



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Miss K Reid

v

Ransomes Jacobsen Limited

Heard at: Cambridge (by CVP)

On: 6 and 7 June 2022

Before: Employment Judge Tynan

Appearances

For the Claimants: Mr D Frame, Solicitor

For the Respondent: Mr G Baker, Counsel

REMEDY JUDGMENT

The Tribunal makes a compensatory award to the Claimant of **£3,354.55** in respect of her unfair dismissal.

REASONS

1. At the conclusion of a two day Hearing on 7 June 2022, I gave Judgment (the "Liability Judgment") upholding the Claimant's complaint that she had been unfairly dismissed. I further determined that, had the Claimant not been unfairly dismissed, there was a 25% chance that she would have been retained in the role of Credit Manager with the Respondent on a full-time basis with commensurate employment.
2. Immediately following the Liability Judgment, the Claimant gave further evidence and was cross-examined as to remedy. The parties' representatives have made written submissions on remedy, including supplemental submissions after it was conveyed to the parties that I considered it to be just and equitable to assess the Claimant's losses over a period of two years, namely from 8 August 2020 to 7 August 2022 (subject, if appropriate, to application of the statutory cap in s.124 of the Employment Rights Act 1996 ("ERA")).

3. The parties are agreed that, by virtue of the application of s.122(4) of ERA, the amount of the basic award for unfair dismissal is reduced to nil to reflect that the Claimant received a redundancy payment from the Respondent (the Tribunal having been satisfied that her dismissal was by reason of redundancy).
4. The correct order in which I am required to consider any issues regarding the amount of the compensatory award is to first determine the amount of the Claimant's losses and any compensation for loss of statutory rights, before going on to determine whether the Claimant failed to mitigate her losses, and only then to consider, in order, any just and equitable reduction pursuant to s.123(1) ERA, any reduction for contributory fault, and any increase or reduction to reflect breach of any applicable ACAS Code, deductions for any excess of the redundancy payment and lastly, application of the statutory cap (see Digital Equipment Co Limited v Clements 2 [1997] ICR237. I agree with Mr Frame that the Respondent has dealt with matters in the wrong order in so far as it has deducted a payment to the Claimant in lieu of notice as the final adjustment in its calculations. The payment in lieu of notice falls to be considered as part of the first stage, namely when calculating the Claimant's losses.

The Claimant's Losses

Loss of Income

5. The Claimant's losses from 8 August 2020 are to be calculated on the basis of her full-time equivalent salary, namely £38,140.55 (gross). I accept the Respondent's calculation that this equates to approximately £2,464.78 net (or £113.76 per day on the basis of a five day working week). The Claimant was paid £3,521.92 gross in lieu of notice. The amount reflects that she was working on a part-time basis when she was made redundant. I accept the Respondent's estimate that the net amount of the payment in lieu of notice was £2,729.49. No alternative figures have been put forward by the Claimant.
6. In the period covered by the payment in lieu of notice, 8 August 2020 to 7 October 2020, but for her dismissal the Claimant would have been paid £4,929.56 net (2 x £2,464.78). As noted already, she received £2,729.49 net from the Respondent. She secured employment with Care UK on 9 September 2020. The available payslips evidence that her monthly net pay with Care UK was £1,682.21 (which equates to £77.64 per day on the basis of a five day working week). There were 21 working days in the period 9 September 2020 to 7 October 2020, meaning that the Claimant earned £1,630.44 in the period covered by the payment in lieu of notice (£77.64 x 21 working days). Her loss of income to 7 October 2020 is therefore £569.63 (£4,929.56 - £2,729.49 - £1,630.44).
7. As regards the period 8 October 2020 to 22 September 2021 (when the Claimant left Care UK), the Claimant's loss of income extends over 249

working days. I calculate her daily loss of income during that period to be £36.12 (£113.76 - £77.64). That translates to a total loss of income of £8,993.88 (£36.12 x 249 working days).

8. As regards the period 23 September 2021 to 3 October 2021, the Claimant had no income. Her loss of income extended over a period of 7 working days and equates therefore to £796.32 (£113.76 x 7 working days). I return below to the question of whether she failed to mitigate her losses in that period.
9. As regards the period 4 October 2021 to 7 August 2022, this amounts to 220 working days. Her loss of income during this period was lower than when she was employed by Care UK as she secured a higher salary on joining Flakt Woods. In his supplemental submissions Mr Frame has proposed a figure of £4,256 for loss of income in the 12 month period 8 August 2021 to 7 August 2021, but he has not explained how he has arrived at that figure or provided any further information as to the Claimant's gross and net earnings at Flakt Woods. In the absence of such information, I have accepted the Respondent's estimate that the Claimant's net monthly salary at Flakt Woods is £2,175.33. That equates to £100.40 net per day (on the basis of a five day working week). I therefore calculate the Claimant's net daily loss of income after she joined Flakt Woods to be £13.36 (£113.76 - £100.40). That translates to a total loss of income of £2,939.20 net over 220 working days.

Loss of Employer Pension Contributions

10. The Claimant claims £5,692 for loss of pension (£56.92 per week), but has provided no further information to the Tribunal as to how this amount has been arrived at. The available payslips for Care UK evidence a monthly employer pension contribution of £126.74, or 6% of gross salary. The available payslips for Flakt Woods evidence a monthly employer pension contribution of £89.20, or 3.35% of gross salary, on a salary sacrifice basis. That equates to £4.11 per day. There are no payslips in the Hearing Bundle that enable me to identify the amount or level of the Respondent's employer pension contribution. The contract issued to the Claimant in 2014 refers to a 1% employer pension contribution. However, since 6 April 2019, the minimum employer contribution required under pension auto enrolment is 3%. On a salary of £38,140.55 (gross) that equates to a monthly employer contribution of £95.35 (or £4.40 per day) which is less than the amount of the monthly employer pension contribution paid by Care UK. Doing the best I can on the limited information available to me, I conclude that the Claimant suffered no loss of employer pension contributions during the entire period that she was employed by Care UK. I consider that her loss of employer pension contributions are limited to the periods 8 August 2020 to 8 September 2020 and 23 September 2021 to 7 August 2022. The loss of employer pension contributions during the former period extends to 22 working days and amounts therefore to £96.80 (£4.40 x 22 working days). The loss in the seven working day period 23 September 2021 to 3 October 2021 is

£30.80 (£4.40 x 7 working days). The Claimant's loss of employer pension contribution at Flakt Woods amounts to £0.29 per day (£4.40 - £4.11), or £63.80 over 220 working days.

Loss of Statutory Employment Rights

11. The parties are agreed that the Claimant should be awarded £500 for loss of her statutory employment rights.

Mitigation of Losses

12. The Claimant's evidence at Tribunal was that she took time to herself after she left Care UK and before she commenced her new employment with Flakt Woods. Whilst that is understandable and not uncommon, it was her choice in the matter, it does not flow from her unfair dismissal. In my judgement, her losses from 23 September 2021 to 4 October 2021 are to be assessed on the basis that she could, and ought reasonably to, have started work earlier with Flakt Woods on 23 September 2021. Accordingly, her losses over that period are to be reduced to reflect her failure to mitigate her losses. The loss of income and employer pension contributions for that short period therefore reduce to £252.84 (£36.12 x 7 working days) and £2.03 (£0.29 x 7 working days) respectively.

Total Losses

13. In summary therefore, the Claimant's losses for the period 8 August 2020 to 7 August 2022, reduced to reflect her failure to mitigate her losses are, as follows:
 - (a) Loss of income £12,755.55 (£569.63 + £8,993.88 + £252.84 + £2,939.20)
 - (b) Loss of employer pension contributions £162.63 (£96.80 + £2.03 + £63.80)
 - (c) Loss of statutory employment rights £500

Her total losses for the period 8 August 2020 to 7 August 2022 are therefore £13,418.18.

Section 123(1) of the Employment Rights Act 1996 – Just and Equitable Reduction of the Compensatory Award

14. The amount of £13,418.18 is to be reduced by 75% in accordance with the Liability Judgment, namely to £3,354.55.

Contributory fault, ACAS Uplift and Application of the Statutory Cap

15. These are not relevant considerations. It is not suggested, nor do I consider, that there was any contributory conduct and the ACAS Code does not apply in cases of redundancy. Given the amount in paragraph 14 above, the statutory cap is not engaged under s.124 of ERA.

16. In conclusion therefore, I shall award the Claimant the sum of £3,354.55 by way of a compensatory award for unfair dismissal.

Employment Judge Tynan

Date: 30 November 2022

Judgment sent to the parties on

2 December 2022

For the Tribunal office