Case Numbers: 2302095/2019
2302107/2019
2303310/2019

EMPLOYMENT TRIBUNALS

Claimants: Ms J Vidgen
Mrs H Hudson
Ms L Payne

Respondent: K2 Smiles Limited

JUDGMENT

The Claimants' application dated 7 October 2021 for reconsideration of the Remedy Judgment sent to the parties on 24 September 2021 on the basis that:

1. the hearing had not finished;
2. Claimants should receive the staff pay rise in April 2019 which would have increased the statutory cap;
3. the Claimants would have received a pay rise in April 2019 which would have increased the calculation of the Basic Award;
4. the Claimants would not have been furloughed;
5. the Claimants would have received a Christmas bonus;
6. the Claimants would have received pay rises they remained employed;
7. the Claimant's future losses should have been calculated over a longer period than the period selected by the Tribunal;
8. the issue of the Claimants pay rises in their new employment was not considered;
9. The Tribunal should have issued recommendations and or declarations;
10. The Tribunal took into account the ability of the Respondent to pay compensation without any documentation and new evidence is available.

are all refused.

Other applications for reconsideration are addressed separately.

REASONS

There is no reasonable prospect of the original decision being varied or revoked in relation to the above matters.

1 The hearing had not finished

1.1 As a general matter, the Claimants' suggestion that the hearing was not completed in the one day allotted to it is not correct. The hearing was completed. The Claimants submitted extensive written submissions. Both parties submitted schedules of loss and counter schedules. The issues that were relevant were the subject of oral submissions by the parties. The Employment Judge then reserved the decision and considered the matter at length, with particular consideration of the written submissions.

2 The Claimants should have received a staff pay rise in April 2019 which would have increased the statutory cap

2.1 The statutory cap is calculated in accordance with sections 220 to 229 of the Employment Rights Act 1996. That requires the Judge to look at the actual pay received by the employee and does not permit consideration of what pay might have been received.

2.2 In the light of the statutory cap, the interests of justice are not served by any further review of the statutory uplift or the date when the Claimant's future losses might cease in relation to the First Claimant and Third Claimant.

3 The Claimants would have received a pay rise which would have increased the calculation of the basic award

3.1 The Basic Award is calculated in accordance with sections 220 to 229 of the Employment Rights Act 1996. That requires the Judge to look at the actual pay received by the employee and does not permit consideration of what pay might have been paid.

4 The Claimants would not have been furloughed

4.1 The Tribunal considered the arguments raised on this issue and reached a decision. The argument that the Claimants' representative would, were he to have been practising at the relevant time, would not have followed his staff is not relevant as the Respondent did in fact furlough its own dental nursing staff.

5 The Claimants would have received a Christmas bonus

5.1 The Tribunal concluded that the Christmas bonus was discretionary on the basis of an email date 22 July 2017, which Mr Wrigley sent to the Respondent explaining this, saying:

"Though not included in their contracts, so not required for you to emulate and so totally at your discretion, I have generally given them each a £250 Christmas bonus, a 4-5% annual pay rise at the start of every new tax year in April and also taken everyone out for lunch at the Oak to celebrate their birthdays in lieu of any presents."

6 The Claimants would have received pay rises had they remained employed which should have been taken into account in calculating their compensatory awards

6.1 The email dated 22nd July 2017 cited above, also addresses pay rises making it clear that they are totally in the discretion of the Respondent. The Tribunal accepted the evidence submitted by Mr Wrigley that the Claimants were paid above the standard rate for dental nurses and the Tribunal considered the matter and concluded it on the basis of that evidence.

7 The Claimant's future losses would have extended longer than that period selected by the Tribunal

7.1 It is rare for any employee to remain in employment until retirement. In this case, while the Claimants may have earned more than they could elsewhere while working for the Respondent, they expressed in their witness evidence in support of the remedy application, a sense of dissatisfaction with their employment with the Respondent for reasons extending beyond the specific matters which led to this claim. The Tribunal was entitled to conclude that the Claimants would not have remained employed by the Respondent for the rest of their working lives. The decision to award losses to the end of 2022 was a reasonable consideration of the likely future losses taking into account the prospect the Claimants would have left of their own accord.

8 The issue of the Claimants' pay rises in their new employment was not considered

8.1 It is not clear how this would make any difference to the compensatory award and the interests of justice are not served by considering this matter.

9 The Tribunal should have issued recommendations and or declarations

9.1 The power to issue recommendations and declarations arises under the Equality Act 2010 for cases of discrimination. There is no similar power in relation to claims for unfair dismissal. The Tribunal has no ability to make such orders in this case.

10 The ability of the Respondent to pay compensation

10.1 The Tribunal did not take into account the Respondent's ability to pay in relation to the award of compensation. This is not a consideration which is relevant for a Basic or Compensatory Award. Evidence was taken about the Respondent's

financial position in relation to the application for a preparation time order, which is an entirely separate matter.

Employment Judge N Walker
Date: 23 October 2021