



EMPLOYMENT TRIBUNALS

PUBLIC TELEPHONE PRELIMINARY HEARING

Claimant: Miss C Hind

Respondent: Hadleys Hairdressing (Burnopfield) Ltd

Heard: Remotely by telephone **On:** 7 October 2021

Before: Employment Judge S Shore

Representation:

Claimant: In Person

Respondent: No Appearance

JUDGMENT

Rule 21 - Employment Tribunals Rules of Procedure 2013

1. This hearing was listed as a private preliminary hearing. I changed it to a public preliminary hearing when I realised that I had sufficient information to enable me to deal with the claimant's claims under Rule 21 of the Employment Tribunals Rules of Procedure 2013.
2. The name of the respondent is **Hadleys Hairdressing (Burnopfield) Ltd**.
3. The respondent has failed to enter an appearance at any stage of these proceedings. On the material available to me, I was able to deal with liability and remedy in respect of the claimant's claims of:
 - 3.1. Automatic unfair dismissal because of a TUPE transfer contrary to Regulation 7 of the Transfer of Undertakings (Protection of Employment) Regulations 2006;
 - 3.2. Failure to consult on a TUPE transfer contrary to Regulations 13 and 15 of the Transfer of Undertakings (Protection of Employment) Regulations 2006;
 - 3.3. Unfair dismissal contrary to section 94 of the Employment Rights Act 1996;

- 3.4. Breach of contract (failure to pay notice pay) contrary to Article 4 of the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994;
- 3.5. Unauthorised deduction of wages contrary to section 13 of the Employment Rights Act 1996 (failure to pay holiday pay);
- 3.6. Unauthorised deduction of wages contrary to section 13 of the Employment Rights Act 1996 (failure to pay wages).

Liability

4. My Judgment on liability in respect of the above matters is:
 - 4.1. The claimant's claim of automatic unfair dismissal because of a TUPE transfer contrary to Regulation 7 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 **fails**, because I find that there was no TUPE transfer of the claimant's employment in February 2021;
 - 4.2. The claimant's claim of failure to consult on a TUPE transfer contrary to Regulations 13 and 15 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 **fails**, because I find that there was no TUPE transfer of the claimant's employment in February 2021;
 - 4.3. The claimant's claim of unfair dismissal contrary to section 94 of the Employment Rights Act 1996 **is well-founded and succeeds**;
 - 4.4. The claimant's claim of breach of contract (failure to pay notice pay) contrary to Article 4 of the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994 **is well-founded and succeeds**;
 - 4.5. The claimant's claim of unauthorised deduction of wages contrary to section 13 of the Employment Rights Act 1996 (failure to pay holiday pay) **is well-founded and succeeds**;
 - 4.6. The claimant's claim of unauthorised deduction of wages contrary to section 13 of the Employment Rights Act 1996 (failure to pay wages) **is not well-founded and fails**; and
 - 4.7. The claimant's claim of direct discrimination because of the protected characteristic of sex, contrary to section 13 of the Equality Act 2010 **is well-founded and succeeds**.

Remedy

5. The claimant was employed by the respondent from 18 April 2018 to 23 March 2022. At the date of effective date of termination of her employment, the claimant was 20 years old. The claimant worked 15 hours per week and was paid £6.45 per hour. Her average gross weekly wage was £96.75. She was beneath the threshold for paying income tax and National Insurance, so no deductions for tax and NI should be made from any of the awards made herein.
6. For unfair dismissal, the respondent shall pay the claimant a basic award calculated as 2 weeks' gross pay multiplied by a factor of 0.5, as she was aged 20 or younger throughout her employment. The calculation is $2 \times £96.75 \times 0.5 = \mathbf{£96.75}$.

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7. For unfair dismissal, I find that the reason for dismissal was an act of direct sex discrimination, so will make awards for lost earnings under my jurisdiction in the Equality Act 2010.
8. For breach of contract (failure to pay notice pay), the respondent shall pay the claimant her contractual notice entitlement of four weeks' wages. The calculation is $4 \times £96.75 = \mathbf{£387.00}$.
9. For unauthorised deduction of wages in respect of failure to pay holiday pay, the respondent shall pay the claimant 14 days' pay. The calculation is $2.8 \text{ weeks} \times £96.75 = \mathbf{£270.90}$.
10. For direct sex discrimination, the respondent shall pay the claimant compensation for injury to feelings of **£9,000.00**.
11. The respondent shall pay the claimant interest on the compensation for injury to feelings. The appropriate interest rate is 8%. The period for which interest is awarded is from the date of the discriminatory act (the claimant's dismissal) on 23 March 2021 to the date on which I have calculated compensation (7 October 2021). The annual rate of interest ($8\% \times £9,000.00$) is £720.00 per year. The daily rate is therefore $£720.00/365 = £1.97$ per day. There were 199 days between the date of discrimination and the date I calculated the compensation. The calculation is $199 \times £1.97 = \mathbf{£392.03}$.
12. For lost earnings arising from direct sex discrimination, the respondent shall pay the claimant compensation from the expiry of her contractual notice period (20 April 2021) of 52 weeks' gross pay. The calculation is $52 \times £96.75 = \mathbf{£5,031.00}$.
13. The respondent shall pay the claimant interest on the compensation for lost earnings. The appropriate interest rate is 8%. The period for which interest is awarded is from the date that the claimant's notice entitlement expired (20 April 2021) to the date on which I have calculated compensation (7 October 2021). The amount of the claimant's lost earnings is the amount she would have earned in the period from 20 April 2021 to 7 October 2021. The sum lost is $25.5 \text{ weeks} \times £96.75 = £2,467.13$. The annual rate of interest ($8\% \times £2,467.13$) is £197.37 per year. The daily rate is therefore $£197.37/365 = £0.54$ per day. There were 171 days between 20 April 2021 and the date I calculated the compensation. The calculation is $171 \times £0.54 = \mathbf{£92.34}$.
14. The respondent totally failed to comply with the ACAS Code of Practice 1: Disciplinary and Grievance Procedures (2015) on Grievance and Disciplinary Procedures in respect of the claimant's dismissal. I find that failure to be unreasonable. However, as I have made no compensatory award under the unfair dismissal head of claim, there is nothing to uplift.
15. The respondent totally failed to comply with the ACAS Code of Practice 1: Disciplinary and Grievance Procedures (2015) on Grievance and Disciplinary Procedures in respect of the claimant's grievance about the failure to pay notice and failure to pay holiday pay. The amounts awarded under those heads will be uplifted by 25%. The calculations are $£387.00 \times 25\% = \mathbf{£96.75}$ and $£270.90 \times 25\% = \mathbf{£66.73}$.
16. The provisions of the Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 do not apply in this case.

17. The total payable by the respondent to the claimant is **£15,433.50**.

Note: This has been a remote hearing. The parties did not object to the case being heard remotely. It was not practicable to hold a face to face hearing because of the Covid19 pandemic.

Employment Judge Shore

Date 7 October 2021

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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