



EMPLOYMENT TRIBUNALS

Claimant: Irene Maisie Dora Cleave

Respondent: Roy Hurst T/A the Old Thatch Inn

Heard at: Bristol (via VHS) **On:** 15th and 16th March 2022
The reconsideration has taken place without a hearing.

Before: Employment Judge Lang

Representation

Claimant: Mr H. Cross, solicitor

Respondent: Mr Hurst in person

RECONSIDERED JUDGMENT

1. The reconsidered Judgment of the tribunal is that the Claimant was unfairly constructively dismissed for which the respondent shall pay to the Claimant (subject to the Recoupment Regulations as detailed below), the total sum of **£6,364.70** which comprises of:
 - a. £972.10 as a basic award

- b. £4,728.18 compensatory award. That being calculated on the gross figures given the financial information indicated that the Claimant had not reached the income tax threshold and therefore this being considered to be her loss.
 - c. £364.42 ACAS uplift (calculated at 10%)
 - d. £300.00 loss of statutory rights.
2. The total sum and the sum for the compensatory award, have been increased following reconsideration of the Tribunal's own initiative in accordance with the written reasons set out below.
3. The Respondent was in breach of contract by dismissing the Claimant without notice, and failing to pay her wages for the period of 29th June 2020 to 10th September 2022.
4. The Respondent is ordered to pay the Claimant the total sum of **£9,072.93**, for the breach of contract claims. That is comprised of; £4,212.43 (gross pay for failure to pay her notice) and £4,860.50 (gross pay for, failure to pay the wages for the relevant period). The Claimant is responsible for discharging any tax liabilities on these sums given they are calculated on the gross basis.
5. The Respondent is ordered to pay the claimant the sum of **£2,139.54** which is the net sum owed to her pursuant to the Working Time Regulations 1998 for accrued but unpaid holiday pay.
6. The Claimant's application for costs of the postponed final hearing in October 2021 is refused.
7. The Court not having had time to consider the Claimant's application for costs of the proceedings, the Claimant shall apply to the Court office for an application if that is pursued.

Recoupment

8. The Recoupment Regulations 1996 apply to the above awards. The information required by Regulation 4 (see also the Annex to this Judgment) is as follows:

(a)	Monetary Award	£6,364.70
(b)	Prescribed Element	£4,728.18
(c)	Dates of the periods to which the Prescribed Element is attributable 10th November 2020 to 23 rd April 2021	
(d)	The amount by which the Monetary Award exceeds the Prescribed Element is	£1,636.52

Employment Judge David Lang

Date: 14 April 2022

Judgment sent to parties: 19 April 2022

FOR THE TRIBUNAL OFFICE

Reasons for Reconsideration

1. The tribunal wrote to the parties on 30th March 2022 indicating that I was minded to reconsider the original decision in respect of remedy pursuant to Rule 73 of the Employment (Constitution and Rules of Procedure) Regulations 2013. Within that correspondence the parties were to write to the Tribunal with any observations on the reconsideration including a reconsideration without a hearing by 8th April 2022. The Respondent has indicated he is content for the reconsideration to take place without a hearing. The Claimant has not responded, however earlier in correspondence sought written reasons for the original decision which will follow.

2. I have proceeded to reconsider the Judgment of my own initiative in accordance with Rule 73. I therefore have reconsidered the decision in respect of the Claimant's compensatory award of my own initiative in accordance with Rule 73 of the Employment (Constitution and Rules of Procedure) Regulations 2013. I have considered the overruling objective and the interests of justice. A decision which is wrong in law cannot be in the interests of justice. I have had regard to Rule 72 (2) and given the nature of the reconsideration I do not consider that it is in the interests of justice or for it to be proportionate for there to be a hearing, particularly in light of the Respondent's agreement to proceed without one.

Reconsideration

3. The tribunal at the remedies element of the hearing considered the compensatory loss suffered by the Claimant. The compensatory loss was awarded, in accordance with section 123 Employment Rights Act 1996. For the reasons given at that hearing, and which will follow in writing as requested. Having had regard to all the circumstances, and what was just and equitable I assessed the appropriate period of loss would be from 10th November 2020 until 23rd April 2021. That amounted to a total for the period of £7,533.78.
4. The Respondent contended, the Claimant accepted, and I found that sum should be reduced for the payments received for work undertaken by the Claimant in that period. Those sums totaled £2,805.59.
5. In addition, it was argued by the Respondent and accepted by the Claimant that credit should also be given for the sums received by the Claimant for universal credit payments those sums totaled £1,084.01 (which were paid in arrears for the relevant period). I accepted that argument. Deducting those two amounts gave a compensatory award for the period in the total sum of £3,644.18.
6. Following the oral decision given, I have identified that that approach does not comply with The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996, and therefore that approach is wrong in law.
7. In reconsidering my decision of the compensatory award I have done so on the following basis. I have previously found that the loss for the period of 10th November 2020 – 23rd April 2021 was the sum of £7,533.78 and retain that figure for the oral reasons given at the hearing.

8. For the reasons given at the hearing I have reduced that figure by the sum of £2,805.59 being the earnings of the Claimant during that period. I have not reduced the amount further by the £1,084.01 received by the Claimant in Universal Credit. That sum therefore makes the compensatory award for the constructive unfair dismissal £4,728.18. I have attached a recoupment notice to my Judgment.

9. So the parties are clear, and as outlined in the letter of the tribunal dated 30th March 2022, the Recoupment Regulations apply to the award for unfair dismissal. For the compensatory loss, that is the sum I assessed as the Claimant's loss of wages from the 10th November to 23rd April 2021, which amounts to £4,728.18. The Claimant has received Universal Credit in the sum of £1,084.01 and if she retains that sum she would be better off. However, the Government is likely to seek that that sum is returned through the Recoupment Regulations. As a result the Respondent must retain the sum which relates to the loss of wages, known as the Prescribed Element, until he receives a notice from the Department for Work and Pensions a Notice. The Notice will either require the Respondent to pay all, or part, of the Prescribed Element to the Department, or tell the Respondent that it does not require any payment. When the Respondent, receives the Notice, he must pay to the Department for Work and Pensions the sum specified in the Notice and the balance should be paid to the claimant. The remaining part of the award, that is the sum above the Prescribed Element, should be paid to the Claimant at this stage.

ANNEX TO THE JUDGMENT
(MONETARY AWARDS)

Recoupment of Jobseeker's Allowance, Income-related employment and support allowance or
Universal Credit

The following particulars are given pursuant to the Employment Protection (Recoupment of Jobseekers Allowance and Income Support) Regulations 1996, SI 1996 No 2349, Reg 4.

The Tribunal has awarded compensation to the claimant, but not all of it should be paid immediately. This is because the Secretary of State has the right to recover (recoup) any Jobseeker's Allowance and other specified allowances paid to the claimant after dismissal in respect of the compensatory award for unfair dismissal. This will be done by way of a Recoupment Notice, which will be sent to the respondent usually within 21 days after the Tribunal's judgment was sent to the parties.

The Tribunal's judgment states: (a) the total monetary award made to the claimant; (b) an amount called the prescribed element, if any; (c) the dates of the period to which the prescribed element is attributable; and (d) the amount, if any, by which the monetary award exceeds the prescribed element. Only the prescribed element is affected by the Recoupment Notice and that part of the Tribunal's award should not be paid until the Recoupment Notice has been received.

The difference between the monetary award and the prescribed element is payable by the respondent to the claimant immediately.

When the Secretary of State sends the Recoupment Notice, the respondent must pay the amount specified in the Recoupment Notice to the Secretary of State. This amount can never be more than the prescribed element of any monetary award. If the amount is less than the prescribed element, the respondent must pay the balance to the claimant. If the Secretary of State informs the respondent that it is not intended to issue a Recoupment Notice, the respondent must immediately pay the whole of the prescribed element to the claimant.

The claimant will receive a copy of the Recoupment Notice from the Secretary of State. If the claimant disputes the amount in the Recoupment Notice, the claimant must inform the Secretary of State in writing within 21 days. The Tribunal has no power to resolve such disputes, which must be resolved directly between the claimant and the Secretary of State.