# EMPLOYMENT TRIBUNALS

**Claimant:** **Ms A Atkinson**
**Respondent:** **Saxon Court Management Company Limited**

**Before:** **EMPLOYMENT JUDGE CORRIGAN**
**Sitting Alone**

**Representation**
Claimant: Mr D Barnett, Counsel
Respondent: Mr A Williams, Solicitor

**HEARING BY CVP** **On: 25 April 2022**
AT ASHFORD

## REASONS FOR REMEDY JUDGMENT

*Requested by the respondent on 6 May 2022*

1. Having found the claimant was constructively unfairly and wrongfully dismissed the matter was listed for remedy hearing.

2. The issues for me to determine were set out in the reasons for the liability judgment. There was also an issue about whether or not the claimant would have received incremental salary increases and whether or not new employment after her dismissal broke the chain of causation.

3. The issues were therefore:

   3.1 Was the claimant due to have an increase in salary, to £33,000 between 1 April 2019 and 31 March 2021, and £35,000 thereafter? Would there have been a further interim increase on 1 April 2020, before the salary rose to £35,000?

   3.2 Did the claimant's employment with Trinity Homecare from August 2019 break the chain of causation?

3.3 Is it likely that that if the claimant had not resigned, she would have been dismissed at some stage in any event?

3.4 Did the claimant contribute to the dismissal?

4. I heard evidence from the claimant on her own behalf and from Ms Dennis on behalf of the respondent. There was a bundle of documents prepared for the remedy hearing.

**Conclusions**

5. I accepted that the claimant's salary would have increased to £33,000 on 1 April 2019 and then to £35,000 from 1 April 2021 as set out on page 231. There was no evidence on which I could base a finding that it was more likely than not that the claimant would have had a further interim increase on 1 April 2020.

6. Having made that decision, the wrongful dismissal award was based on the agreed calculation giving £3,232.

7. Turning to the question of whether it was likely that the claimant would have been fairly dismissed at some stage in any event. Despite the implication at the last hearing that there would be significant evidence on this point, no evidence has been called to assist with the question of what would have happened in an investigation into the potential misconduct I found in the liability judgment. I have not heard from the potential disciplinary officer. Ms Dennis would not have dealt with any disciplinary hearing.

8. Most of the details in the suspension letter did not relate to the potential misconduct I found. The details in respect of the relevant potential misconduct in the suspension letter (p153 liability bundle) were very brief, namely that there had been a breach of trust and confidence and had not acted in the best interests of residents. There was no further detail in the letter of p245 (remedies bundle). There was therefore a lack of clarity whether or not this issue was continuing to be looked into by the respondent.

9. However, I found sufficient potential misconduct in my judgment that I do need to look at what might have been found in disciplinary proceedings if the Respondent had acted fairly. The conduct of the claimant that I found in the liability judgment is as follows.

10. I note that terminating the contract with RSL was permissible and proper action if the board wanted to and were not subjected to inappropriate pressure. RSL believes in self determination of residents.

11. I did find there was some evidence of potential pressure on the owners to leave RSL generated by the Claimant and the role she played in giving notice to RSL.

12. The evidence of the board members was equivocal. Despite their later statements suggesting they felt pressured, the majority of the Board of Directors were in agreement at least with the plan to terminate the arrangement with RSL and probably to instruct Mr Sharples' company as an alternative up to 20 January 2019.

13. I referred back to paragraph 33 of the liability judgment. The Deputy Chair had attended meetings with the Claimant and spoken against RSL at the RSL AGM and met the Head of Care, Quality and Compliance (paragraph 34). They were present at and signed the minutes from the meeting at which the decision was made on 15 January 2019 (hosted in the Deputy Chair's flat) and some spoke in favour at the meeting with owners on 21 January 2019. It is clear from the way the Claimant referred by first name to the union representative, Ms Wilshire and Mr Sharples when forwarding the draft notice letter that the Chair and the Deputy Chair were aware of their involvement and were in agreement with the proposal up to that date. The Claimant clearly wrote in terms that show she believed she was working with them on a common aim. She referred the notice letter to the board and as per paragraph 36 of the liability judgment was told it was a good letter. Three board members all signed the letter giving notice.

14. I have found that not everything the Claimant relayed to the Board of Directors was within her own knowledge or accurate (for example the call with Mr Chriscoli). The evidence does suggest she was personally very invested in obtaining the result of leaving RSL and moving the management agreement to Mr Sharples' new company. She became caught up in the politics.

15. There is evidence that at least two of the board began to have concerns, including that it was moving too fast to give only one month's notice, and that they did not agree to make the decision without consulting owners, which is why the short notice meeting was called on 21 January 2019. This is evidence that the board were able to think for themselves. At the short notice meeting on 21st January the claimant did make the statement about leaving RSL described as a diatribe by Mr Van Bergen. She promoted Mr Sharples' new business as an alternative and had not provided the owners with a choice of alternative managing agents. Members of the board also spoke in favour and all voted to leave RSL – as did the majority of owners.

16. The claimant then did intercept the letter from RSL to owners and sent out her own letter that was very critical of RSL, using terms such as "blackmail" and "threats". She did send the notice instructing them to do nothing until her return

from holiday (and the end of the notice period with RSL). It is clear from the face of the notice that that was done before any discussion with the Board.

17. When the Claimant was away some Board members, including in particular the Deputy Chair, then felt out of their depth to deal with the upset amongst owners that had been created and became very distressed by the situation, even unwell, in the case of the Deputy Chair.

18. There was evidence to justify the conclusion that the claimant had applied inappropriate pressure on the Board and residents, even if the Board had been working with her: in her response to RSL's letter to residents and in the inaccuracies she relayed to the Board, and the partisan approach to the meeting with owners.

19. The procedure followed with residents was handled badly, in the calling of the residents' meeting at short notice and in issuing the notice when the claimant was going on holiday and unavailable. The Board were aware of the steps followed. All of them were out of their depth (including the claimant). She was over invested/partisan and unprofessional in the way she spoke to and about RSL. She did not ensure she was objective and avoid influencing board members though she acknowledges that they can be suggestible.

20. I do not find the claimant's conduct to be intentional. She was naïve, caught up in the politics and unaware of the impact of her actions. It is difficult to assess how far the board were in agreement.

21. Based on all the above I cannot find it more likely than not that the claimant would have been dismissed for misconduct if the respondent were acting fairly. However, I also cannot find that she would not have been. I find there is sufficient evidence of the claimant being partisan and exercising misjudgement, for example in the language of her letter at paragraph 16 above, that she may have been.

22. I considered the chance of dismissal to be 30% from the end of the notice period.

23. Turning to whether or not the claimant contributed to the dismissal, this question relates to whether or not she contributed to the respondent's conduct that was a fundamental breach of the contract.

24. I looked at the conduct that I identified as the fundamental breach of contract. This included searching the claimant's locked room and changing the locks. I did consider the claimant's conduct contributed to this as the room was searched because of concerns raised by staff and the Deputy Chair which included

concerns about the claimant's role in respect of the termination of the management agreement with RSL.

25. The fundamental breach of contract also included the petition started by the Deputy Chair and her u-turn, with that of at least one other Board Member, to blaming the claimant for the termination of the RSL agreement. This was not unrelated to the claimant's conduct, but was unnecessary. I do not find she contributed to this.

26. The other part of the fundamental breach of contract was the addition of three other exaggerated and unsupported charges to the disciplinary. I do not find the claimant contributed to these.

27. I took into account the danger that a reduction for chance of dismissal any way and a reduction for contribution overlap meaning the claimant is penalised twice. Taking into account all of the above I considered a low reduction for contribution is appropriate. I decided the appropriate reduction was 20%.

28. The danger in respect of overlap does not apply to the basic award. There the question is whether any conduct by the claimant before the dismissal was such that it is just and equitable to reduce the award. Based on the behaviour of the claimant outlined above I considered it just and equitable to reduce the basic award by 40%.

29. Applying the above reductions to the agreed figures in the schedule of loss gave the figures in the judgment.

30. After I gave judgment in the above terms the respondent's representative rightly raised the fact, I had forgotten to consider issue number 2 above and I reconsidered my decision accordingly.

31. I considered the reasons why the claimant left Trinity Homecare. I accepted her reasons why that was not a suitable alternative employment. The travel and hours were excessive and meant she was missing out on time with family and weekends which was an unsustainable situation. I consider it was a reasonable attempt to mitigate her loss to give that role a try, but it did not turn out to be suitable. It was just and equitable to continue to compensate her after that reasonable attempt to mitigate her loss. Therefore the reconsideration did not alter my decision.

32. For the avoidance of doubt the claimant's figure for her bonuses was agreed.

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**Employment Judge Corrigan**
Ashford
26 July 2022