



## EMPLOYMENT TRIBUNALS

**Claimant:** Ms J Hernandez Sosa

**Respondent:** Prestige Services London Limited

London Central: by CVP on 14 and 15 October 2021

**Before:** Employment Judge Nicolle

**Representation:**

**Claimant:** Mr S Bennett of United Voices of the World

**Respondent:** Ms K Evans, Respondent's Office Manager.

### Judgement

#### Liability

1. The claim for unfair dismissal succeeds. Whilst the reason for the Claimant's dismissal was redundancy her dismissal was procedurally and substantively unfair as a result of failures in respect of individual consultation, the identification of the appropriate pool for redundancy selection, the failure to identify appropriate redundancy selection criteria and failure to give adequate consideration to possible alternative employment.

#### Remedy

2. The Tribunal found that had a fair procedure and meaningful individual consultation taken place that the Claimant would have been employed for an additional two weeks therefore extending her employment until 21 September 2020. She is awarded £725.18 in respect of this period.
3. A 50% Polkey reduction should apply for the period between 21 September 2020 and 31 December 2020 to reflect the possibility that had a fair redundancy process been followed that the Claimant would have been made redundant fairly on or about 21 September 2020 and for this period the Claimant is awarded £2,590.

4. The Tribunal decided that there should be a further 50% reduction under Polkey from 1 January 2021 to reflect the possibility that the Claimant would have been made redundant or about 31 December 2020. For the period between 1 January 2021 and 30 April 2021 the Claimant is awarded £1,541.05.
5. It was agreed that the Claimant's pay based on the London Living Wage would increase from £10.75 to £10.85 per hour with effect from 1 May 2021.
6. For the period from 1 May 2021 until 22 May 2021 the Claimant is awarded £273.99.
7. The Claimant obtained an alternative position of employment with Taco Bell with effect from 23 May 2021 and her earnings from this position are thereafter taken into account by way of mitigation. For the period from 23 May 2021 until 15 October 2021 the Claimant is awarded £794.76.
8. The Tribunal found that there should be a further reduction under Polkey to reflect the possibility that the Claimant would have been made redundant in the current round of redundancies. From 16 October 2021 compensation should be reduced further from 25% to 20% to reflect this possibility. Further, the Tribunal found that it was reasonable to expect that the Claimant would be able to fully mitigate her loss by securing equivalently remunerated alternative employment to her position with the Respondent within three months. Therefore the Claimant for the period from 16 October 2021 until 15 January 2022 the Claimant is awarded £403.41.
9. The Claimant is awarded the sum of £500 for loss of a statutory rights which sum is reduced by 50% under Polkey giving a figure of £250.
10. As the Claimant received a statutory redundancy payment she is not entitled to a basic award.
11. The total compensatory award is therefore £6,578.39. This represents a net of tax figure, and it is not necessary to gross this figure up, and therefore the total sum payable to the Claimant by the Respondent is £6,578.39 subject to a deduction to reflect the payment to be made by the Respondent to the Secretary of State under the Employment Protection (Recruitment of Jobseeker's Allowance and Income Support) Regulations 1996, SI 1996/2349.

### **Reasons**

1. Oral reasons were given to the parties on 15 October 2021.

Employment Judge Nicolle

15 October 2021

Sent to the parties on:

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For the Tribunal:

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**Note**

Written reasons will not be provided unless a written request is presented by either party within 14 days of the sending of this written record of the decision.

**Public access to employment Tribunal decisions**

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

**Recoupment Regulations**

1. The total amount over the monetary award is £6,588.39
2. The amount of the prescribed element is £5,924.98. This does not include the £250 of the compensatory award attributable to the loss of statutory rights.
3. The dates of the period to which the prescribed element is attributable are 7 September 2020 until 15 October 2021 as been the period between the effective date of termination and the date of the remedy hearing.
4. The amount by which the monetary award exceeds the prescribed element is £663.41.

Employment Judge Nicolle

15 October 2021

Sent to the parties on:

18/10/2021.....

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For the Tribunal:

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**Case No: 2207744/2020 Ms J Hernandez Sosa v Prestige Services London Limited**

**ANNEX TO THE JUDGMENT (MONETARY AWARDS) Recoupment of Benefits**

1. The following particulars are given pursuant to the Employment Protection (Recoupment of Benefits) Regulations 1996, SI 1996 No 2349.
2. The Tribunal has awarded compensation to the Claimant, but not all of it should be paid immediately. This is because the Secretary of State has the right to recover (recoup) any jobseeker's allowance, income-related employment and support allowance, universal credit or income support paid to the Claimant after dismissal. This will be done by way of a Recoupment Notice, which will be sent to the Respondent usually within 21 days after the Tribunal's judgment was sent to the parties.
3. The Tribunal's judgment states: (a) the total monetary award made to the Claimant; (b) an amount called the prescribed element, if any; (c) the dates of the period to which the prescribed element is attributable; and (d) the amount, if any, by which the monetary award exceeds the prescribed element.
4. Only the prescribed element is affected by the Recoupment Notice and that part of the Tribunal's award should not be paid until the Recoupment Notice has been received. The difference between the monetary award and the prescribed element is payable by the Respondent to the Claimant immediately.
5. When the Secretary of State sends the Recoupment Notice, the Respondent must pay the amount specified in the Recoupment Notice to the Secretary of State. This amount can never be more than the prescribed element of any monetary award. If the amount is less than the prescribed element, the Respondent must pay the balance to the Claimant. If the Secretary of State informs the Respondent that it is not intended to issue a Recoupment Notice, the Respondent must immediately pay the whole of the prescribed element to the Claimant.
6. The Claimant will receive a copy of the Recoupment Notice from the Secretary of State. If the Claimant disputes the amount in the Recoupment Notice, the

Claimant must inform the Secretary of State in writing within 21 days. The Tribunal has no power to resolve such disputes, which must be resolved directly between the Claimant and the Secretary of State.