



EMPLOYMENT TRIBUNALS

Claimant: Mrs S Costello

Respondent: Natalie Farrar

Heard at: Manchester (by CVP)

On: 22 November 2022

Before: Employment Judge McDonald
(sitting alone)

REPRESENTATION:

Claimant: In person

Respondent: Mr R Farrar (Father)

REMEDY JUDGMENT ON UNFAIR DISMISSAL

The judgment of the Tribunal is that:

1. The respondent is ordered to pay the claimant by way of compensation for unfair dismissal:
 - (a) A basic award of £2,040.
 - (b) A compensatory award of £500.
2. The compensatory award and the basic award together amount to £2,540.
3. The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 do not apply to the unfair dismissal compensatory award.
4. For the avoidance of doubt, the sums award above are in addition to the sums awarded for the successful claims of wrongful dismissal (£1,416.10) and for unpaid holiday pay (£436.92) in my Judgment of 21 September 2022.

REASONS

1. These are my reasons on the remedy hearing in relation to the unfair dismissal claim brought by the claimant against the respondent. As I explain in my case management order of today's date, I refused an application by the respondent

to postpone this hearing. I gave oral reasons for my judgment and they were requested in writing so I provide them with the judgment.

2. By a Judgment under rule 21 of the Employment Tribunal Rules 2013 dated 21 September 2022 I found that the claimant's claim of unfair dismissal (relating to her dismissal on 26 April 2021) succeeded but that a remedy hearing was needed to decide the amount of compensation to be awarded. In that Judgment I also awarded amounts for the claimant's successful wrongful dismissal claim and for accrued but unpaid holiday pay. For the avoidance of doubt, the amounts I am awarding by way of compensation for unfair dismissal are in addition to those amounts.

3. Dealing briefly with the legal position, a successful unfair dismissal gives rise to a claim for two types of award. The first is a basic award which is calculated in accordance with a set formula. Section 122(2) of the Employment Rights Act 1996 provides that a basic award shall be reduced where the Tribunal thinks that it will be just and equitable to do so due to the claimant's conduct. The second kind of award is the compensatory award under section 123 of the Employment Rights Act 1996. Section 123(1) provides that 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 claimant in consequence of the dismissal insofar as that loss is attributable to action taken by the employer.

4. There is provision for that award to be reduced for contributory conduct by the claimant. In addition, the case of **Polkey** provides that compensation should be reduced to reflect the chance that the claimant would have been fairly dismissed in any event.

5. In this particular case the award of notice pay already made means that the relevant period I am considering for the compensatory award is from the end of that notice period i.e. from the middle to end of June 2021 onwards. The claimant has already been compensated up to that point by the wrongful dismissal award.

6. As I have explained in the Case Management Order of today's date, I allowed Mr Farrar to take part in these proceedings to a limited extent given that the response had been rejected. He gave brief sworn evidence. He told me that the respondent, his daughter Natalie, has been in a Care Home from February 2022, which means that the need for domiciliary care from that point ended. He also said that his daughter had been very distressed by the incident which led to the dismissal.

7. I then heard sworn evidence from the claimant. She told me about the impact of the dismissal on her. In terms of her financial position, she confirmed that she had found other work to make up some of the losses she suffered through losing the job caring for the respondent. I find that the difference between the hours she was working for that job (on average 17 hours at £10 per week) and the job that she found to replace it (12 hours at £10 hours per week) was £50 per week gross. The claimant told me that she had not been in touch with or had any contact with the respondent after her dismissal. However, she confirmed that she had been told by a social worker that respondent no longer wanted to be in contact with her or for her to provide her with care. An email in the file confirms that that was the position as at June 2021.

8. In deciding what compensation it is just and equitable to award, I have to decide what would have happened had there been no unfair dismissal. Based on

what the claimant told me I find that the relationship with the respondent had according to the respondent's social worker broken down in the wake of the incident leading to the claimant's dismissal. Given the evidence about what the social worker told the claimant, I find that the employment would have ended at the latest by the end of the notice period in any event because the respondent, Natalie, no longer wanted the claimant to provide her with care. That does not make the dismissal fair. However, it does have an impact on the compensatory award. I find that the claimant's employment would have come to an end in any event because the relationship between her and the respondent had broken down. Given the personal nature of the employment the claimant's employment would not have continued once that relationship had broken down. She could have been fairly dismissed with notice for some other substantial reason. Consequently, I do not award any compensatory award for loss of earnings because I find that the claimant's job would have come to an end by the end of the notice period in any event. She has already been compensated for the notice period by the wrongful dismissal award in my previous judgment.

9. However, I do recognise that by being unfairly dismissed from a job which she had held for eight years the claimant lost her statutory rights which she had accrued. For example, she had lost the right to claim unfair dismissal which is only accrued after two years of employment. The Tribunal makes, as standard practice, an award of compensation for loss of those statutory rights. I have decided the appropriate amount to award is £500 for that compensation for loss of statutory rights.

10. Turning to the basic award, the calculation of this is based on the following elements. Mrs Costello's gross pay was £170 per week. She had worked for the respondent, Natalie, for eight full years. During that time the claimant was 41 years of age or older, which means that we multiple the figure by 1.5. That gives a basic award of £2,040. I find that there is no evidence on which I can justify a reduction in that basic award, and I therefore make an award in that amount.

11. For the avoidance of doubt, if I am wrong about the claimant being fairly dismissed because the relationship with Natalie had broken down, I would have found that her employment would have ended in any event in February 2022 when the respondent moved into a Care Home. If the employment had carried on until then, then the financial loss would have been the net equivalent of £1,800 gross (based on 36 weeks' losses of £50 per week).

12. In summary, the total amount I am awarding is £2,540 which is £2,040 for the basic award and a compensatory award of £500 as compensation for loss of statutory rights.

13. The claimant confirmed that she has not been in receipt of any State Benefits and so the recoupment provisions do not apply.

Employment Judge McDonald

Date: 22 November 2022

JUDGMENT AND REASONS SENT TO THE PARTIES ON

25 November 2022

FOR THE TRIBUNAL OFFICE

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NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990 ARTICLE 12

Case number: **2409159/2021**

Name of case: **Mrs S Costello** v **Natalie Farrar**

Interest is payable when an Employment Tribunal makes an award or determination requiring one party to proceedings to pay a sum of money to another party, apart from sums representing costs or expenses.

No interest is payable if the sum is paid in full within 14 days after the date the Tribunal sent the written record of the decision to the parties. The date the Tribunal sent the written record of the decision to the parties is called **the relevant decision day**.

Interest starts to accrue from the day immediately after the relevant decision day. That is called **the calculation day**.

The rate of interest payable is the rate specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as **the stipulated rate of interest**.

The Secretary of the Tribunal is required to give you notice of **the relevant decision day**, **the calculation day**, and **the stipulated rate of interest** in your case. They are as follows:

the relevant decision day in this case is: 25 November 2022

the calculation day in this case is: 26 November 2022

the stipulated rate of interest is: **8% per annum**.

For the Employment Tribunal Office