



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms J Hadley

**Respondent:** Wilson's Express Same Day Ltd

**HELD AT:** London South (by CVP)

**ON:** 5 November 2021

**BEFORE:** Employment Judge Barker

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Philippa Lloyd, director of the respondent

## JUDGMENT ON REMEDY

(I) The claimant is entitled to be paid a basic award for unfair dismissal of £2,558.62 by the respondent.

(II) The claimant is entitled to be paid a compensatory award by the respondent as follows:

- a. Loss of wages from the date of dismissal to the date of the remedy hearing: 49.4 weeks' at £302.17 per week = £14,927.20, reduced by receipt of carer's allowance of £1906.80, increased by 10% for the respondent's failure to comply with the ACAS Code of Practice = £14322.44;
- b. Future loss of earnings for 13 weeks from the date of the remedy hearing at £302.17 per week, reduced by receipt of carer's allowance of £817.20, increased by 10% for the respondent's failure to comply with the ACAS Code of Practice = £3422.11;
- c. Loss of pension contributions before and after the hearing - £6.71 per week = £418.86 increased by 10% for the respondent's failure to comply with the ACAS Code of Practice = £460.74,
- d. Loss of statutory rights = £500.

(III) The total award compensatory award is £18,705.29 but is subject to the statutory cap of 52 weeks gross wages, so is limited to £17,739.96, a reduction of

5.2%.

(IV) The total compensation payable to the claimant for unfair dismissal is £20298.58.

(V) Please note that the figures given to the parties at the conclusion of the remedy hearing contained errors. The figures in this written judgment are correct and should be used for payment and recoupment purposes instead.

(VI) The Recoupment Regulations apply to this judgment and award of compensation as follows:

### **Recoupment**

(a) Grand total	<b>£20,298.58</b>
(b) Prescribed element	£13,577.67
(c) Period of prescribed element	from 7 July 2020 to 5 November 2021
(d) Excess of grand total over prescribed element	£6,720.91

## **REASONS**

### **Preliminary Matters and Issues for the Tribunal to Decide**

1. The purpose of this hearing was to determine the amount of compensation payable to the claimant, following the judgment in her favour dated 27 July 2021, following a hearing on 16 June 2021 and further written submissions by the parties which were to be submitted by 23 June 2021. The judgment was sent to the parties under cover of a letter dated 30 July 2021, although the claimant told me that she did not receive this in the post until 15 October 2021.
2. The issues to decide in this remedy hearing were set out at paragraph 51 of the judgement and reasons of 21 July 2021. They are a set of standard issues that a tribunal would consider on a remedy hearing in an unfair dismissal case and it transpired that, by the date of this hearing, not all of them were relevant, but answers to those questions had been considered by the claimant and were set out in her remedy witness statement, which was of assistance to the Tribunal.
3. The claimant sent this remedy witness statement and a Schedule of Loss and accompanying documents to the Tribunal and to the respondent's Mrs Lloyd by email on 19 October 2021.
4. That witness statement is described on the first page as "*Witness Statement In Regard to The Remedy Hearing on the 5th of November 2021*". In

paragraph one of this witness statement, it refers to the judgement itself. It states that the judgement was dated 16 June 2021, but that was the date of the liability hearing. However, it is clear in that first paragraph that the witness statement makes reference to a judgement having already been issued.

5. The parties had been sent a letter from the Tribunal entitled Notice of Remedy Hearing by email from London South ET on 27 July 2021. The covering email stated "Please find attached Notice of Remedy Hearing". The enclosed letter stated "*the hearing has been allocated 3 hours to hear the evidence and decide financial compensation or other remedy*". The final paragraph of the letter was headed "*Public access to employment tribunal decisions*" and provided the link to the [www.gov.uk](http://www.gov.uk) website on which Tribunal judgments and reasons are published. This Notice of Remedy Hearing was sent directly to Mrs Lloyd's email address, as well as by email to the claimant.
6. Turning to the preliminary and case management issues that arose at the outset of the hearing, it became apparent after about thirty minutes that Mrs Lloyd did not know what the purpose of the hearing was, nor that the respondent had lost the liability stage of the hearing, despite having received the claimant's remedy witness statement and schedule of loss on 19 October 2021 and despite repeated reference at the outset of the hearing to the list of issues for the remedy hearing as set out in paragraph 51 of the judgment and reasons.
7. She had, as stated above, also received a Notice of Remedy Hearing by email in July. Mrs Lloyd was adamant that she had received no liability judgment from the tribunal and no covering letter. She was also certain that she had not been told what this hearing would be about.
8. The claimant confirmed that she had received the judgment and covering letter by post on 15 October 2021. The Tribunal notes that it is standard procedure for parties to be sent identical packs of documents when a judgment is issued and therefore if the claimant had received the judgment and covering letter, it was highly likely that the same would have been sent to the respondent. The address on the Tribunal's copy of the letter was that provided by the respondent for service.
9. Mrs Lloyd was asked by the Tribunal whether she had taken any advice on the contents of the claimant's remedy documents, sent to her in the email of 19 October 2021. Mrs Lloyd said that she sent these documents to her HR advisers but that they told her she didn't need to do anything with them. She conceded that neither she nor her advisers picked up on the fact that the witness statement makes reference to a judgement having been made and nor did they appear to understand the implications of the hearing being termed a "remedy" hearing, despite the Notice of Hearing's reference to it being held in order to decide the compensation payable to the claimant. No further enquiries were made by the respondent or their advisors, even though the claimant's email was sent 10 days before the hearing.

10. Mrs Lloyd indicated that she was entirely unprepared for the hearing. She had not read the judgment and had prepared nothing in advance. That notwithstanding, she said that that the hearing should “*carry on anyway*”.
11. The Tribunal adjourned for twenty minutes to investigate what had happened regarding the promulgation of the judgment to the parties. On the resumption of the hearing the information was given to the parties that the tribunal clerk confirmed that the letter and the judgment had been sent to the correct address for service for the respondent at the same time as it had been sent to the claimant. I conclude on the balance of probabilities is that it was validly sent but it was missed, or received but ignored. Similarly, I am confident that the respondent received the Notice of Remedy hearing at the same time as the claimant in July 2021, but made no further enquiries about it.
12. The Tribunal makes the following observations. The respondent had by their own admission received the claimant’s email containing her schedule of loss on 19 October, ten days before this hearing. Ten days was more than enough opportunity for either as the respondent or their HR advisors to make inquiries as to the whereabouts of any judgment (as referred to extensively in the claimant’s remedy witness statement) that might have been missed. They failed to do so. By 19 October, the respondent had enough information to be put on notice that the judgment had been handed down. It would have been possible to request a copy of the judgment or apply for a postponement of the hearing, but nothing was done.
13. It was pointed out to the respondent that the Tribunal had thought it necessary to impress on Mrs Lloyd during the liability hearing that these proceedings required the respondent’s full attention, due to a concern that she was in an office where she was being interrupted. It had also been the case that the hearing had concluded on 16 June following information from Mrs Lloyd that she had no laptop charger and her laptop battery was about to run out. The decision was taken to allow the parties to make written representations instead and the Tribunal agreed to hand down a reserved decision, which delayed the proceedings, given that the hearing had been listed for a day but had had to conclude before lunchtime. Mrs Lloyd also joined this hearing ten minutes after the start time without apology or explanation.
14. Mrs Lloyd made no application to adjourn the remedy hearing. Her words were “*can we just do this because I will be appealing this because it’s unfair.*” However, of the Tribunal’s own volition I did consider whether to adjourn the hearing. On balance and in the interests of fairness I have decided not to do so, because the respondent had enough information to be put on notice that a judgment had been issued, even if the paper copy had somehow gone missing. The respondent had notice that a hearing had been listed to award compensation to the claimant. The respondent ought to have made further inquiries either individually or through their HR advisors as to the proceedings, if they were not sure of the next steps to be taken. Were the hearing today to be adjourned, the claimant would be without a remedy for some considerable time due to the delay caused by having to obtain a relisted hearing date. She has arrived fully prepared to conduct the remedy hearing and has provided documents and evidence that assist the Tribunal.

15. In the event that the respondent considers the liability judgment and reasons and this award of compensation and wishes to dispute some or all of it, they have the opportunity to:
- a. Apply for reconsideration of the remedy decision within 14 days of receiving the written record of it;
  - b. Appeal to the Employment Appeal Tribunal against this award of remedy; and
  - c. Appeal or apply for reconsideration of the original liability decision, with the caveat that if time limits for doing so have expired, they will have to provide an explanation as to why their appeal or application is late, which will need to be accepted before they can proceed.
16. The Tribunal took time after the claimant was sworn in to go through her witness statement, examining the applications that she has made for jobs both with and without her DWP work coach. Miss Hadley sent through to the Tribunal and the respondent information about the claimant's Universal Credit and carer's allowance and talked through with me the various permutations of the claimant's benefits, what was deducted, what was added on and what the periods of payment were and what she was left with net at the end of the month. This was very helpful, as such calculations are very complex.
17. Mrs Lloyd was given the opportunity to ask questions of the claimant, but declined to do so. She was sent by email a copy of the judgment and reasons and the covering letter during a twenty minute adjournment, and the Tribunal suggested to her that she may wish to use that time to telephone her advisors. On returning from the adjournment, she told the Tribunal that she had "*emailed the decision to them*". She was given the opportunity to comment on these proceedings, but other than beginning to take issue with the findings of fact in the liability judgment, she did not comment on the claimant's submissions.

### **Findings of Fact**

18. The claimant was dismissed on 6 July 2020 and remains out of employment. She used a DWP work coach initially, but the DWP work coach ceased to be a service that she had the benefit of when she became carer for her grandson in April 2021 and in receipt of carer's allowance. She told me that she cares for him 30 hours per week. Following a discussion of the calculations sent through by Miss Hadley, it became clear that the claimant received £272.40 net carer's allowance per month for caring for her grandson, which was largely done after school and one weekend every other week. This allowed her daughter to work and also provided her with some respite.
19. The claimant told me that nevertheless, she is still on job search websites and is still applying for jobs.
20. The claimant's evidence, which I accept, was that she has some limitations in applying for jobs that one might otherwise expect her to apply for in areas such as catering, hospitality, retail and delivery driving, because she has

osteoarthritis in her hip that affects her mobility and her ability to stand for long periods and also affects her ability to drive a manual car, such that she is only able to drive an automatic car.

21. She does own an automatic car and it was discussed whether she might be able to use her own car in doing courier and delivery driving, which she said she had not considered, but I wonder whether she may do now. I make that comment because such jobs (driving, retail and hospitality) have many vacancies at present and ordinarily I would have expected Mrs Hadley to have found one of those jobs by now and to fully mitigated her losses. Instead, she claims six months future loss of earnings.
22. Having considered the evidence and being aware of the job market at the moment and taking into account the claimant's limitations, the claimant is awarded three months future loss of earnings. It is to be expected that with a successful tribunal judgement now in her favour and with her ongoing efforts to apply for a job and with demand increasing before Christmas, that she will be able to find work to mitigate her losses in the next three months.
23. I also find that the carer's allowance has allowed the claimant in part to mitigate her losses, as she carries out a caring role for her grandson and receives payment (in the form of an allowance) for doing so. Such a benefit is not a recoupable benefit, but it has reduced her financial losses and will do so (on her account) in the future.

### **The Law**

24. Compensation for unfair dismissal consists of a basic award and a compensatory award. The basic award is calculated in the same way as a redundancy payment and is a statutory formula based on age, length of service and gross weekly wages. (section 119 Employment Rights Act 1996).
25. The compensatory award for unfair dismissal has two aspects – immediate losses (that is, losses from the date of the dismissal to the date of the remedy hearing) and future losses (that is, losses from the date of the remedy hearing to a point in the future when the claimant can be said to have mitigated her losses in full), section 124 Employment Rights Act 1996.
26. A claimant is under a duty to mitigate her losses and must show, on the balance of probabilities, that she has done so, irrespective of whether her efforts in securing alternative work have been successful or not.
27. Where a Tribunal has identified a failure on the part of a respondent to comply with the ACAS Code of Practice on disciplinary and grievance procedures, the Tribunal ought to consider whether to increase the claimant's compensatory award by up to 25% (s124A Employment Rights Act 1996). This is a penal sanction against the respondent and reflects failures of good practice on their part.
28. Where a claimant has been in receipt of certain statutory benefits, including Universal Credit, the award of compensation must be divided into the

“prescribed part” and the balance. The prescribed part, which is the claimant’s loss of earnings to the date of the hearing, is not to be paid to her until the relevant benefits are recovered from it. The non-prescribed element can (and should) be paid to the claimant forthwith.

### **The Award of Compensation**

29. The basic award, based on her period of service of 5 years, her age during her service and her wages is £2558.62.
30. Turning to her immediate loss of earnings, the claimant’s compensation for unfair dismissal will be subject to the so-called “statutory cap” as it is not possible to be awarded compensation of more than 12 months’ wages. Her Schedule of Loss has correctly identified that and her maximum compensatory award is £17,739.96. This plus the basic award gives her total losses in her Schedule of Loss of £20,298.58. The following reasoning considers whether this is correct.
31. In terms of her losses to the date of the hearing, she has not found a job to date and is now acting as a carer for her grandson and in receipt of carer’s allowance. As stated above, this in part has mitigated her loss of earnings and account must be given for her receipt of carer’s allowance in the calculations of financial loss.
32. The claimant’s loss to the date of this remedy hearing is 49.4 weeks at £302.17 per week. She also claims loss of statutory rights of £500, which is a standard figure which I will allow. She also claims loss of employer’s pension contributions to the date of the remedy hearing of £6.71 per week. Mrs Lloyd wasn’t able to confirm or refute whether that was correct. The claimant told me that this figure was taken from her payslips. I accept that this figure is correct.
33. The Tribunal was told by Miss Hadley that Mrs Hadley receives a £272.40 additional benefits as carer’s allowance. The claimant started caring for her grandson in March or April 2021. I have taken the date as April 2021 for ease of reference. This date to the end of October 2021 is seven months at £272.40 per month which has to be accounted for and for three months (13 weeks) future losses from the date of this hearing.
34. If a Tribunal finds that there has been a failure to comply with the ACAS Code of Practice, compensation can be increased by up to 25%. The respondent’s failure is set out in full in the liability judgment and was a partial failure, and so an increase of 10% will be applied to the claimant’s compensatory award.
35. In relation to the figures for loss of earnings from the dismissal until the date of this hearing, this is 49.4 weeks at £302.17 per week which is £14,927.20. This is to be reduced by receipt of carer’s allowance of £1906.80 and increased by 10% for the respondent’s failure to comply with the ACAS Code of Practice and amounts to £14322.44.

36. In relation to future losses, a period of 13 weeks future losses is appropriate here. Future loss of earnings for 13 weeks from the date of the remedy hearing at £302.17 per week, reduced by receipt of carer's allowance of £817.20, increased by 10% for the respondent's failure to comply with the ACAS Code of Practice equals £3422.11.
37. The claimant is also entitled to recover loss of her employer's pension contributions from the date of the dismissal until 13 weeks from the date of this hearing, which at £6.71 per week is £418.86. This is also increased by 10% for the respondent's failure to comply with the ACAS Code of Practice and so is £460.74.
38. The total award compensatory award is £18,705.29 but is subject to the statutory cap of 52 weeks gross wages, so is limited to £17,739.96, a reduction of 5.2%.
39. The total compensation payable to the claimant for unfair dismissal is £20,298.58, this being the compensatory award plus the basic award. This is subject to the recoupment provisions. As the total compensatory award was reduced by 5.2% due to the statutory cap, so the prescribed element of the recoupment provisions is reduced by the same amount.

The prescribed element is therefore £13,577.67. The excess of the grand total over the prescribed element is £6,720.91 and this sum should be paid to the claimant forthwith, with the remainder to be paid once the respondent is instructed to do so.

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Employment Judge Barker

Date: 5 November 2021\_\_\_\_\_