



EMPLOYMENT TRIBUNALS

Claimant: Ms S Bennett

Respondent: Sandra Nelson T/A Salon 22

Heard at: via Cloud Video Platform

On: 11th October 2021

Before: Employment Judge Pitt

Representation

Claimant: In person

Respondent: In person

JUDGMENT having been sent to the parties on 12 November 2021 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. This is a remedy hearing following the tribunal decision dated 21st June 2021 that the claimant had been unfairly dismissed. The claimant and respondent appeared in person. I had before a bundle of documents that included the claimant's tax information and information with regard to the potential sale of the Salon.
2. I had before me a small number of documents which included Accounts for the claimants trading year to the end of April 2021 and a brochure for the sale of the salon. I also read witness statements and heard evidence from the claimant and the respondent

The Facts

3. These facts should be read in conjunction with paragraphs 3 -22 of the Judgment on liability. The claimant was 16 years of age when she was first employed at Salon 22 by Ms Nelson's predecessor. The claimant resigned because of the respondent's breach of the implied term of trust and confidence. During her notice period, she was dismissed by Ms Nelson for misconduct. The effective date of termination was 6 October 2020, at which time the claimant was 35 years of age. On 7 October 2020, the claimant took up the option to rent a chair in a salon in the nearby area. She is now self employed and works approximately 21 hours per week in the salon, and tries to make extra income by being a mobile hairdresser.

4. At the date of her dismissal at the claimant was earning £183.12 per week. She was not subject to national insurance or tax because she was below the earnings limit. Whilst employed at the salon and until July 2021, the claimant was in receipt of tax credits. However, due to a change in her personal circumstances, she now makes a claim for universal credit. I have seen the claimant's schedule of loss and supporting documentation. In particular, I have seen the claimants year end accounts compiled by her accountants.
5. This reveals that for the period 10 October 2020 31 March 2021, she had sales of £1132, and her net loss was £1966. These figures have been used to calculate her tax liability, and on that basis, I do not see we can challenge them in this tribunal.
6. The claimant, whilst employed, was claiming tax credits. She continued to claim tax credits until July 2021, when a change in her personal circumstances meant she had to claim universal credit. In determining the losses since that time, the claimant has been claiming universal credit and has to keep a record of her income and outgoings for the purposes of making a claim since July figures are as follows July her sales were £711, expenditure £386.70 that means she made a profit of £324.30. In August, her income was £1046, and her expenditure was £646.27, giving her a profit of £399.73. In September, which was the last time she made her claim for universal credit, her income was £384, and her expenditure was £548, making a loss of £164. She tells me she hopes to be in profit next year.
7. In relation to her use of the car, she tells me she tries to additional sums on top of those at Reilly's by being flexible and mobile. In addition, Reilly's salon is small, and she has to transport goods to and from it regular basis.
8. Salon 21 is now up for sale as a going concern, the sale price of £49,500. During the pandemic, Ms Nelson has made valiant efforts to ensure that the business survived which included reducing her own furlough payments to ensure she could pay other bills.
9. Ms Nelson also told me that for 17 ½ weeks following her dismissal, the claimant would have been on furlough because of the government decision to lockdown a number of businesses again. During this period, the claimant's income would have been £146.19 per week
10. The issues were identified as follows:-
 - i. was it unreasonable for the claimant to commence self-employment by (renting a chair, rather than pursuing an option of employed person)
 - ii. what were the costs associated in establishing her new self-employment
 - iii. in particular, is the claim for a car a reasonable expense

The Law

11. I had had regard to the following provisions of the Employment Rights Act 1996, The Act, section 119, which sets out how a basic award is calculated. A claimant is entitled to one week's gross pay for every complete year of service for which she

was employed and was over the age of 22. Half a weeks pay for every year a claimant is employed under 22 years of age

12. Section 123 sets out how the compensatory award is to be calculated:
"the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal insofar as that loss is attributable to action taken by the employer.
The loss may include any expenses reasonably incurred.
13. Section 124 places a limit to the amount of the compensatory award. In this case, it is the claimant's gross salary over a 52 week period.
14. Section 124A sets out the adjustments order the tribunal also had regard to section 38 of the employment act, which requires me to consider an increase in an award for failure to give a statement of the employment particulars, and such an award shall be some between two and four weeks.
15. In addition, the award shall be increased as a result of the failure to comply with the court under section 207A of the Trade Union Labour Relations (Consolidation) Act 1992.
16. I also had regard to the Employment Protection (Recruitment Of Jobseekers Allowance And Income Support) Regulations 1996. This applies as the claimant is in receipt of universal credit, and the employer must account to the DWP for the sums in the protected period before they can be given over to the claimant.
17. I had regard to the case of Tao Herbs Acupuncture v Jin EAT/1477/09. The ability of the former employer to pay compensation is not a relevant consideration in assessing damages for unfair dismissal.

Discussion and conclusions

18. I am invited by Ms Nelson to conclude that it was unreasonable for the claimant to rent a chair at Reilly's when this option was available to her at Salon 21—having concluded that the claimant was entitled to resign because of the changes in her terms and conditions which undermined the employer and employee relationship. The claimant had tried to obtain employment at Reilly's Salon, but this was not an available option. She was in a position where she had to find a way to earn an income. She was offered the opportunity to rent a chair at Reilly's with an immediate start. I concluded this was not unreasonable.
19. I considered the expenses to set up and continue with the business, which is set out in the accounts information and the evidence of the claimant. No reason was put before to challenge the accounts, and at this time, that is the figure upon which the claimant will be assessed by HMRC.
20. Ms Nelson argues in relation to the car as an expense; the claimant has no need of it because the salon is within walking distance from her home. I do not agree. The claimant has to use the car to obtain her supplies and to pursue the mobile side of her business.
21. Ms Nelson also argues that as the business is failing, I should also limit the award. The purpose of the award is compensate the claimant for her losses flowing from the dismissal. The fact the business is in difficulty is not a matter I can take into account.

The Basic Award

For each of the six years of her employment, the claimant was below the age of 22, the claimant is entitled to half a weeks pay. For the 13 years, she was over 22 below 41 she will be entitled to one week's wages.

3 x £183	549
13 x £183	2380.56
Basic Award	2929.92

The Compensatory Award

22. The claimant's loss of earnings for the period since her dismissal is as follows: loss of earnings: For 34.5 weeks, the claimant would have received her full wage of £183.12. For 17 and half weeks, she would have received her furlough pay of £146.90. She also made a loss up to April 2021 of £1075. the claimant was unable to provide details of losses or profits for April, May June. Since July, when she was receiving Universal Credit, she made an overall profit of £550.03

23. I have to consider the uplift under section 32 of the Employment Rights Act 2002. The claimant was never provided with her terms and conditions or a contract of employment. I bear in mind that Ms Nelson has been the employer for the last five years only and was in the process of ensuring the claimant had a contract. I, therefore, limit the uplift to 2 weeks' pay.

24. I have considered the uplift in relation to section 207 Trade Union And Labour Relations Consolidation Act. I can make uplift the award by anything between 10 and 25. In making my decision in relation to this figure, I take account of the fact that this is a small salon with one manager/owner; although there was a summary dismissal on the spot, Ms Nelson did try to remedy this and hold a disciplinary procedure after the event, this procedure did fall short of that which a reasonable employer would have used. I'm going to limit my award to 10%.

Loss of Earnings

17.5 x £146.19	2558.32
34.5 x £183.12	6317.64
Total Loss of Earnings	8875.96

Loss/ Profit incurred from the Business

To April 2021 (Loss)	1075
July, August, September 2021 (profit)	-560.03

Total Loss 9390.93

Loss of Statutory Rights	300
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<u>Uplifts</u>	
Section 32 ERA 2 x £183.12	366.24
Section 207 TULCRA 10% of 10,056.27	1005.62
<u>Total Compensatory Award</u>	<u>11,061.89</u>
Statutory Cap 52 x £183.12	9522.24
<u>Total Award</u>	<u>£12452.06</u>

Recoupment

The prescribed period is 6th October 2020 to 11 October 2021

The prescribed figure is £9390.93

Employment Judge AE Pitt

Date 17th January 2022