



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs B Krzysztoforska

v KGB Cleaning South West Limited

Heard at: Reading

On: 9 and 10 May 2022

Before: Employment Judge Milner-Moore

Members: Ms E Bristow
Ms B Osbourne

Appearances:

For the Claimant: Mr D Bain, Solicitor
For the Respondent: Ms C Summers, HR Officer
Interpreter: Ms M Tzulik

RESERVED REMEDY JUDGMENT

1. The claim of unfair dismissal having succeeded the claimant is awarded:
 - a. A basic award in the sum of £4,233.60
 - b. A compensatory award in the sum of £14,676.48
2. The claim of wrongful dismissal having succeeded the claimant is awarded the sum of £2,822.40.
3. The claim of holiday pay succeeds. The claimant is awarded the sum of £89.72.
4. The Employment Protection (Recoupment of Benefits) Regulations 1996 do not apply to the sums awarded.

RESERVED REASONS

The hearing

1. We heard evidence from the claimant in support of the losses claimed on her schedule of loss. The figures in the schedule were adjusted somewhat to reflect that the claimant had 10 years service (rather than the 12 initially claimed on the schedule).

Facts

2. The claimant's employment with the respondent began in November 2009.

She was 58 years of age and had 10 years continuous service when her employment with the respondent terminated on 4 August 2020. The claimant's weekly wages were £255.73 net and £282.24 gross. Her gross annual earnings from the respondent were £14,676.48.

3. The claimant claimed 10 weeks' compensation for wrongful dismissal, a basic award and a compensatory award covering the period to the date of the hearing and future loss of earnings for 26 weeks.
4. Before her dismissal the claimant had been working for a local school for about 12 hours a week and she has continued in that employment subsequently. Her earnings from that employment were not relevant to be applied to reduce her loss of earnings following her dismissal by the respondent because she had performed her work for the school during hours that she was not contracted to work for the respondent. The claimant sought to recover compensation for her loss of earnings to the date of the hearing and for the 26 week period after the hearing. The claimant's evidence, which the respondent did not seek to challenge, was that she had made efforts to find other cleaning work but that she had experienced difficulty finding anything. The claimant attributed this to the effects of the pandemic and to her age and inability to drive to access work. The claimant had done a small amount of work for Healthy Family Limited from which she had earned £1,288. The claimant has not claimed any benefits following her dismissal and so the Employment Protection (Recoupment of Benefits) Regulations 1996 will not apply to this award.

Law

5. Section 119 and 122 of the Employment Rights Act 1996, detail how the Basic Award is to be calculated:

s. 119. (1) Subject to the provisions of this section, sections 120 to 122 and section 126, the amount of the basic award shall be calculated by—

(a) determining the period, ending with the effective date of termination, during which the employee has been continuously employed,

(b) reckoning backwards from the end of that period the number of years of employment falling within that period, and

(c) allowing the appropriate amount for each of those years of employment.

(2) In subsection (1)(c) "the appropriate amount" means—

(a) one and a half weeks' pay for a year of employment in which the employee was not below the age of forty-one,

(b) one week's pay for a year of employment (not within paragraph

(a)) in which he was not below the age of twenty-two, and

(c) half a week's pay for a year of employment not within paragraph (a) or (b).

(3) Where twenty years of employment have been reckoned under subsection (1), no account shall be taken under that subsection of any year of employment earlier than those twenty years.

S. 122 Basic award: reductions.

(1) Where the tribunal finds that the complainant has unreasonably refused an offer by the employer which (if accepted) would have the effect of reinstating the complainant in his employment in all respects as if he had not been dismissed, the tribunal shall reduce or further reduce the amount of the basic award to such extent as it considers just and equitable having regard to that finding.

(2) Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly.

(3) Subsection (2) does not apply in a redundancy case unless the reason for selecting the employee for dismissal was one of those specified in section 100(1)(a) and (b), 101A(d), 102(1) or 103; and in such a case subsection (2) applies only to so much of the basic award as is payable because of section 120.

(3A) Where the complainant has been awarded any amount in respect of the dismissal under a designated dismissal procedures agreement, the tribunal shall reduce or further reduce the amount of the basic award to such extent as it considers just and equitable having regard to that award.]

(4) The amount of the basic award shall be reduced or further reduced by the amount of—

(a) any redundancy payment awarded by the tribunal under Part XI in respect of the same dismissal, or

(b) any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy (whether in pursuance of Part XI or otherwise).

(5) Where a dismissal is regarded as unfair by virtue of section 104F (blacklists), the amount of the basic award shall be reduced or further reduced by the amount of any basic award in respect of the same

dismissal under section 156 of the Trade Union and Labour Relations (Consolidation) Act 1992 (minimum basic award in case of dismissal on grounds related to trade union membership or activities).

6. Section 123 and 124 of the Employment Rights Act 1996, detail how the compensatory award is to be calculated.

S. 123 Compensatory award.

(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.

(2) The loss referred to in subsection (1) shall be taken to include—

(a) any expenses reasonably incurred by the complainant in consequence of the dismissal, and

(b) subject to subsection (3), loss of any benefit which he might reasonably be expected to have had but for the dismissal.

(3) The loss referred to in subsection (1) shall be taken to include in respect of any loss of—

(a) any entitlement or potential entitlement to a payment on account of dismissal by reason of redundancy (whether in pursuance of Part XI or otherwise), or

(b) any expectation of such a payment,

only the loss referable to the amount (if any) by which the amount of that payment would have exceeded the amount of a basic award (apart from any reduction under section 122) in respect of the same dismissal.

(4) In ascertaining the loss referred to in subsection (1) 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.

....

(6) Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.

S. 124 Limit of compensatory award etc.

(1) The amount of—

(a) any compensation awarded to a person under section 117(1) and (2),
or

(b) a compensatory award to a person calculated in accordance with
section 123,

shall not exceed the amount specified in subsection (1ZA)].

(1ZA) The amount specified in this subsection is the lower of—

(a) £93,878, and

(b) 52 multiplied by a week's pay of the person concerned.

Conclusions

Wrongful Dismissal

7. The claim of wrongful dismissal having succeeded the claimant was entitled to 10 weeks' notice of dismissal. We awarded the claimant damages for wrongful dismissal amounting to £2,822.40, in relation to the 10 week period between 5 August 2020 to 14 October 2020 at her gross weekly rate of pay of £282.24

Unfair Dismissal: Basic Award

8. We awarded the claimant a basic award in the sum of £4,233.60, applying the age multiplier of 1.5 x 10 years' service to £282.24 (the claimant's gross weekly wage)

Unfair Dismissal: Compensatory Award

9. We considered whether it would be appropriate to make any reduction to the sums awarded to the claimant for failure to mitigate her losses but noted that the burden was on the respondent to show that the claimant had failed to take reasonable steps to mitigate her losses and that the respondent had not discharged that burden. We did not therefore make any reduction for failure to mitigate.
10. We awarded the claimant a compensatory award in the sum of £14,676.48 calculated as follows:
- a. Loss of earnings between 15 October 2020 and 10 May 2022 (82 weeks x £255.70) = £20,967.40.
 - b. Future loss of earnings for a further 26 weeks (26 weeks x £255.70) = £6,648.20
 - c. Loss of statutory rights - £300.

Subtotal - £27,915.60

d. LESS the claimant's earnings from Healthy Family - £1,288.

Subtotal - £26,627.60

e. Application of the statutory cap in accordance with section 124 Employment Rights Act 1996 compensation capped at one year's gross earnings of £14,676.48

Total - £14,676.48

Holiday pay

11. The respondent accepted that the claimant had been under paid holiday pay in the amount of £89.72.

Employment Judge Milner-Moore

Date: 21 June 2022.....

Judgment sent to the parties on

19 July 2022

For the Tribunal office