



EMPLOYMENT TRIBUNALS

Claimant: Ms R Leher

Respondents: (1) Aspers (Stratford City) Limited
(2) Ms K Greenyer
(3) Mr T Greenwood
(4) Ms D Peneva

Heard at: East London Hearing Centre (in public, by video)

On: 17-18 March 2022

Before: Employment Judge Moor
Ms P Alford
Mrs M Legg

Representation
Claimant: Mr P Starcevic, counsel
Respondents: Mr McFarlane, employment consultant

JUDGMENT

It is the unanimous judgment of the Tribunal that:

1. In total the award is **£74,113.65** (that is £61,702.47 after grossing-up. (£8,041.20 plus the tax-free element of £30,000 have not been included in the grossing-up calculation).

This total is broken down as follows as between the Respondents as follows:

- a. The First Respondent must pay to the Claimant a basic award of **£6,787.47** (i.e. £5,512.50 plus £1,274.97 for grossing-up).
- b. The First Respondent must pay to the Claimant loss of overtime plus interest of **£2,739.44**.
- c. The First Respondent and the Third Respondent are liable jointly and severally to pay aggravated damages plus interest of **£6,855.01** (i.e. £5559.84 plus £1,295.17 for grossing-up).
- d. All four Respondents are liable jointly and severally to pay an award of financial loss (not including loss of overtime), injury to feelings and interest of **£57,731.73** (i.e. £47,890.69 plus £9,841.04 for grossing-up).

2. The calculation of those awards is set out in the Appendix attached.
3. Recoupment does not apply, the sum for loss of earnings having been made in respect of the discrimination claims.

**Employment Judge Moor
Dated: 22 March 2022**

APPENDIX 1
CALCULATION

Effective Date of Termination 11 April 2019 £

Agreed gross weekly wage: £552.98
 Agreed net weekly wage £413.30
 Pension contribution 3% gross.

A. **Basic Award:** $7 \times 1.5 \times 525.00$ (statutory maximum) **5,512.50**

B. Discrimination: Financial Loss

(i) *Loss of Overtime from 1.6.17 to 11.4.19*

at 1 day per month x 8hrs x 13.00 gross = £104 gross
 £70.72 net per shift

not including 29 August- 5 November 2018 i.e 2 months

$12+12+8.5 = 32.5 \times 70.72$ **2,298.40**

[No ACAS uplift]

(ii) *Loss of net pay through sickness absence 29.12.18 to 11.4.19*

The pay date was the end of the month.

Gross Pay received in Jan, Feb, Mar, April = 2450.99

What expected: £552.98 pw gross.

Number of weeks = 14.7

Total gross expected $552.98 \times 14.7 = £8128.80$

Difference $8128.80 - 2450.99 = 5677.81$ gross

Net at 75% (as suggested in Claimant's skeleton) = **4,258.36**

ACAS Uplift 10% **425.84**

(iii) *Loss of Earnings from 11.4.2019*

Net loss of earnings $153 \times 413.30 = 63,234.90$

Gross loss of £500 + £500 + £500/4

to reflect pay rises for 2020, 2021 and 2022 = 1125

Net gross loss pay rises at 75% = 843.75

Total net loss earnings = 64,078.65

Less UC and mitigation of (49,793.50) – 1/3 of march projection in schedule
(502.21) = 49291.29

Total net loss of earnings = 14,787.36

(iv) *Loss of employer pension contributions*
At 3% gross according to method in Claimant's skeleton

Net loss income plus 634 UC = 15,421.36
Grossed up by 125% = 19276.7
3% of gross = lost pension = 578.30

Adjustments to iii and iv:

Loss of earnings and pension reduced by 10%
14,787.36 + 578.30 = 15365.66 – (15365.76) **13,829.09**

ACAS Uplift on loss of earnings and pension 10% = **1,382.91**

(v) *Loss of statutory rights* **500.00**

Acas uplift 10% = 50 **50.00**

Total past loss of earnings adjusted (B) 22,744.60

C. Future loss of earnings 19.3.22 to 28.3.22

Total gross pay if still employed today
28704 + 1500 = 30204
Net annual = 30204 x 75% 22653
Weekly 435.63 x 1.2 weeks = 522.76
Less 1/3 projected March earnings (502.21) **20.55**

D. Interest on financial loss

(i) *Loss of overtime from 1.6.17*

From midpoint: agreed days = 1751

8% x (1751/365)/2 = 19.189% x 2298.40 **441.04**

(ii) *Loss of adjusted pay while sick*

From midpoint: agreed days = 1203

8% x (1203/365)/2 = 13.184%

13.184% x [4258.36 + 425.84] = **617.56**

(iii) *Loss of adjusted earnings and pension from 11.4.18 to 18.3.22*

From midpoint: agreed days = 1072 days

8% x (1072/365)/2 = 11.748% x 15212 = **1,787.10**

Total interest on financial loss	<u>2,845.70</u>
E. Injury to Feelings	18,000.00
ACAS uplift 10%	1,800.00
	<u>19,800.00</u>
F. Aggravated damages	4,000.00
Add in ACAS uplift 10%	400.00
	<u>4,400.00</u>
G. Interest on Injury to Feelings	
From 1 December 2018 = 1203 days agreed	
8% x 1203/365 = 26.36%	
26.36% x 19800 =	<u>5,219.28</u>
H. Interest on aggravated damages from 1 December 2018	
26.36% of 4400 =	<u>1,159.84</u>

**Total award before grossing up:
A+B+C+D+E+F + G + H =**

**5512.50 + 22,744.60 + 20.55+ 2845.70 +
19800 + 4400 + 5219.28 + 1159.84 = £61,702.47**

The awards to which grossing up does not attach are those in italics:

The loss of overtime and loss during sickness absence as adjusted plus interest:

2298.40 + 441.04 + 4,258.36 + 425.84 + 617.56 = 8,041.20