



EMPLOYMENT TRIBUNALS

Claimant: Ms L Andrews

Respondent: Hafod Care Organisation Limited

Heard at: By CVP **On:** 12 January 2022

Before: Employment Judge Hindmarch

Representation

Claimant: Mr Keith - Counsel

Respondent: Mr Bidnell-Edwards - Counsel

JUDGMENT

The Claimant is awarded a basic award of £4,671.66 and a compensatory award of £8,906.90, making a total award of £13,578.56 which includes an uplift under s38 Employment Act 2002.

REASONS

1. These written reasons are supplied in response to a request made by the Claimant's representatives by email to the Tribunal.
2. This remedy hearing by CVP came before me on 12 January 2022. The Claimant was represented by Counsel, Mr Keith, who had represented her in the substantive hearings in April and September 2021. The Respondent was represented by Mr Bidnell-Edwards of Counsel.
3. At the outset I confirmed I had read my Judgment and written reasons given after the September hearing. I had a small remedy bundle from the Claimant's solicitors, and I had the substantive hearing bundle and the Respondent's witness statements from the earlier hearing but not the Claimant's witness statement. Mr Keith confirmed that statement dealt with remedy towards the end and he emailed a copy to me and Mr Bidnell-Edwards.

4. In my liability Judgment at paragraph 4 I had recorded that the Respondent had raised issues of Polkey and contributory fault in the ET3 which may fall to be considered and had not yet done so.
5. Mr Bidnell-Edwards indicated he would not be arguing for a Polkey deduction but would wish to address me on deductions under s123 and 122 Employment Rights Act 1996.
6. Mrs Andrews gave evidence as to remedy. In short Mr Bidnell-Edwards asked her about what he termed “her evasive position” when first asked questions by the Respondent during its investigation and about whether she agreed as the person at the Respondent with an HR role she should have issued her own written particulars of employment. He also asked her about her attempts to mitigate her loss.
7. I heard submissions from both Mr Keith and Mr Bidnell-Edwards before deliberating. Mr Bidnell-Edwards confirmed he took no issue with the Claimant’s calculations as to her net and gross weekly wage or her basic award.

THE LAW AND CONCLUSIONS

8. S119 Employment Rights Act deals with the formula for calculating the basic award. S122 provides for reductions in the basic award and provides that a Tribunal may reduce the basic award “where the tribunal considers that any conduct of the complainant before the dismissal 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...that amount accordingly”.
9. S123 deals with the compensatory award providing the amount of this award should “be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequences of the dismissal in so far as that loss is attributable to action taken by the employer”. S123 references the duty to mitigate and subsection (6) provides that the tribunal may reduce the award by a just and equitable amount “where the tribunal finds that the dismissal was to some extent caused or contributed to by any action of the complainant”.
10. S38 Employment Act 2002 permit the tribunal to make an award of 2 or 4 weeks pay where the employer had failed to issue the employee with a written statement of particulars of employment.
11. Dealing with the Respondent’s challenges to the losses in order – firstly the question of any deduction for the Claimant’s failure to answer questions (during the Respondent’s internal investigation into her conduct). I have revisited the timeline. The Claimant was the person at the Respondent who usually gave references and did so at the rate of

about a week. The reference for CM was given on -19 February 2018. On 1 October 2019, the day after her mother died, the Claimant was suspended for "giving a fraudulent reference" but was not told which one.

12. She was then invited to an investigation meeting on 14 October 2019 and again was not told in the invitation letter whose reference was of concern. This was at a time when she was no doubt still in mourning.
13. On 14 October 2019 she was, for the first time in the process, asked if she had given a reference for CM. It is suggested she was evasive. I find she was not. The Respondent did not show her the reference and I accept, given the volume of references the Claimant completed and the fact she had given the CM reference nearly 20 months earlier, that she would struggle to recall specifically.
14. I therefore do not accept she contributed to her dismissal and do not make any reduction here.
15. Turning to the argument about failure to mitigate. The Claimant worked for the Respondent for 14 years in a general business administration role with some HR functions. After her dismissal, she began looking for similar roles. This was against a background of being unfairly dismissed for gross misconduct and having no reference. By May 2020, having failed to secure an administration role, she took a role which she did not want to do but felt obliged to do and thereby mitigated her losses such that there is no claim for continuing loss beyond this date.
16. She obtained this new role in the first lockdown and is still in that role.
17. The Respondent asks me to find she should have found that role within a month from dismissal. I do not agree. I think given her background in business administration, the Claimant was entitled to initially seek similar roles. She is to be commended for lowering her expectations and taking nightshift work, which does not use her usual skillset, when she was unable to find anything suitable for her. (Whilst the Claimant remains on a temporary contract I am pleased to note she had been retained for 20 months.)
18. I do agree with the Respondent that £500 is high for loss of statutory rights and I award £350.
19. Turning to the issue of an award for failure to provide written particulars of employment. It is clear from my liability judgment that the Claimant was not issued with these. The respondent says she should, as part of her HR role, have been responsible for providing this and in evidence the Claimant accepts she issued particulars to colleagues.
20. I am minded to make an award here of two weeks pay. The Claimant in her HR role had access to the documents held by the Respondent and

could have prepared her own particulars and perhaps given them to management to approve. I therefore find two weeks is appropriate.

21. The basic award based on the Claimant's age, length of service and pay is therefore £4,671.66. The compensatory award reflecting loss of earnings until the new role was secured and including the sum of £350 for loss of statutory rights and £667.38 for the failure to issue a written statement of particulars is, in total, £13,578.58.

Employment Judge **Hindmarch**
8 March 2022