



EMPLOYMENT TRIBUNALS

Claimant: Mrs S. Brannan
Respondent: Navigo Health and Social Care CIC
Heard at: Midlands East Employment Tribunal via CVP
On: 28 April 2022
Before: Employment Judge R Broughton

Representation

Claimant: In Person
Respondent: Miss L. Haye - Counsel

RESERVED REMEDY JUDGMENT

1. Basic Award : **£6,473.10** (after the 50% deduction for contributory fault has been applied)
2. The Compensatory Award is in two parts and includes the following (after the 50% deduction for contributory fault has been applied);
 - 2.1 **£5,387.25 gross** (which is equivalent to 12 weeks contractual notice pay) subject to the statutory deductions for tax and National Insurance as required by law;

and

2.2 **£1662.31 net**

*The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 SI 1996/2349 do **not** apply.*

REASONS

The Issues

1. Following a judgment on liability on 15 December 2021, this hearing is to determine what compensation should be awarded to the claimant.
2. The finding of the tribunal was that the claim for ordinary unfair dismissal under section 94 and 98 Employment Rights Act 1996 (hereafter referred to as the ERA), was successful subject to a 50% reduction in both the basic and compensatory award for contributory fault.
3. The claim of automatic unfair dismissal under section 103A ERA was held not be well founded and was dismissed.
4. The claimant did not present a claim for wrongful dismissal.

Evidence

5. The parties attended the hearing via the Cloud Video Platform.
6. The claimant attended the hearing without legal representation although she was assisted by a friend, Mr Lloyd. The respondent was represented by counsel.
7. The hearing was listed for 1 day. There was some initial confusion because the respondent had produced a bundle of documents for the hearing (numbering 173 pages, increasing to 175 with the addition of a counter schedule of loss) however the claimant had submitted her own bundle. The claimant's bundle was without an index and unpaginated. The respondent's bundle contained some but not all of the claimant's documents.
8. The claimant had not realised that she had received the respondent's bundle, witness statement and counter schedule until she checked her 'spam' email folder at the commencement of the hearing and located the documents.
9. The hearing was adjourned, ultimately recommencing at 11: 30am, allowing the parties time to organise the documents into one bundle and the claimant to consider the respondent's documents and witness statement. On reconvening the claimant confirmed that she had had sufficient time to consider the respondent's documents and we were then in a position to proceed.
10. The final bundle, incorporating the claimant's additional disclosure numbered 198 pages. The tribunal was still required to make reference to the claimant's bundle to locate a witness statement from her sister, Mrs Hopkin and Ms Thomas, proprietor of the Louise Centre for Natural Healing.
11. The claimant had prepared a witness statement which mainly dealt with the impact of the dismissal and the surrounding publicity, on her health. She gave sworn evidence and was cross examined at some length by the respondent's counsel.
12. Mr Richard Adrian Watson, employed by the respondent as Assistant Director of HR /People and Transitional Development, produced a witness statement, gave sworn

evidence and was cross examined by the claimant. The claimant was directed to challenge any evidence in his statement which she did not agree with and it was explained that any failure to do so may lead the tribunal to infer that the evidence is otherwise accepted. The claimant challenged only one aspect of his evidence.

13. Given the delayed start, it took the whole day to complete the evidence, hence the decision was reserved.

Agreed Facts

14. The parties confirmed at the hearing that they were in agreement with respect to the following facts;
- The number of years services at the EDT: 23
 - The statutory cap on the compensatory award (52 weeks gross pay) : £22,440
 - Gross weekly pay: £431.54
 - Net weekly pay:£359.15
 - Calculation of the Basic award : £12,946.20 subject to 50% reduction for contributory fault is **£6,473.10**
 - The sum equivalent to the period of contractual notice is: **£5,178.48 gross**
15. The only areas in for dispute between the parties were therefore the amount which should be awarded for loss of earnings from the date of dismissal and the amount which should be awarded for loss of statutory rights.

Findings of fact – background

16. The tribunal considered all the evidence presented by the parties, however the findings of fact set out in this judgement are only those findings of fact relevant to the decision. All findings are based on a balance of probabilities unless otherwise stated and references to page numbers are to pages in the joint bundle.
17. The claimant was suspended by the respondent on **15 October 2019**. The claimant it is not disputed, had a notice period under her contract of employment of 12 weeks. The claimant's employment was terminated on **4 December 2019** summarily for gross misconduct. The offence for which she was dismissed was the making of inappropriate and racist comments.
18. The claimant lodged an appeal on 13 February 2019 , the dismissal was upheld.
19. As set out in the liability judgment, the claimant was a nurse devoted to good patient care and had enjoyed a long career of 25 years as Registered Mental Health Nurse working throughout her career, only within the NHS. It was clear to the tribunal that the way in which her employment ended had caused her considerable hurt.
20. The claimant is a highly qualified and experienced mental health nurse. The tribunal accept that although she had undergone a 1 year training in basic nursing care initially at the start of her career in 2002 , the tribunal accept her undisputed evidence that this

training was not in clinical skills i.e. it did not cover taking blood or dealing with Intravenous Intrusion (IV), and thus she had not undergone the full training required to undertake the duties of a general nurse. The claimant's evidence which the tribunal accept, is that she could provide basic nursing care such as checking blood pressure and temperatures but would require further training to be able to work as a general nurse.

21. The claimant as recorded in the liability judgment, had been finding completing administration using the new computer systems (System One) difficult. This had been recorded in a supervision meeting on 8 May 2019 . There was discussion at that time with the claimant about her stepping down to a lower band **Support Worker role** which would involve more interaction with the patients which was part of the role, the claimant enjoyed. The claimant had at this meeting, stated that she felt that; “ *maybe the time is right for this – she is going to go away and think about this...*”
22. At 67 years of age the claimant gave evidence before the tribunal at the liability hearing, that she felt she was nearing the end of her career as a nurse, although those discussions about stepping down to a lower band role did leave her feeling ‘insecure’ and ultimately she decided not to step down, at a meeting with the Associate Director for Business service Delivery on 3 June 2019. The claimant had felt more secure about continuing in her Nurse Practitioner role following that meeting and had decided to seek more support with the computerised administration system.
23. The claimant has experience of working with patients with Dementia and she accepts that this is a sought after skill in an area which is under resourced.

Impact of dismissal

24. The claimant's witness statement focussed on the impact of the dismissal. She complains about the impact of being “*exposed as a whistle-blower*” and the false accusations of racism which occurred straight after the whistleblowing and that ; “*my whole professional and personal life collapsed*” . The claimant refers to the campaign against her and the witness statements relied upon during the internal disciplinary process and of this adding to the already established pressures in her private life; her husband recovering from an accident at work, caring for her adult daughter who has long term developmental issues and helping to look after her grandchildren who have similar health issues as her daughter. That the claimant has those pressures and caring commitments at home is not disputed.
25. The claimant described feeling “*devastation*” when she was dismissed which caused her blood pressure to raise and eroded her self-esteem and that she was on sleeping tablets, Diazepam and other anti-depressants from her GP and received counselling. The claimant has also received some complementary natural healing.
26. The claimant did not produce any medical evidence of her prescriptions, copies of her medical records or any report from her GP. The claimant gave no explanation for not doing so, although briefly in submissions she referred to requests for her medical reports being ignored, but this did not form part of her sworn evidence and further, she did not disclose any documents evidencing that she had made any request for copies of her medical records.

27. The claimant therefore presented no medical evidence in support of her claim that she was prescribed medication, when she was prescribed it and the reasons for it. Her evidence was not clear in terms of the dates when this was prescribed and for how long.
28. As recorded in the liability judgment however, the claimant was already taking Diazepam during the disciplinary process because she was not sleeping. The claimant was therefore taking Diazepam the tribunal find, prior to the act of dismissal. The claimant had other pressures in her life and described how she did not take the medication continuously but that it helped her to sleep and referred to supporting her daughter who has autism, helping to care her two grandchildren and her husband and that there was *"lots going on"*.
29. The claimant clarified in response to a question from the tribunal, that her GP had prescribed her Citraline and Diazepam when she was *suspended* because she was not sleeping and because she was also having to support her daughter who has long term health problems. The respondent arranged for her to see Occupational Health and she was referred for counselling. The treatment started therefore not from the date of dismissal but as a result of events prior to that, namely from the date of suspension and the tribunal find that the problems she was experiencing with her mental health were in no small part, due to the challenges in her home life.
30. The claimant did not allege that her medication was increased after the date of dismissal. Her evidence is that for a few weeks after dismissal only, she could not focus or drive, that she would go to bed and think about what had happened but then she referred to having to; *"pick yourself up and brush yourself down and start again"*.
31. The claimant gave evidence that after dismissal she received some complimentary support from Ms Thomas who practices natural healing, at the Louise Healing Centre. She produced a statement from Ms Thomas who referred to the claimant presenting with symptoms of agitation, anxiety, depression and low self-esteem and that Ms Thomas observed there were; *"blockages in her whole energy"* field and that with the use of natural healing the claimant became more focussed, motivated and was sleeping better. The claimant confirmed that she had the first session when she was suspended and had 3 further sessions with the last being after the tribunal hearing in September 2021. She had two session per year. This was not arranged via the claimant's GP. Ms Thomas is someone the claimant has known for a long time. Ms Thomas did not attend the tribunal hearing and thus her evidence is merely hearsay however, it was not disputed that the claimant received this treatment
32. The tribunal find that the claimant was profoundly upset after the dismissal and for a few weeks experienced difficulty focussing and at the insistence of her family (not her GP) did not drive but then resolved to move forward and was able to do so because by early January 2020 she had applied for another job.

January to July 2020

Starting to Look for work : Marie Curie role

33. The claimant in response to a question from the tribunal, gave evidence that she started looking for work in **January 2020**. She had an interview before the internal

appeal was heard against the decision to dismiss in January 2020. The interview was for a job as a Support Worker, as a Sitter for Marie Curie.

34. The claimant gave evidence under cross examination that after dismissal, she was not able to acquire new skills because she was not mentally well enough to do so because she had been dismissed; "*for doing nothing wrong*". However this evidence was not consistent with her evidence that the role with Marie Curie would require her to learn new skills, which she was evidently the tribunal find, prepared to do and which she explained she had to do because she was the only "*breadwinner*" at home.
35. The claimant applied for the role at the beginning of January 2020, had a telephone call about the role on 20 January 2020 and had an interview in February 2020. She did not however get the role because her undisputed evidence is that she did not have enough palliative care experience. Her evidence is not that she failed to get the role because of the reasons why she was dismissed by the respondent.

Opportunities for Registered Mental Health Nurses in the locality – March 2020

36. It is not in dispute that in the claimant's local area of Grimsby, the respondent is the only NHS Mental Health Trust.
37. However, the claimant was taken by the respondent to extracts from the Grimsby Telegraph in March 2020 [152], of extra nurses being drafted in to help with an isolation unit, during the Covid pandemic at Scunthorpe General Hospital. The claimant's undisputed evidence is that the drive from her home to Scunthorpe hospital was a "*60 mile round trip*" and that this would have meant her driving in the dark and further, she did not feel mentally well enough to drive that distance. She did not enquire what jobs were available at the hospital. The claimant conceded in cross examination that within the hospital there would have been a variety of roles suitable for someone with her skills and experience.
38. The claimant was also taken to an advert in **April 2020** [152] about a new emergency hospital opening at the former Cambridge Park Care Home, in Grimsby. It referred to a range of roles being on offer and the facility operating from April 2020. The roles advertised included roles for; registered nurses, senior healthcare assistants, health care assistants, senior care assistants and care assistants.
39. The claimant gave evidence that she knew that a new home was being opened however she did not apply for any of the roles.
40. The claimant accepted that the vacancies included roles which with her skills, she could have carried out. Although she confirmed under cross examination that the salaries on offer would have been comparable to what she earned with the respondent, her evidence later in cross examination was that the vacancies advertised in April 2020 for Support Workers, would not have been paid at a comparable rate because she had been employed by the respondent as a top band grade 5 nurse. She went on to give evidence that the salary she was paid with the respondent would also not be comparable to vacancies for Bank work for Support Workers. The tribunal was not presented with any evidence of the salaries on offer for those roles however the tribunal takes Judicial Notice of the NHS website which lists the different types of roles in the NHS, their seniority

and relative pay and notes that the pay for Support Workers and Health Assistants is less than for a Registered Nurse.

41. The claimant also accepted that there was particularly during the pandemic, lots of Bank work for Support Worker roles but gave evidence that she did not apply for this work because ; *“I’m a registered mental health nurse – why should I accept that work – this was my profession – why should I apply for support worker roles when after 25 years as a good nurse ... why should I “*
42. The claimant however did accept a Support Worker role in September 2020 as a PA because there was; *“...only one wage coming in to the house so I needed to”*. Her evidence was however that she had not applied for Support Worker roles earlier in March 2020 because she was not mentally and physically well enough. The tribunal however do not accept that the claimant was not mentally or physically well enough to work as a Support Worker in March/ April 2020; there is no medical evidence to support that and the burden of proof falls on the claimant to establish that she was so unwell she could not work. Her own evidence is that she was unable to focus and drive only for a few weeks and further by January 2020 she had applied for and been interviewed for a Support Worker role. The claimant may not have wanted a Support Worker role in a hospital, because had worked as a band 5 nurse in a hospital when employed by the respondent, but the tribunal do not accept that she could not do the work because of health reasons.
43. The claimant accepted under cross examination that her skills were also transferable to the roles of a Health Care Assistant and Healthcare Worker.
44. The tribunal have regard to the fact that with respect to her physical health, the claimant was physically fit enough to care for her young grandchildren (aged 10 and 3 years of age) who have additional needs, as well as caring for her daughter, her husband and her sister.
45. The claimant signed up with a number of recruitment agencies including; Indeed, NHS Direct and Medilink and her evidence is that she would receive hundreds of emails from the agencies every day but most would not be suitable posts or posts she was not confident about. The claimant had not disclosed any of those emails within the bundle.

March 2020

46. The claimant did not deny that there would be vacancies for Support Workers and health care providers, advertised throughout January to July 2020, however she referred to being in a situation where she was caring for 2 young children as well because her daughter and son in law who are front line workers and the schools had closed. The claimant needed to help with the care of her grandchildren while they were not allowed in school. She could not recall when this was but believes it was around June and July 2020. Her sister was also ill and shielding so there was ; *“lots going on”* in her home life.
47. The claimant’s evidence is that she had not seen the jobs advertised in Scunthorpe and Grimbsy, *“but I was caring for my grandchildren”*. The claimant had aware been aware of the emergency hospital opening and the tribunal do not find it credible, that although she was receiving hundreds of emails a day from a

number of agencies, she did not receive notifications about these new jobs in her local hospitals. The tribunal find that what is more likely, is that during the period from the first lock down at the end of March throughout summer 2020, the claimant was preoccupied caring for her family and therefore was not actively looking for work during this period .

48. The claimant was confident enough to apply for a role with Marie Curie in January 2020 and with Care4all in July 2020, therefore the tribunal is not persuaded that the reason she did not apply for other vacancies throughout January 2020 to July 2020 was because she was not well enough to do so but find that it was because she was chose to prioritise the support her family needed from her.
49. The claimant also accepted that when Covid hit in March 2020, the Government were offering incentives for nurses to come back into the profession from retirement and she accepted that there had been a shortage for years of general nurses. However her evidence is that she was not in the right frame of mind to retrain as a general nurse.
50. The claimant was also taken to an advertisement in the Grimbsy Telegraph [156] about vaccination centres which opened in Grimbsy in the summer of 2020. The advert referred to staff being recruited to support the roll out. The claimant did not accept that she had the training required to do this work but gave evidence that she did not apply because she was not *"in that mind frame"*. She had not made any enquiries of what training may be available.
51. When the tribunal asked from what point in time after termination, the claimant would have been prepared to put herself forward for a role as a RMHN, the claimant gave evidence that it would have been; *"from anytime really"*.

Other jobs/ attempts to find work : 4 December 2019 to date

52. The claimant confirmed that from 4 December 2019 to July 2020, she applied for work only with Marie Curie and Care4 all and took no steps to find work outside of the care sector after her dismissal.
53. The claimant gave evidence that she would not have the skills suitable to carry out an administrative role because of what she described as her *"appalling" IT skills*. That she had some challenges using IT is consistent with the concerns raised during her employment and recorded in the liability judgment and is consistent with her need for support from Mr Lloyd during this hearing to locate documents in her email and view them remotely.
54. The claimant did not seek to dispute that she could have obtained work in a retail shop for example but had not done so. The claimant was evidently upset and offended at the suggestion put to her by the respondent's counsel that she could have applied for this type of work, referring to her long years in nursing and being a RMHN and why should she have to, when she had been removed from the job she loved.
55. The claimant accepted that nurse vacancies in the North East and Yorkshire had spiked by 18% since March 2021.

56. The claimant had taken no steps to seek work outside of the care sector and mentioned only working as a volunteer at the Grimbsy Central Hall, a community hub, where she was involved in delivering pamphlets and general administration perhaps once or twice a week in 2019 and throughout 2020.

July 2020 : job application – Care4all Ltd

57. The claimant applied for a job as a Support Worker, with Care4all which provides support services for vulnerable people in the community. This includes arranging support by Personal Assistant Support Solutions (PASS), where the service user chooses the support worker and employs them direct.

58. The claimant accepted under cross examination that her eldest grandchild went back to school in about June 2020 and she was sent the application for a role with Care4 All on 7 July 2020, following a conversation a few days beforehand. It was a role of Relief Support Worker at a starting salary of £17,049 gross pro rata per annum on a Bank contract i.e. an “*as and when required*” basis. However, the undisputed evidence of the claimant is that she was never asked to do any shifts. The claimant gave evidence that she believes that was because although she had explained at the interview the circumstances around her dismissal, she attended a training sessions with the respondent’s Chief Executive. The respondent’s Chief Executive is a trustee for Care4all and she suspects that the CEO of the respondent and Care4all had a discussion about her following that training session which is why she was not offered any shifts.

59. The claimant had not lead any evidence on this in her witness statement and produced no evidence in support of this accusation. She does not allege that she made any enquiries at the time about the lack of shifts offered to her.

60. The tribunal is not persuaded that the evidence supports a finding that work was not offered because of an alleged discussion which took place between the respondent’s and Care4all’s CEO. This appears to amount to no more than conjecture on the claimant’s part.

61. The claimant did however take up a role as Relief Support Worker via the PASS service and was employed direct by a service user from 29 September 2020.

29 September 2020: Work as a Personal Assistant - Care4all (PASS scheme)

62. From 29 September 2020 to the date of this remedy hearing, the claimant has worked as a Personal Assistant/ Support Worker for an individual who has a brain injury.

63. The claimant initially worked 7.5 hours per week but increased her hours to 10.5 hours about a month later from beginning of November 2020. She is paid at the national minimum wage

64. The claimant has therefore since the beginning of November 2020 worked 10.5 hours per week (3.5 hours 3 days per week) at the national minimum wage (NMW). The claimant could not recall what the applicable NMW rates were throughout the period and neither party produced evidence of what the rates were. The tribunal takes judicial notice from the Government’s own website that the NMW rates were;

From 1 April 2020 : £8.72
From 1 April 2021: £8.91
From 1 April 2022: £9.50

65. The claimant supplied payslips for the month of September/October 2020 [191] and for December/January, January/February and February/March 2022 [192 – 194] ie the last 3 months prior to this hearing (one payslip showed two months pay as the claimant was late submitting her timesheet). The payslips confirmed that she is paid at the NMW rate of £8.91 plus in January/February 2020. She was also paid a few additional hours at an enhanced rate of £13.36 [193] .
66. The claimant was also offered the chance of further work under the PASS scheme for a different service user , in September 2020 [110]. However, the claimant's evidence is that she needed to check with her daughter whether the claimant would be able to work those additional hours. In the event she turned down the offer of additional hours. The claimant gave evidence that this was in part because the service user was a young man with complex physical and mental needs and at her age she did not consider she could have cope however, it was also clear that part of the reason was because she needed to support her daughter and her grandchildren. Although the claimant did not in her email to Care4all give the needs of the service user as the reason for needing time to consider the additional PA work, the tribunal accept the claimant's evidence on balance, that the needs of the particular service user also made this work unsuitable for her.

November 2020 – enquiries about a role : Appoint Group

67. The claimant made some enquiries about a role as a part time Registered Nurse at a private nursing home called Havenmere Care Home for people with Head Injuries which was a Band 5 role, at the starting band for a grade 5 (i.e. less than she was paid by the respondent).
68. The claimant clarified in response to questions from the tribunal that this role was advertised as full time however, she had told them that she only wanted 1 or 2 shifts of 7.5 hours each i.e. a total of 15 hours per week. Because she also receives a nurses pension, she was concerned about how much tax she would have to pay if she worked too many hours and went on to clarify that after her employment ended, she was looking to work no more than 15 hours week. Havenmere Care Home were prepared to be flexible because they were desperate for nurses and were prepared to discuss flexible working with her at the interview. It was a general nursing role in charge of a unit and she had intended to go to the interview to find out more about the role which involved caring for those with head injuries. She believes, but had not checked that the pay would have been at pay band 5, about £24,500 for full time / 37.5 hours.
69. The claimant confirmed that she explained at the job interview about the circumstances of her departure from the respondent and the company still wanted her to attend an interview.
70. However, the claimant on the 4 November 2020, emailed turning down the role explaining that a close family member, (which she confirmed during this hearing was

her sister) needed to undergo treatment for lung cancer and the claimant was to be providing her with care and thus she could not take up the part time role because she would be shielding.

71. The claimant was invited to get back in touch if her circumstances changed but confirmed that she never did.
72. In response to questions from the tribunal, the claimant clarified that did not get back in touch because her sister was unwell and also she was fearful of working in a *general* nursing role and performing work she did not have the skills to do.

November 2020 : Tree House Care and Bank Care Assistant

73. The claimant was also invited in November 2020, to an interview for a Support Worker role with Tree House Care [117] as a Relief Worker on an as and when required basis, on the NMW and as a Relief Support Worker via the recruitment agency Care Plus Group, but declined to proceed with either application because of the need to support her sister.
74. The claimant gave evidence that had she remained employed by the respondent she could have worked and cared for her sister by working different shifts and arranged care with her family however when asked to explain why she could not have the same arrangement in other caring roles, her answer was not straight forward. She did not allege that there would not have been the same opportunity to work shifts but rather her immediate response was; “ *because I was dismissed*” and then went on to refer to looking after her sister and “*I have a caring role and looking after everyone else as well as looking after my mental health*”.
75. The claimant referred how her caring responsibility had changed and in response to a question from the tribunal, clarified that “*maybe*” she could have cared for her sister while still working for the respondent but she did not know.

24 May 2021 – 5 July 2021 : The Wolds Care Home

76. The claimant in May 2021 secured a second job through the Humberside Independent Care Association Limited (Hicagroup) working as a Registered Nurse at The Wolds Care Home which started on **24 May 2021** . The care home called is located in Louth. The claimant estimated Louth to be about 30 miles from her home. The tribunal therefore find that the travel to Louth is comparable to a 60 mile round trip to Scunthorpe. It is not the claimant’s case that she could not do the job because of the travelling.
77. This role was for **7.5 hours per week at £16.50 per hours gross.**
78. The claimant did not produce any wages slips. Her undisputed evidence is that she worked 1 day per week on Friday’s, her wages slips were electronic and she received only two payments of;

a. £148 gross

b. £329 gross.

Total = £477 gross

79. What she earned in this role was not challenged by the respondent. The contract of employment [134] confirms that the rate of pay is £16.50 and an average of 6 hours per week .
80. The claimant's undisputed evidence was that she went to the interview, she explained what had happened with the respondent and they were " *happy to employ me*" but she could not cope and resigned from this role. The claimant's undisputed evidence is that this employer wanted her to deal with IVs and feeding tubes, they took her on knowing she was a mental health nurse and offered to give her training but due to Covid that training did not materialise and she could; "*not process more, my confidence and self-esteem had gone*".
81. In her email of resignation dated **5 July 2021** [p.142] she stated;
- " I would like to give notice . After a lot of reflection over the weekend and discussion with my family I feel now it's time to retire from my nursing career.*
- I feel now I have not got the energy and ability to process new skills and give 100% in a very busy environment."*
82. The claimant in her witness states gave evidence that she told people that she had retired only to save face however, she also in her witness statement, referred to "*extricating*" herself from nursing "*totally*" and taking up the voluntary role with Grimsby Central Hall as this was as "*far removed from nursing as possible*" – that however was prior to the newspaper article in January 2022. She complains that after the newspaper article in January 2022 which reported on the tribunal liability judgment, she did not attempt a return to nursing afterwards due to the stigma. The claimant did not however apply for another nursing role again after 5 July 2021. Indeed she did not apply for any other job but continued with the PA work.

Witness statement of claimant's sister

83. The claimant produce a signed statement from her sister although she did not give evidence before the tribunal. Her evidence therefore is hearsay. The contents of the statement was not however disputed by the respondent. It referred to the claimant becoming her carer in March 2019 ie pre dismissal. It was however put to the claimant that her sister in her statement is indicating that the care she required from the claimant increased in 2021 following the progression of her cancer and when her sister required radiotherapy treatment. The claimant confirmed that her sister's needs changed from time to time and on balance of probabilities and on the evidence, the tribunal find that the care the claimant's sister required was more intensive during 2021 i.e. post dismissal, when her sister was shielding and her cancer had progressed. The tribunal find that on a balance of probabilities, the caring responsibilities the claimant had for her sister, no doubt formed part of the reason why she did not seek other employment during 2021, she was after all shielding to protect her sister according to the emails in November 2020 [116/117]

Other attempts job opportunities

84. The evidence of Mr Watson was that as RMHN the claimant had a number of skills that made her employable in the health and care sector and had significant nursing experience. As a RMHN she would have had skills and experience that *exceed* the requirements to work as unregistered Support Worker, a Health Care Assistant or as an Advanced Health Care Assistant although this would require extended skills such as taking blood and administering medicine, whether that was in a hospital or primary care settings or a nursing home . That evidence was not challenged by the claimant.
85. Mr Watson gave evidence that as the respondent is the only MHS Mental Health Trust within the North Lincolnshire area, he carried out a search on 8 April 2022 within a 10 mile radius of Grimsby of what he described as potentially suitable jobs and he sets out his findings in his statement. The vacancies include roles from a Nurse Practitioner to Staff Nurse however in cross examination he conceded that most of the roles did not match the claimant's training and that in fact only the role of Staff Nurse RGN/RMN and Registered Nurse RGN/RMN matched her training , both of which were advertised to be jobs located in Grimbsy.
86. Mr Watson gave evidence that he considered transferring to a general nursing role would require minimal upskilling for the claimant given her ability and skill. The claimant had not been clear in terms of what additional training she would require and how involved and lengthy this would be but did not seek to challenge this evidence from Mr Watson.
87. Mr Watson also gave evidence which the claimant did not challenge, that there existed plenty of opportunities for nurses to work on a casual basis thorough one of the many agencies as Bank Staff for private as well as NHS organisations. He also referred to NLaG reporting vacancy rates throughout 2020 of between 8 and 12 % for Registered Nurses and between 4 and 14% for unregistered supporter workers and that within a 5 mile radius of where the claimant lives there are also 51 CQC registered nursing home/care providers and a further 39 registered home service providers.
88. The claimant did not assert that she had applied for those two roles advertised through Nurses.co.uk. The only reason she gave for not applying, was to question how she could apply without a reference, however she had not lead any evidence about the problems of finding a role without a reference . Her evidence about the jobs she applied for and secured, and the reasons she was not successful in terms of the Marie Curie role, do not support a finding that this was or would have been on balance a barrier. The claimant also argued that these two roles would not have been suitable because “ *of what happened to me, Navigo dismissed me, I was not in the right frame of mind*”. That however directly contradicts, her response to the tribunal when she clarified that if there was role as a mental health nurse available, she would have applied for it at any time. Further, the reasons she gave under cross examination also are not consistent with what she said her position was from January 2022, following the article in the Grimbsy Telegraph.

Newspaper Article – 15 January 2022

89. The newspaper article is dated 15 January 2022, (over 2 years following the date of dismissal) and reported on the findings of the tribunal at the liability hearing. The claimant in her witness statement states that this article; “ *I didn't attempt a return to nursing because of the stigma of the false allegations ...*”

90. The tribunal therefore do not accept that the claimant did not apply for the roles in April 2022 because of concerns about a reference, but because she had decided not to return to nursing and in fact the tribunal find that she had on a balance of probabilities, made that decision in July 2021, when she resigned stating that she was retiring and took no steps thereafter to look for any other work whether within nursing or elsewhere. If the claimant decided that due to the stigma she could not return to nursing from January 2022, she took no steps to find another job in another sector, whether retail or otherwise.

Submissions

Respondent's submissions

91. The respondent submits that a sum of £350 is adequate for loss of statutory rights and that the tribunal cannot award a payment in excess of £500,
92. With respect to loss of earnings from the date of dismissal, the respondent submits that the period of loss should cease as at **1 April 2020**, when there were vacancies at the Grimbsy hospital which the claimant did not apply for.
93. There was a labour crises in the health and social care sector pre and post the Covid 19 pandemic and the respondent submits that the unchallenged evidence of Mr Watson was that the claimant would have had the skills suitable for most general nursing positions in acute settings such as nursing homes, care homes and home care providers and had transferable skills which would have enabled her to obtain work comparable in pay terms to what she had with the respondent.
94. The claimant could drive and had only stopped doing so for a few weeks period at the request of her family.
95. The claimant could work day or nights shifts as long as she could work around her caring needs for her family and had accepted a job 30 miles away from her home in Louth, therefore a degree of travel was not an impediment.
96. The respondent submits that the claimant made insufficient attempts to mitigate her loss. There was comparable work in terms of hours and salary in nursing or care setting she could undertake but she did not and there were also Support Workers vacancies she could have applied for.
97. The respondent invites the tribunal to take judicial notice that there would have been comparable work outside nursing she could have obtained during the pandemic and her attitude of '*why should she*', is simply not good enough.
98. The claimant referred to her health and confidence preventing a return to nursing but her evidence was that this was at its worst immediately after the dismissal. however she applied for roles not consistent with her skill set for which she could needed different skills and training.

99. Her evidence is that she was taking Diazepam after dismissal but only intermittently for a few weeks however there is no medical evidence to support what the claimant says, the burden of proof is on the claimant and the respondent invites tribunal to find she has failed to discharge it.
100. Her ability to look for work and secure it was not impeded hence by July 2020 she had secured the PA role which was outside her primary expertise.
101. The claimant had to balance work with the need to care for her wider family, that was the position pre and post dismissal but the claimant decided to limit the number of hours she was prepared to work to a maximum of 15 hours per week from the 22.5 she had worked for the respondent because she was in receipt of a pension and the loss he suffered from that decision does not flow from the dismissal.
102. The respondent invites the tribunal to find that within **17 weeks** from dismissal she could have secured a job at 15 hours per week on a comparable salary.
103. The respondent invites the tribunal to find in the alternative, that the period of loss should stop at around the **5 July 2021** when it is submitted she decided to retire .She was approaching the end of her career and told her employer in July 2021 that she had decided to retire.
104. In terms of stigma, the respondent refers to the ‘suspicion’ of stigma not being sufficient and in terms of the effect. Her search for employment in 2022 was 50% successful and she was offered additional shifts, and all of this was with the full knowledge of the circumstances around the claimant’s departure from the respondent. The claimant’s evidence is that she had been honest about her dismissal from the respondent.
105. The newspaper article is dated 2022 and goes no way to answering the deficiencies in mitigation.
106. The claimant was caring for her family from March 2019 and working while doing so, it is unclear the respondent submits why the claimant was pulling out of positive options for work on the basis .
107. ***Devine v Designer Flowers Wholesale Florist Sundries Ltd 1993 IRLR 517, EAT:*** the parties were invited to comment on this case. The respondent submits that the claimants evidence was that the dismissal affected her but she got on with it, she applied for the Marie Curie post , there was the respondent accepts “*some impact*” but not sufficient to stop her applying for work in 2020 and 2021 and it is not accepted that her health impeded her. She clarified in response to a question from the tribunal that she would have applied for a role as a mental health nurse at “*anytime*” after dismissal.
108. The respondent accepts that the period of the compensatory payment equivalent to her 12 weeks contractual notice period would attract tax and suggests that it cannot be paid gross to the claimant as the respondent is liable for making the statutory deductions. The payment may be processed on an emergency tax code (so the claimant will pay more tax however the claimant would have to contact HMRC and arrange for any overpayment to be recovered). The respondent suggests that the tribunal award any sum equivalent to the contractual notice pay as a gross sum subject to tax and NI and calculate the compensatory aware of the period of her losses from

the expiry of the notice period and separate out the two payments. The respondent calculates the notice period to be **£5,178.48 gross** subject to tax and NI deductions. The end of the 12 week period would be 26 February 2020.

Claimant's submissions

109. The claimant agreed with the respondent figures for notice pay and had no comment on the suggestion that the amount equivalent to the contractual notice period is paid gross.
110. The claimant made brief submissions; she referred to looking forward to working with the respondent until she was 72. That the dismissal destroyed her life, because she could not continue with the job she loved. The claimant submits that it is ridiculous to suggest she could secure a job that paid the same as she earned with the respondent because all jobs outside care homes are paid at NMW.
111. Mr Watson had agreed that from the list of jobs in his statement, most were unsuitable for her.
112. The claimant referred to the impact on her mental health and that the contact between her and her GP during the pandemic has been virtually non-existent and her request for her medical reports had gone unanswered.
113. She has been accused of making racist comments and since the newspaper article, the chance to recover her career has been destroyed because she has been branded a racist and it is unfair.

Legal Principles

114. The starting point is the relevant statutory provisions:

Employment Rights Act 1996;

Section 118 General.

(1).Where a tribunal makes an award of compensation for unfair dismissal under section 112(4) or 117(3)(a) the award shall consist of—

*(a) a basic award (calculated in accordance with sections 119 to 122 and 126), and
(b) a compensatory award (calculated in accordance with sections 123, 124, 124A and 126).*

115. The calculation of the basic award is a set calculation and the relevant statutory provision is section 19 ERA.
116. The relevant statutory provision for the calculation of the **compensatory award is set out at section 123;**

*(1) Subject to the provisions of this section and sections 124 124A and 126, 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 in so far as that loss is attributable to action taken by the employer.** Tribunal stress*

117. To calculate the compensatory award, it is first necessary to ascertain the employee's total loss in consequence of the dismissal, in so far as that loss is attributable to the employer's actions: section 123(1) ERA. Deductions and adjustments should then be made including deductions by way of sums earned by way of mitigation, or to reflect the employee's failure to take reasonable steps in mitigation : section 123(4) ERA. Any 'just and equitable' reductions based on contributory fault under S.123(1) ERA should only then be applied and then the application of the statutory cap, which the parties agree in this case is £22,440 (52 weeks' pay) which is lower than the applicable statutory cap as at the date the dismissal took effect (£86,440).

Compensatory Award – case authorities

118. As Lord Justice Underhill observed in **Griffin v Plymouth Hospital NHS Trust 2015 ICR 347, CA**, the tribunal's task in assessing the appropriate amount of compensation is 'bound to be to a considerable extent an exercise in speculation, based on the tribunal's assessment of the claimant herself — that is, her attitude and abilities — and of the local job market'.

119. The employee's personal circumstances must be taken into account. In **Haslam v Manchetts Cleaning Supplies Ltd ET Case No.33984/95**. The employee's age, experience and level of qualification are important factors.

120. Compensation may even be awarded beyond normal retiring age if the evidence shows that the employee would have stayed on past that age : **Barrel Plating and Phosphating Co Ltd v Danks 1976 ICR 503, EAT.**)

121. In **Devine v Designer Flowers Wholesale Florist Sundries Ltd 1993 IRLR 517, EAT**, the Appeal Tribunal reminded itself that an employee can only recover losses that are attributable to action taken by the employer. In that case, the employee's dismissal caused her to suffer anxiety and depression, which rendered her unfit for work. The EAT held:

*“...There is no reason whatever why such an employee should not be entitled, at least, to compensation for loss of earnings for a reasonable period following the dismissal, until she might have reasonably been expected to find other employment. Further, since the question is one of assessing the loss sustained by the individual employee who has been dismissed, there is, in our view, no reason why the personal circumstances of that employee, including the effect of the dismissal on her health, should not be taken into account in ascertaining the appropriate amount of compensation. That does not mean that if the employee becomes unfit for work, wholly or partly as a result of the dismissal, she is necessarily entitled to compensation for loss of earnings for the whole period of such unfitness. The Industrial Tribunal has to have regard to that loss, consider how far it is attributable to action taken by the employer, and arrive at a sum which it considers just and equitable. ...**It is well established that the manner of dismissal is not a proper subject of compensation.** In the whole circumstances, therefore, it seems to us that there are a*

number of points to be considered in arriving at the proper award, and the appropriate course is to remit the case to the Industrial Tribunal to reconsider the question of what compensatory award should be made..” Tribunal Stress

122. House of Lord’s decision in ***Malik v Bank of Credit and Commerce International SA (in compulsory liquidation) 1997 ICR 606, HL*** the employees claimed that BCCI had breached the contract of employment by acting in a way that appeared to implicate them in a fraud, with the result that their future employment prospects were prejudiced. The employees claimed compensation for the damage caused to their reputations. The House of Lords held that BCCI was in breach of the implied term that it would not, without reasonable cause, conduct itself in a manner likely to destroy or seriously damage the relationship of mutual trust and confidence between employer and employee. Their Lordships stated that if it could be established that the breach of contract caused foreseeable financial loss, then the employees should be able to recover damages for that loss, even if it occurred after the contract had been brought to an end. Lord Nicholls and Lord Steyn, giving the leading judgments, expressed the view that cases where ‘**stigma damages**’ could be claimed would be rare.

Mitigation

123. Claimants must take reasonable steps to mitigate their losses: S.123(4) of the Employment Rights Act 1996 (ERA), provides that: *‘In ascertaining the loss [sustained by the claimant] the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales or (as the case may be) Scotland.’*
124. The test is whether the employee’s conduct is reasonable on the facts of each case: ***Yetton v Eastwoods Froy Ltd 1966 3 All ER 353, QBD.***

Conclusions and Analysis

Compensatory award

The employee’s total loss in consequence of the dismissal

125. The tribunal conclude that the claimant was profoundly upset by the dismissal and that for a few weeks she was unable to focus and her family were concerned enough to suggest that she refrain from driving. That was in consequence of her dismissal.
126. The claimant then remained out of work until she secured the PA role in September 2020, this was 7.5 hours per week rising to 10.5 hours. Following her dismissal, the claimant was in receipt of her pension and decided that she did not want to work more than 15 hours per week, she also had significant responsibilities caring for various family members and needed to balance that with work. Her losses from the date of dismissal, must therefore be limited to 15 hours per week because of the decision the claimant took, primarily for financial and family reasons, to work less hours.
127. The tribunal do not accept that after the initial few weeks, when the claimant was able to focus and drive again, that she was unable to work because of any physical

or mental illness. The claimant produced no medical evidence to support such an argument and the evidence presented to this tribunal suggests otherwise. The claimant applied for and was interviewed for a role in January 2020 and continued to be able to provide care and support to various family members with health issues. Further, she confirmed to the tribunal that had there been a role for RMHN she would have applied for it ; *“anytime”*.

128. The claimant’s evidence was contradictory. She was upset and offended at the suggestion that she should seek to secure work as a Support Worker or Health Care Assistant given how qualified she was and yet had done so and further, talked about a decline in her confidence and self-esteem in terms of returning to nursing and yet informed the tribunal that she would have applied at any time had there been a RMHN vacancy.

129. The claimant the tribunal conclude on balance, was well enough to return to a role as a nurse or some other role within nursing or the care sector from the beginning of January 2020.

130. The tribunal conclude that there were no suitable RMHN vacancies within a reasonable travelling distance of her home until April 2022. However, prior to that, on 5 July 2021, the claimant made the decision not to look for another job. The claimant informed the Wolds Care Home that she had decided to retire from nursing and made not no effort, consistent with that decision, to look for another nursing job or indeed any other job.

131. The claimant’s case as set out in her statement, is that she made the decision that she could not return to nursing in January 2022 because of the newspaper article. However the tribunal conclude on the evidence that she made that decision in July 2021, probably as a result of a combination of factors, but the main reasons were that she already had a part time role and was concerned about earning more because of the impact on the tax she would have to pay and because of her family responsibilities, including the care of her sister whose needs had changed and were more significant during 2021.

132. The tribunal therefore conclude that the period of loss, is limited from the date of dismissal to the 5 July 2021 when the claimant then decided not to look for other work and to retire from nursing.

133. The tribunal do not consider that the ongoing losses from 5 July 2021 are in consequence of the dismissal but in consequence of the claimant’s positive decision to retire from nursing and only continue with the part time PA role.

Deductions by way of sums earned by way of mitigation, or to reflect the employee’s failure to take reasonable steps in mitigation

134. The tribunal is not satisfied, given the success the claimant had in securing work, that the claimant was hampered by not being in a position to provide a reference. She was candid when applying for roles about why she had left her last employment and her evidence is that despite such candour that Marie Curie invited her for interview and she does not allege that she did not get the role because of the absence of a reference, rather it was according to her own evidence, that she did not have sufficient palliative care experience. She secured the role as a PA and in The Wolds Care Home

where they wanted her to run the home. She gave no evidence of being refused a job because of a lack of a reference. The claimant was also out of work during a period when there was a shortage of nursing and care staff, when the Government was urging nurses to return from retirement and there was other work available in vaccination centres etc. During this period, there was the tribunal conclude, a surge in demand for the skills the claimant has.

Period from 4 December 2019 to 1 January 2020

135. The claimant did not after the dismissal, want to work more than 15 hours per week. It would not therefore be just and equitable to calculate her losses by reference to the 22.5 hours she worked prior to dismissal.

136. The weekly salary, based on working 15 hours per week, the claimant would have earned had she remained employed by the respondent, the tribunal calculates, (based on the figures in the respondent's counter schedule) equates to:

*net weekly wages for working **15 hours per week** based on £359.15 net for 22.5 hours per week = **£239.43** per week net.*

137. The tribunal accept that the impact of the dismissal was such that for a few weeks until it estimates, the start of January 2020, the claimant was unable to drive or focus, she was deeply upset, continued with the Diazepam intermittently and was not in a fit state to consider applying for new employment. The claimant had worked for 25 years as a nurse and the dismissal no doubt caused her profound sadness and distress.

138. It would be just and equitable to award the claimant her losses for that initial period based on her working 15 hours per week. She did not present a separate claim for breach of contract/wrongful dismissal and her losses therefore are subject to the provisions of section 123 ERA. ;

(a) 4 weeks x £239.43 per week (based on 15 hours) = £957.72 net (date of dismissal to beginning of January 2020) less 50 % reduction or contributory fault = **£478.86 net**

Period from 1 January 2020 – 26 March 2020

139. The claimant the tribunal conclude, was then well enough from 1 January 2020 to focus and drive and search for new work and indeed she did so, securing an interview with Maire Curie, after applying in early January 2020.

140. The claimant produced no medical evidence to support any assertion that she remained so impacted by the dismissal, it hampered her efforts to find work. Her own evidence is that she would have applied for RMHN post at "anytime" after dismissal.

141. The claimant was reluctant to work in a lower band role and the tribunal conclude (given her evidence that she would have taken up a RMHN role "anytime") that the main objection to doing so was pride, she repeatedly and robustly challenged why she should take a lower band role after 25 years as a RMHN. While it is reasonable to allow the claimant a period of time to try and find work at the same level as her

previous job, the claimant was aware that this was unlikely given that the respondent was the only Mental Health Trust in the locality. In those circumstances the tribunal do not consider it just and equitable, knowing the restriction on work for RMHN in her local area and not wanting to travel too far, to compensate her for not taking reasonable steps to apply for more junior roles namely as a Support Worker or Health Care Assistant. The claimant had indeed applied for one Support Worker role with the Marie Curie but had taken insufficient steps to apply for other roles.

142. Taking into account demand for these skills particularly around this time and the claimant's experience, the tribunal estimate that she could have secured a Support Worker or Health Care Assistant role in a hospital or care home setting, by 26 March 2020 ie after an estimated further period of circa 12 weeks from the beginning of January 2020.

143. The tribunal consider it just and equitable that the claimant should be compensated for her losses for that further 12 week period, based on the salary she would have received from the respondent for working 15 hours per week, until she could have secured a role as a Support Worker or Health Care Assistant;

(b) 12 weeks (12 x £239.42) = £2,873.04 net (from beginning of January 2020 to 26 March 2020) less the 50% contributory fault = £1,436.52 net

Period 26 March 2020 to 5 July 2021

144. From the end of March 2020 onwards, the tribunal conclude that the claimant could have secured a job as a Support Worker or Health Care Assistant in the NHS or with a private or social health care provider. There were particularly in March and April 2020 a significant number of jobs available particularly with the opening of the new emergency hospital locally. However, the claimant never enquired about the roles although she was aware of the new hospital opening. Her reasons for not doing so are not sufficient and do not amount to the claimant taking reasonable steps to mitigate her losses.

145. In terms of finding work as a general nurse, the tribunal take into account that there was a surge in demand for nurses however it also takes into consideration that the claimant may have found it difficult to secure a job which provided retraining, not least given her age and the fact that she only wanted to work 15 hours per week. The claimant had been told she would be given training by The Wolds Care Home to work as a general nurse but due to the pressures of the Covid pandemic, that training did not materialise. The tribunal also take into consideration that the respondent suggested that the claimant may want to step down into a Support Worker role while she was employed by them, given the difficulties she was having learning how to use the new computerised administration system. The tribunal therefore find that it would be just and equitable to calculate her losses on the basis that she could and should have secured a Support Worker/ Healthcare Assistant role during this period, but not that she should have taken on another role as a nurse, whether in mental health or general nursing.

146. Neither party produced evidence of the different pay rates for different roles within the NHS. The tribunal takes judicial notice however of the NHS pay banding which is publicly available on the NHS own website. It provides the following information for Agenda for Change pay bands for 2020/2021 in place from 1 April 2020:

Band 2

< 2 years' experience £18,546

2+ years **£19,918**

Examples of roles at band 2 - domestic support worker, domestic team leader and healthcare assistant.

The above is based on a 37.5 full time role or £76.61 per day based on 7.5 hour day (**£10.21 per hour gross**).

147. Given the claimant's experience and qualifications, the tribunal consider it reasonable to use the upper Band 2 rate as a benchmark, pro rata'd to 15 hours per week.

15 hours x £10.21 per hour = **£153.22 gross**
£ 122. 58 net @20%

148. Had the claimant secured a Support Worker or Health Care Assistant role from the end of March 2020, the tribunal estimates (the parties did not provide any calculations) she would have earned, working 15 hours per week :

The weekly salary of £239.42 net (which is the estimated salary the claimant would have received from the respondent for working 15 hours per week) less £122.58 (the pay the claimant would have earned working 15 hours as A Support Worker or Health Care Assistant) = £ 116,84 net shortfall per week .

149. The tribunal then applies that figure for ongoing losses until the 5 July 2021 when the tribunal finds that the claimant chose to retire from nursing and made no other efforts to find better paid employment inside or outside of nursing;

(b) 27 March 2020 to 5 July 2021 : 15 months and 8 days/465 days x £116.84 net per week shortfall = 66.4 x £ 116.84 shortfall per week= £7,758.18 net.

Less than the income

150. The claimant did secure a role from 29 September 2020 and obtained some work in May 2021, and her losses his should be offset by these sums earned but only to the extent it exceeds the presumed role she would have had as a Support Worker/Health Care Assistant;

24 May/ July 2021 payments: The Wolds Care Home

151. This role was for 7.5 hours per week at **£16.50 per hours gross**. The hourly rate is **above** that of a Band 2 support worker which is **£10.21 per hour gross**. The claimant earned **£477 gross** (circa 29 hours work at £16.50 per hour) or estimated : **£381.60 net**

152. In the role of a support worker she would have earned 29 hours x £10.21 gross per hour which equates to an estimated **£236.87 net**.

153. The claimant during this period earned circa **£144.73** more than she would have earned as a support worker therefore the respondent must be given credit for this additional earnings from the losses estimated above.

Period from 29 September 2020 to 5 July 2021

154. The claimant obtained work as a PA from 29 September 2020 and was paid 7.5 rising to **10.5 hours per week** at the national minimum wage.

155. The work of a Support Worker is above that of a PA. A Support Worker is paid above the national minimum wage.

*(c) The figure for losses from 1 April 2020 to 5 July 2021 is therefore **£7,758.18 net** minus **£144.73 = £7,613.45 net***

*This sum must then be reduced by 50% to take into account the contributory loss = **£3,821.05***

Contributory fault

156. The sums above (a) (b) and (c) need to be reduced by 50% to reflect the amount for contributory fault.

Loss of statutory rights

157. Taking into account the claimant's long service, the tribunal consider it just and equitable to award a global sum for loss of protection from unfair dismissal and for loss of accrued statutory notice of £500. This sum is also subject to a reduction of 50% for contributory fault..

Grossing up

158. The respondent accepts that a sum equivalent to the notice period of 12 weeks will need to be paid gross, as this sum is likely to be subject to tax and NI even though it forms part of the compensatory payment.

159. The tribunal has apportioned an amount equivalent to the contractual notice period to be paid gross on the basis that HMRC are likely to find that this sum should be subject to tax and NI . The claimant may be entitled to recovery of tax paid if an emergency tax code is applied to this sum but this is a matter the claimant to address with HMRC. There is no further need to gross up the net sums.

160. In a claim for unfair dismissal, the tribunal cannot compensate for non-economic losses e.g. for hurt feelings.

161. In summary the award for compensatory loss is as follows;

(a) **£957.72 net**

(c) **£2,873.04 net**

(c) **£7,613.45**

Subtotal = **£11,444.21**

Less 50% = **£5,722.11**

Plus **£500 loss of statutory rights less 50% contributory fault.**

£ 5,972.11 net (after all sums subject to 50% contributory loss)

162. The equivalent of 12 weeks net pay which the claimant would but for the dismissal have received in notice pay (based on contractual 22.5 hours) is: £359.15 x 12 = **£4,309.80 net** which leave compensatory award of (£5,972.11 - £4,309.80 = **£1,662.31**

163. Grossing up the award for the sum of **£4,309.80** given the agreed likely tax treatment, this gives a gross sum of **£5,387. 25** using the marginal rate of 20%.

Stigma Damages

164. In terms of the newspaper article, it is this which the claimant alleges meant that she could not recover her nursing career, however, the article reports on the findings of the tribunal including that the dismissal was held to be unfair because of the way in which the appeal process was carried out. The report which uses extracts from the tribunal judgment, therefore reflects the tribunal findings which includes the conduct of the claimant. The report of the tribunal findings, does not amount to a breach of the employment contract by the respondent.

165. In any event, the tribunal find on the evidence that the claimant had prior to January 2022 decided not to return to nursing . She provided no evidence of attempts to find work after this date and more particularly no evidence of attempts to find work which was impeded by the reporting of the tribunal's findings.

Employment Judge R Broughton

8 May 2022

JUDGMENT SENT TO THE PARTIES ON

FOR THE TRIBUNAL OFFICE