



EMPLOYMENT TRIBUNALS

Claimant: Ms Davina Brown

Respondent: The Hair Academy Limited

Heard at: London South by CVP **On:** 17 December 2021

Before: Employment Judge Jones QC

Appearances:

For the claimant: In person

For the respondent: Did not attend

REMEDIES JUDGMENT

1. For the purposes of recoupment the prescribed element is: £629.66
2. The prescribed period is 2 April 2020 to 11 April 2021.
3. The total award is £12,214.80, that being the compensatory award for the Claimant's unfair dismissal;
4. The balance payable by the Respondent to the Claimant is: £11,585.24.
5. In addition, the Respondent shall pay the Claimant the sum of £1320 in respect of her unlawful deduction claim.

REASONS

1. The Claimant was formerly employed by Respondent as a hairdressing tutor. Her employment began on 2 March 2020 and ended on 2 April 2020.

2. The Claimant had a written contract of employment which provided for her to work a total of 12 hours each week. She was to work on Mondays and Tuesdays. Her hourly rate of gross pay was £22.00.
3. In March 2020, the Respondent was looking to move its teaching online in response to the Covid crisis. It failed to pay the Claimant the money that she was due in respect of the work done that month. The Respondent's position appears to have been that the Claimant would be paid once money came through from the Government. By that the Respondent seems to have had in mind monies paid out under the Coronavirus Job Retention Scheme ("the Scheme"). The Claimant (and others) complained about not being paid. The Respondent then dismissed the Claimant. The Claimant was given a P45 which showed her total pay to 16 April 2020 as zero. A P60 for the tax year to 5 April 2020 shows her total gross pay as £1320. That represents 5 weeks of pay. Although the Claimant produced a pay slip in evidence which recorded her as having received the sum of £1320 in cash, her oral evidence on oath was that she has not in fact received the money and that her benefits office had performed a check with the HMRC which revealed that no tax or NIC had been paid over by the Respondent in respect of her employment which, she says, is consistent with no payment having been made to her.
4. The Claimant subsequently commenced proceedings alleging that she had suffered unlawful deductions from her pay and that she had been "automatically" unfairly dismissed, by which she meant that she had been dismissed because she had made protected disclosures for the purposes of **Employment Rights Act 1996, s. 103A**. The Respondent did not file a response and the Claimant obtained a judgment in default. The matter was then listed for a remedy hearing. The Respondent did not attend.

(1) Unlawful Deduction

5. The P60 and pay slip establish that the Claimant should have received gross pay of £1,320 during her period of employment. Her oral evidence establishes that she did not receive any part of that sum. In the circumstances, the Respondent is ordered to pay to the Claimant the sum of £1320.

(2) Unfair Dismissal

(a) Basic Award

6. The Claimant was not continuously employed for a year. In the circumstances, her basic award is a nil award.

(b) Compensatory Award

7. The Claimant's evidence was that the Respondent did not dismiss those who did not complain about non-payment. However, she told me that she was expecting to be furloughed. There is no reason to believe that the Respondent would have paid furloughed staff more than the 80% required by the Scheme. The Claimant says that the Respondent advertised at some point later in the year. As best as she could recall it would have been in or about August 2020. It is obviously unlikely that the Respondent would have recruited staff simply to put them on furlough. Any staff that had been furloughed would have resumed their duties at the same time the new tutors began to work. That suggests that had the Claimant not been dismissed she would, at some time in late 2020 have started to receive her full pay. The difficulty is identifying when that might have been. I think it more likely than not that if the Respondent was advertising in August 2020, new staff would have been in place by no later than the beginning of October 2020. That means that the Claimant's loss to the end of October is:

- (1) 80% of her net salary from 2 April 2020 to 30 September 2020; and
- (2) 100% of her net salary from 1 to 31 October 2021.

8. In November and December 2020, the Claimant was able to obtain some temporary employment which she accepts allowed her, for a period, to mitigate her loss. I do not find, however, that that broke the causal link between her dismissal and her subsequently incurred losses. The reason the Claimant could no longer find salon work was that they were again closed as a result of Government regulation. Since it appears that the Respondent was delivering its training online, there is no reason to think that the training would have ceased.

9. The Claimant was then without work until 12 April 2021 when salons were again re-opened. From that date she accepts she could have mitigated her

loss. It follows that the Claimant suffered a loss of 100% of her salary from 1 January to 11 April 2021 following which her loss came to an end.

10. Using the figures on the Claimant's P60 her net weekly pay was £238.50. Whilst that figure may not be precise, it is, in my view, sufficiently accurate to result in an award which is just and equitable within the meaning of **ERA 1996, s. 123(1)**. Using that figure results in the following losses:

Period	% of net salary	Value of Loss
2 April – 30 September 2020 (26 weeks)	80	£4,960.00
1 – 31 October 2020 (4 weeks)	100	£954.00
1 January - 11 April 2021 (14 weeks)	100	£3339.00

11. That produces a total net loss of earnings of £9,253.80.
12. On the basis that the Claimant could have been mitigating from 12 April 2021, her annual income for the 2021/22 tax year would be £13,728. Taking account of her personal allowances, that would produce a tax and NI requirement of £729. If she receives her compensatory award this year, her total income would then be £22,981.00, on which tax of £3690 would be due. I therefore, gross up the compensatory award by £2961.
13. It follows that the total compensatory award is £12,214.80.

(c) Injury to feelings

14. The Claimant did not suggest that her unfair dismissal had caused her any compensable injury.

(d) Recoupment

15. The Claimant made a claim for Universal Credit. Her evidence is that she received £629.66.

Employment Judge Jones QC

17 December 2021