



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs H Song

**Respondent:** CL Corporation Ltd

**Heard at:** London South (in person)

**On:** 22-24 & 29-30 November & 1-2 December 2021

**Before:** Employment Judge Tsamados  
With members:  
Mr K Murphy  
Mr R Shaw

## Representation

Claimant: In person  
Respondent: Mr K Nam

**Also present:** Mrs J McLean, Tribunal appointed interpreter, assisting the Claimant and Mrs H Koh, the Respondent's Director

# JUDGMENT

The **unanimous** Judgment of the Employment Tribunal is as follows:

- 1) The Claimant was unfairly dismissed contrary to section 98 of the Employment Rights Act 1996 ("ERA 1996");
- 2) The Claimant was dismissed in breach of her entitlement to minimum statutory notice pursuant to section 86 ERA 1996 and is entitled to damages under the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994 ("the 1994 Order");
- 3) The Respondent was in breach of its duty under section 4(1) ERA 1996 to provide the Claimant with particulars of change to her written statement of employment particulars and entitled to compensation under section 38 of the Employment Act 2002;
- 4) Her complaints of automatic unfair dismissal and detrimental treatment because she raised health and safety issues and/or made protected disclosures under sections 100(1)(c), 103A, 44(1)(c) and section 47B ERA 1996 respectively are unfounded and are dismissed;

- 5) Her complaints of breach of contract under the 1994 Order in respect of changes to her job title, working conditions, salary and responsibilities and entitlement to a bonus are unfounded and are dismissed.
- 6) The Claimant is awarded a grand total of **£3606.25** in respect of her successful complaints payable by the Respondent. This comprised of the following elements.

**Unfair dismissal**

Basic Award

Based on 3 complete years' continuous employment from 1 July 2016 to 22 September 2019 at the age of 40 as at the Effective Date of Termination ("EDT") and gross weekly pay capped at the then statutory maximum of £525.

$3 \times £525 = £1572$

Reduced by 60% in respect of the Claimant's contributory fault pursuant to section 122(2) ERA 1996.

Total Basic Award = £628.80

Compensatory Award

*Past loss of earnings*

Limited to 2 weeks applying the rule in Polkey v A E Dayton Services Ltd [1987] IRLR 503.

Based on entitlement to Statutory Sick Pay only at the EDT of £94.95 x 2 = £188.50. But extinguished by the award of damages for breach of contract below, in order to avoid double recovery for the same period.

*Loss of employer's pension contributions*

$£18.48 \text{ per week} \times 2 = £36.96$

*Loss if statutory rights*

£500

Plus an increase of 25% for the Respondent's breach of the ACAS Code of Practice 1: Disciplinary and Grievance Procedures (2015) pursuant to section 207A of the Trade Union & Labour Relations (Consolidation) Act 1992 = £134.24

Total Compensatory Award = £671.20

**Notice pay**

2 weeks' net pay in respect of damages for breach of contract. The Claimant received 1 weeks' notice of dismissal from the Respondent but was entitled to statutory minimum notice of 3 weeks, paid at her usual rate of pay notwithstanding her then absence from work due to ill-health (under section 88 ERA 1996). This award is based on net weekly pay of £502.50.

$$2 \times £502.50 = £1005$$

Subsequent to giving oral Judgment, we determined that the 25% increase in compensation for breach of the ACAS Code also applied to this award. We therefore reconsidered our Judgment and have increased the damages awarded by £251.25.

$$\text{Total damages for breach of contract} = \underline{£1256.25}$$

**Failure to provided a written statement of employment particulars**

2 weeks gross pay in respect of the Respondent's failure to provide changes to any previous written statement of employment particulars on taking over ownership.

$$2 \times £525 = \underline{£1050}$$

- 7) As we have said above the grand total payable by the Respondent to the Claimant is **£3606.25**.

Employment Judge Tsamados

Date: 3 December 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.

**Public access to Employment Tribunal Judgments**

All judgments and written reasons for the judgments are published online shortly after a copy has been sent to the Claimant(s) and Respondent(s) in a case. They can be found at: [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions).