) due to technical issues. A face to face hearing was not held because the relevant matters could be determined in a remote hearing.

JUDGMENT (Reserved)

The judgment of the Tribunal is that the Claimant is awarded £1086.12 compensation for unfair dismissal, calculated as set out below:

Gross weekly pay: £504
Net weekly pay: £412.75
Age at date of dismissal: 52
Number of complete years' service: 4

A Basic award

4 complete years of service x 1.5 gross weekly pay (all service aged over 41) = £3024

Less deduction for contributory fault under s122(2) Employment Rights Act 1996 at 75% (judgment para 35)

= £756

B Compensatory award

Net loss of earnings for two weeks (judgment para 34) $2 \times 412.75 = \text{£}825.50$

Plus loss of statutory rights $\text{£}250 = \text{£}1075.50$

Less notice pay (net) received in the two week loss of earnings period ($\text{£}825.50$)

= $\text{£}250$

Plus increase s207A Trade Union and Labour Relations (Consolidation) Act 1992 (unreasonable failure to comply with ACAS Code of Practice)

$\text{£}250 \times 25\% = \text{£}62.50$

= $\text{£}312.50$

Plus increase s38 Employment Act 2002 (written statement of employment terms to comply with s1-3 Employment Rights Act 1996)

2 weeks' gross pay = $\text{£}1008$

= $\text{£}1320.50$

Less deduction for contributory fault under s123(6) Employment Rights Act at 75% (judgment para 36)

= **$\text{£}330.12$**

TOTAL A + B = $\text{£}1086.12$

REASONS

1 A telephone remedy hearing was held on 17th September 2021. The Respondent provided an electronic bundle for the hearing and I also had the electronic bundle from the previous hearing. This hearing had to be converted to a telephone hearing because Mr Chand had technical issues with his video link. Both parties attended. I explained the issues to them and in particular how the compensatory award is calculated and the reasons for and the way in which increases and reductions are made. I asked each of them to comment on these increase/decrease issues as I went through that explanation and explained I was required to apply those increases/decreases in a particular order. I went through the calculation of a week's gross and net pay as set out above and these figures were agreed by the parties.

2 My judgment dated 11th June 2021 already made findings as to the claimable period of loss under *Polkey* (para 34) and as regards contributory fault (paras 35 and 35). A finding of a breach of the ACAS Code of practice was also made (para 32). I flagged up in the orders dated 11th June 2021 (para 5) that one additional issue was under s38 Employment

Act 2002 (failure to provide statement of employment particulars compliant with s1 Employment Rights Act 1996).

Findings of fact

3 I find that the Respondent's failure to comply with the ACAS Code of Practice was unreasonable. Whilst it was argued that for residents' safety the Claimant's employment had to be terminated immediately, an alternative to dismissal without a disciplinary hearing could have been a short suspension so that a disciplinary hearing could be held. Further, an appeal could have been held in any event after the employment had been terminated.

4 I find that the Claimant's contract (page 86 original bundle) did not contain a detail required under s1 Employment Rights Act 1996. This was information about the pay interval (s1(4)(b)). The place of work (s1(4)(h)) was also not separately identified but I find that the heading of Highcroft Care Home (there is only one) meant that in practice the information was provided albeit not expressly as such in the body of the contract. In one respect therefore the contract did not comply with the minimum requirements.

Relevant law

5 The compensatory award is calculated under s123 ERA 1996 and is such sum as the Tribunal considers just and equitable in all the circumstances having regard to the loss sustained in consequence of the dismissal in so far as that loss is attributable to the action of the employer. It can include a sum for loss of statutory rights ie what the employee has lost because they lose their unfair dismissal protection and have to start again at a new employer and work for another two years to get that protection back.

6 Losses already compensated are not compensated twice.

7 s207A Trade Union and Labour Relations (Consolidation) Act 1992 provides that an award may be reduced or increased by up to 25% where there has been an unreasonable failure by a party to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures (2015), if just and equitable in all the circumstances to do so.

8 The compensatory award can be increased by two or four weeks' pay when, at the time of the dismissal, the employer has not issued a written statement of terms and conditions to the employee or has issued one but it does not contain all the required particulars (s38 Employment Act 2002). If such a statement was not issued to the employee the Tribunal must award two weeks' pay. The Tribunal can instead make a higher award of four weeks' pay if it thinks it is just and equitable to do so. It does not need to make any award if there are exceptional circumstances which would make an award unjust or inequitable.

Reasons

9 Taking into account the findings of fact in the judgment dated 11th June 2021 and the above findings of fact I conclude that the Respondent's failure to comply with the ACAS Code was unreasonable. Two fundamental parts of a fair disciplinary process (a disciplinary

hearing and a right of appeal) were not conducted by the Respondent. Given the extent of that failing it is just and equitable to make an increase to the maximum of 25% taking into account it deprived the Claimant of the opportunity to respond to the allegations in a formal disciplinary process, to make her case and to have an appeal heard by someone independent of the disciplinary process.

10 Taking into account the above findings of fact I make an additional award of two weeks' pay for the failure to provide a written statement of terms which contained all the required information. Where a failure to do so is identified the Tribunal must make that minimum award unless there are exceptional circumstances which make an award unjust or inequitable. Although the missing details had no ultimate bearing on the dispute which eventually arose when the Claimant was dismissed, information as to the frequency of pay is basic initial information an employee needs to be given, even if, as argued at this hearing, over time it becomes obvious how often they are paid.

Employment Judge Reid
Date: 20 September 2021