



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms Donna Patterson

**Respondent:** Wm Morrison Supermarkets Limited

**Heard at:** Leeds

**On:** 17, 18, 19, 20 and 21  
October 2022

**Before:** Employment Judge D N Jones  
Ms J Blesic  
Mr M Brewer

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Mr J Davies, Counsel

# JUDGMENT

1. The respondent unfavourably treated the claimant because she was exercising the right to maternity leave in the manner it consulted her about a restructure which affected her job.
2. The respondent subjected the claimant to a detriment of indirect sex discrimination after her maternity leave by applying a provision, criterion or practice in respect of the discharge of the duties in the post to which she was redeployed which placed, or would have placed, women at a particular disadvantage compared with men, placed the claimant at a particular disadvantage and was not justified.
3. The claimant was constructively dismissed and the dismissal was unfair.
4. The constructive dismissal was discriminatory having regard to the findings in respect of paragraphs 1 and 2 above, which contributed to the breach of the implied term of trust and confidence in respect of which the claimant resigned.
5. The respondent shall pay to the claimant compensation in respect of the unlawful discrimination of **£57,533.25**. The award is itemised below.
6. The respondent shall pay to the claimant compensation in respect of the unfair dismissal of **£2,909**, being a basic award of **£2,284** and a compensatory award of **£625**. The award is itemised below. The recoupment provisions do not apply.

7. The decision is unanimous.

## CALCULATION OF AWARDS

### Discrimination

1. Past loss of earnings and other remuneration <sup>1</sup>		
1.1 Notice period		
12 weeks x £1,222.16 gross		£ 14,666 gross
1.2 Further past losses to hearing		
18 weeks x £977.73 net		£ 17,600 net
2 Interest on past losses		
8% for 3.5 months on £ 32,266		£ 753
3 Future losses 9 weeks x £977.73 net		£ 8,800
4 Injury to feelings <sup>2</sup>		£10,000
5 Interest on injury to feelings		
8% for 2 years		£ 1,600
6 Additional tax following grossing up for tax on excess over £30,000 <sup>3</sup>		£ 738.25
7 Recouped maternity pay		£ 3,376
<b>Total compensation for discrimination including interest</b>		<b>£57,533.25</b>

### Unfair dismissal

Basic award		£ 2,284
Compensatory award		
– loss of statutory rights	£ 500	
– Tax due on loss of statutory rights and basic award	£125 <sup>4</sup>	
		£ 625
<b>Total compensation for unfair dismissal</b>		<b>£ 2,909</b>

**Total compensation for unfair dismissal and discrimination**     **£ 60,442.25**

<sup>1</sup> Weekly earnings calculated as net income of £37,999, car allowance of £4,680 net, pension £2,000, bonus £4,863.20 net, staff discount £1,000 and perks of £300, which amount to annual remuneration including benefits of £50,842.20. Divided by 52 gives a net remuneration of £977.73 and grossed up with a marginal rate of 20%, £1222.16.

<sup>2</sup> Apportioned 50% to pre-termination and 50 % post termination.

<sup>3</sup> Sums grossed up: Past losses excluding notice pay £17,600, interest on past losses £753, future losses £8,800 and half the sum for injury to feelings and interest £5,800, being a total of £32,953. The excess over the tax free termination payment being £2,953, grossed up for 20% tax = £3,691.25. The sum of £738 to be added for additional tax due.

<sup>4</sup> The basic award and loss of statutory rights would be liable to tax as the total sum for discrimination exceeds £30,000. The additional marginal rate of tax due on those sums has been added under section 123 of the Employment Rights Act 1996. Otherwise, the compensation received would vary in accordance with a claimant's incidence to tax and that would not be just and equitable.

Employment Judge D N Jones

Date: 24 October 2022