



# EMPLOYMENT TRIBUNALS

**Claimant**  
Ms I Korpysa

v

**Respondent**  
Impact Recruitment Services Ltd

**Heard at:** Watford (by CVP)

**On:** 22 August 2022

**Before:** Employment Judge Allott  
Ms A Carvell  
Ms S Williams

## **Appearances**

**For the Claimant:** In person (via an interpreter)

**For the Respondent:** Mr Alan Williams (solicitor)

## **JUDGMENT**

The Judgment of the Tribunal is that:

1. The respondent is ordered to pay the claimant the gross sum of £1,031.26 (subject to tax and National Insurance deductions) for wrongful dismissal/breach of contract.
2. The respondent is ordered to pay the claimant a basic award in the sum of £1,422.30
3. The respondent is ordered to pay the claimant a compensatory award in the gross sum of £7,435.13 (subject to tax and National Insurance deductions).

### Recoupment

4. The claimant has not been in receipt of any state benefits and consequently the recoupment provisions do not apply.

## **REASONS**

1. This hearing has been to determine remedy.

### Adjustments

2. The respondent accepts the claimant would not have been dismissed in any event and accordingly issues relating to "Polkey" do not arise.

3. The termination of the claimant's contract of employment took place against the background of the first two weeks of the lockdown due to Covid. We have taken account of the fact that there was very considerable confusion as to what was to happen at that time, in particular regarding the working of the furlough system. Clearly the respondent did fail to comply with the ACAS Code. Both parties were, to an extent, under a misapprehension. The claimant did not entirely understand her exact employment status and the respondent wrongly came to the conclusion that she had resigned. In the circumstances, we do not consider that the failure to comply with the ACAS Code was unreasonable and we also find that the claimant did not contribute to her dismissal. Accordingly, no adjustments are made for contribution and/or failure to comply with the ACAS Code.

The claimant's pre-dismissal earnings

4. Mr Hooper gave evidence which we accept as to the claimant's earnings in the 12 weeks prior to the week commencing 23 March 2020. The claimant worked a 40 hour week. For seven weeks she worked for £11.59 per hour and for five weeks for £12.22 per hour (the higher rate was due to working on a later shift). Hence her gross weekly earnings were between £463.60 and £488.80. With the agreement of the parties, we have taken £474.10 as her average gross earnings for the 12 weeks prior to 23 March 2020.

Breach of contract/notice pay claim

5. The claimant was entitled to three weeks' notice. We find that she was entitled to £474.10 per week. That gives a figure of £1,422.30. The claimant was paid £391.04. This figure appears to have been arrived at on the basis of 32 hours or four weeks at 8 hours per week. That appears to arise from an agreement with Howdens. In our judgment that is not the correct way to assess the notice pay. However, we have given credit for the amount paid.
6.  $£1,422.30 - £391.04 = £1,031.26$  gross. Accordingly, we award that amount. The three weeks' notice period would expire on 1 May 2020.

Basic award

7. The claimant was born on 29 June 1978 and accordingly was 41 in June 2019, the last of her three complete years of employment. As such the claimant was entitled to a multiplier of 3. At a rate of £474.10 per week that gives a basic award of £1,422.30.

(NOTE: The multiplier has been corrected to 3 from 3.5 as the claimant was not 41 for the whole of the final year.)

Compensatory award

8. We take as the starting point for the compensatory award 1 May 2020 which is when the notice pay would have expired. We find that the claimant would probably have been placed on furlough at 80% of her gross weekly wage of

£474.10. We find that the claimant would probably have returned from furlough to full time employment on 17 July 2020.

1 May 2020 – 17 July 2020 £474.10 at 80% = £379.28 x 11 = £4,172.08

9. On return to work on 17 July 2020 we find that the claimant would have worked through to 5 April 2021 having transferred to the Raunds site.

37 weeks x £474.10 = £17,541.70

10. Consequently, we find that the claimant would probably have received earnings of £21,713.78 to the 5 April 2021.

11. The claimant has produced documents which indicate that her gross earnings to 5 April 2021 were £15,705.45. We find that she has not failed to disclose any earnings and that represents her actual earnings.

12. Consequently, £21,713.78 - £15,705.45 = £6,008.33.

13. Documents produced by the claimant indicate that for the first 10 weeks of the financial year beginning 5 April 2021 the claimant was earning an average of £441 per week gross. That represents a shortfall of £33.10 per week.

14. We note that the claimant would probably have incurred greater travelling expenses to get to the Raunds location although we have no figure given to us. In our judgment the employment position steadily improved during the course of 2021 and it was not unreasonable to expect the claimant to have achieved comparable earnings six months after 5 April 2021. Consequently, we award a further six months' loss at £33.10 per week.

28 x £33.10 = £926.80

15. Accordingly, we award £6,935.13 gross for loss of earnings.

16. In addition, we award £500 for loss of statutory rights. The compensatory award therefore totals £7,435.13.

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Employment Judge Alliott

Date:20/9/2022

Sent to the parties on: 22 September 2022

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For the Tribunal Office