



# EMPLOYMENT TRIBUNALS

**Heard:** By Video **On:** 9 May 2022

**Claimant:** Mrs Bridget Regnante

**Respondent:** Essex Cares Limited

**Before:** Employment Judge Fowell

Ms S Collins

Ms C Earwaker

**Representation:**

**Claimant** Mr Giuseppe Regnante (husband)

**Respondent** Mr I Wright instructed by S A Law LLP

## JUDGMENT ON REMEDY

1. The claimant is awarded compensation in the total sum of £15,760.32.
2. This sum comprises:
  - a. £10,260.32 for Unfair Dismissal (itself comprising a Basic Award of £3,005.55 and a Compensatory Award of £7,254.77); and
  - b. £5,500 for the detriments suffered on health and safety grounds contrary to section 44 Employment Rights Act 1996
3. No separate award is made for breach of contract.

## REASONS

### *Compensation for Unfair Dismissal*

1. At the previous hearing which concluded on 23 February 2022 we gave judgment

for the claimant on her complaints of unfair dismissal and detriments suffered on health and safety grounds contrary to section 44 Employment Rights Act 1996. This hearing was listed to deal with remedy. Following an initial Schedule of Loss from the claimant, the respondent has responded with a Counter Schedule of Loss and the claimant has responded with her further comments in red on that document. There is now relatively little difference between the parties over the relevant figures and we set out our conclusions on the various heads of claim raised in that document

2. The starting point is that we have to establish figures for gross pay and net pay. Taking into account that Mrs Regnante would have received a 3% pay rise shortly after her resignation, the parties have agreed that the figure for one week's gross pay is £400.74. That corresponds to a gross monthly salary of £1,736.54. The net figure has also been agreed, pre-pay rise, as £1,381.87 per month, and (for simplicity) adding 3% gives a monthly sum of £1,423.33, or £328.46 per week. On that basis the basic award is **£3,005.55**
3. Turning to the compensatory award, the first issue is the balance of pay due in May 2020. The employment ended on 26 May that year and we can only award compensation from the date of termination of the contract. There were three working days remaining that month, so the amount is 3/5 of the net weekly figure just given (£328.46), i.e. £197.08
4. There are then parties for loss of earnings to the end of September 2020 which are agreed in the sum of £5,653.48.
5. Mrs Regnante started a new job with the NHS on 1 October 2020. Although she is now better paid in this role, there was an initial shortfall, taking into account the 3% pay rise she would have received with the respondent. We agree with her calculations on that point. The difference is £91.79 gross per month. The claimant has calculated that that amounts to £65.19 per month which appears to be correct and on that basis we accept her figure of £517.46 for the cumulative losses until her earnings exceeded those in her previous employment. The difference of £91.45 continued until March 2021 then tapered off over the following three months.)
6. Applying those figures, the total compensatory award is **£6368.02**. That falls between the two figures on each side, which are not very far apart.
7. The loss of pension is agreed mathematically. The respondent has set out its calculations in the Counter Schedule of Loss and Mrs Regnante has commented in red on those figures. However, she has double counted the amounts. She is entitled to the contributions which the *employer* would have made to her pension fund, not her own contributions, which she has not had to make. So the total figure is half the sum claimed, i.e. **£536.75**.

8. There is also a claim for loss of her husband's income in helping her with the case. It is possible to make an award for preparation time, rather than legal costs, where a party is not represented, but such costs or preparation orders are made in very limited circumstances which do not arise here.
9. The claim for loss of grade/scale has been taken into account in the 3% pay rise, which is included in the above figures, so no separate award is made on that basis.
10. There was a claim for a bonus payment but that has already been paid and so there is nothing further is due under that heading either.
11. As far as any national insurance contributions go, these are potentially recoverable but Regulation 7(1) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983 states that where a person has received compensation or unfair dismissal they are not entitled to receive national insurance contributions for the same period.
12. The next heading for private health insurance. This is a cashback scheme provided as a benefit to employees who incur dental charges, prescription charges or similar. In order to award compensation we would have to be evidence that the claimant had, for example, made such an opticians visit. The only such evidence is for the cost of herbal remedies, which are specifically excluded by the plan and on that basis we make no award.
13. As to the loss of a valued job, we have to emphasise that only financial loss can be awarded for unfair dismissal. The same is true of the claim for loss of opportunity for promotion.
14. As to loss of statutory rights we have ordered £350, which corresponds to approximately one week's pay, which is the usual yardstick.

*Detriment*

15. Injury to feelings can be awarded for the detriment claim. The two detriments in question were that Mrs Regnante was pressured to change her answers on the questionnaire about working from home and was then presented with an ultimatum about either returning to work or being required to take three months leave without pay. That ultimatum is the main item under consideration here. We have to try to fix an award to compensate the claimant for being put in that position but not to compensate for the overall effect of the dismissal.
16. We have to isolate the period of a few days in which she was under pressure to make this difficult decision which is not easy to do. It was a very difficult position in which to be placed. Effectively she was being asked to choose between her husband's health and her job. For the reasons already given she did not have any

real hesitation about that, having warned the company that that would be the outcome, but that does not mean that it was a simple or pain-free decision. It would have given rise to real anxiety about her financial future, particularly during Covid and the difficult job market at that time.

17. We are satisfied that an award in the lower band is appropriate given that it was for a short period of time. The midpoint of the lower band was £4950 at the relevant time. We consider that it should be somewhat above the middle point and assess it as £5,500, doing our best to separate it from the actual dismissal and to reflect the real value of money, and what it might buy in terms of, say, a holiday, to redress the effects.
18. Aggravated damages are rarely awarded in Employment Tribunal cases and are an aspect of compensation. There is no particularly aggravating feature here. The respondent clearly did not want Mrs Regnante to resign but felt that she should have returned to work.
19. Exemplary damages are even more rare and have little or no application in the employment context. The Employment Appeal Tribunal in **MOD V Fletcher 2010 IRLR 25** stated that exemplary damages are reserved for the worst cases of oppressive use of power by public authorities, and we are not concerned with that sort of case here.
20. The last element is the claim for increased damages for breach of the ACAS Code of Practice. There was no disciplinary hearing here so the only consideration is whether there was a failure to follow the grievance procedure. The Employment Appeal Tribunal confirmed in **The Cadogan Hotel Partners Limited v Ozog UKEAT/0001/14/DM** that there needs to be a formal written grievance, which is not the case here.
21. The overall amounts awarded are therefore as follows:

Financial loss	£10,260.32
Non-financial loss	£5,500.00
<b>Total</b>	<b>£15,760.32</b>

Employment Judge Fowell

Date: 10 June 2022

Judgment & Reasons Sent to the Parties: 16 June 2022

FOR THE TRIBUNAL OFFICE