



EMPLOYMENT TRIBUNALS

Claimant: Ashling Reid
Respondent: Independent Catering Management Ltd
Heard at: London South Employment Tribunal
On: 23 November 2022
Before: Employment Judge Apted

Representation

Claimant: Miss Knight
Respondent: Mr Kohanzad

JUDGMENT having been sent to the parties on 08 December 2022 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction:

1. This claim was listed for a final hearing on the 23 November 2022 in relation to claims for constructive unfair dismissal and breach of contract. The tribunal had set aside 3 days.
2. On the 21 November 2022, the Respondent wrote to the Tribunal and Claimant accepting liability in respect of those claims.
3. I therefore found that the Claimant's claims for constructive unfair dismissal and breach of contract were well founded and were allowed. I issued Judgment accordingly.
4. The Claimant nevertheless wanted to present all of the evidence of her claim and proceed with a hearing in relation to liability. I refused to allow her to do so because the Respondent accepted liability. In other words, as I said to Miss Knight, the Claimant won her claim.
5. I also have to apply the Employment Tribunal Rules and in particular the overriding objective. I have to have regard to the interests of justice. I have to have regard to proportionality and to save expense. In my judgment it

was disproportionate to continue with a final hearing in relation to liability, when liability is accepted and to have done so, would have been an inappropriate use of Tribunal resources.

Remedy:

Basic Award:

6. The parties agree that the Claimant should be awarded the sum of £600 as a basic award. I so find and award this sum.

Compensatory award:

7. Section 123 of the Employment Rights Act 1996 provides that 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 complainant in consequence of the dismissal insofar as that loss is attributable to action taken by the employer”.

8. Compensation for unfair dismissal should be awarded to ‘compensate and compensate fully, but not to award a bonus’ according to Sir John Donaldson in **Norton Tool Co Ltd v Tewson** [1973] All ER 183. The object of the compensatory award is to compensate the employee for their financial losses as if they had not been unfairly dismissed - it is not designed to punish the employer for their wrongdoing.
9. The employer’s liability will normally cease before the date of the remedies hearing if the employee has (or ought to have) got a new permanent job paying at least as much as the old job as there will no longer be a loss arising from the dismissal.
10. In this case, in my judgment, the Respondent’s liability ceases on 13 January 2020, when it is agreed that the Claimant obtained new employment at a higher salary.
11. The Claimant is therefore entitled to a day’s loss of salary between the effective date of determination and the start of her new employment on the 13 January 2020. This is the agreed sum of £49.50.
12. The Claimant is not entitled to the loss of a week’s notice pay applying the principles set down by the Court of Appeal in **Stuart Peters Ltd v Bell 2009** EWCA Civ 939. The principle established in **Norton Tool Co Ltd v Tewson** 1973 1 WLR 45 namely that if an employee was dismissed without notice and without pay in lieu, he would be entitled to compensation equal to his net pay for the notice period without deduction for earnings that he had received from alternative employment, did not apply to cases of constructive dismissal.

13. The Claimant is entitled to loss of statutory rights. This can be between £250 - £500. The Claimant claims for £500 and the Respondent submitted this should be £300. In my judgment, the just and equitable figure is £400.
14. The Claimant accepts that she is not entitled to sums for withholding lunch breaks or the Christmas 2019 bonus.
15. The Claimant is entitled to damages for the failure by the Respondent to pay pension contributions between October 2018 and January 2019. This is the basis of the claim for breach of contract.
16. The pension provider has provided a figure of £117.04 which represents unpaid pension contributions between December 2016 and January 2020. This period of time is obviously greater than the period of time for which the breach of contract claim has been brought. The Respondent has already paid this figure to the Claimant. The Claimant would be entitled to a sum of money to represent the growth of her pension. However, as I have said, the figure of £117.04 is greater than the amount of money that the Claimant would have been entitled to under the breach of contract claim. It is therefore just and equitable in my judgment to award a figure of £0 as the Claimant has already had this larger figure paid to her.
17. The Claimant is entitled to expenses incurred in looking for a new job of £10.
18. The Claimant is not entitled to the loss of housing benefit or council tax benefit and she is not entitled to the loss of lunch provision or loans from her family as liability ends in my judgment on the 13 January 2020 and these losses do not represent losses arising from the dismissal.
19. I make a similar finding in respect of childcare expenses. As a result of her new employment, the Claimant earns approximately £3700 more per annum. Liability ends on the 13 January 2020 and the Claimant is therefore not entitled to this figure.
20. That provides a total compensatory award of £459.50.
21. I then have to consider whether there has been a breach of the ACAS code. A number of accusations of breach of the code were alleged. The Respondent accepts a partial and limited breach, amounting to a failure that the Respondent did not hold a meeting and as a consequence she was not accompanied because a meeting did not take place.
22. The decision to award any uplift is a matter of my discretion. The maximum uplift is 25%. Given that the Respondent accepts partially breach the Code, I have decided in my discretion to uplift the compensatory award by 10%. That provides a figure of £45.95.
23. That therefore provides a total compensatory award of £505.45.

24. The total amount of compensation awarded to the Claimant for unfair constructive dismissal and breach of contract is £1105.45 comprising a £600 basic award and a compensatory award of £505.45.

25. I turn then to the application for a Preparation Time Order.

26. Such an application is permissible under Rule 76 Employment Tribunal Rules. The rule that Miss Knight cited and upon which she made the application was Rule 76(1)(a), which reads as follows:

“Rule 76.(1) A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that—

(a) a party (or that party’s representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; or...”

27. Under rule 77:

“A party may apply for a costs order or a preparation time order at any stage up to 28 days after the date on which the judgment finally determining the proceedings in respect of that party was sent to the parties. No such order may be made unless the paying party has had a reasonable opportunity to make representations (in writing or at a hearing, as the Tribunal may order) in response to the application.”

28. The decision whether or not to make an order is a matter for my discretion. I have to decide firstly, whether in this case, the Respondents have acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted.

29. I have listened with care to the criticisms of the Respondent that Miss Knight has made. Various accusations have been made about their conduct. I have been mindful of the fact that I have not heard any evidence and that those people who have been accused of behaving in a certain way have not had an opportunity to defend themselves.

30. The Respondent denies behaving in the way alleged. The Respondents are entitled to defend a claim. The Respondents are entitled to reserve their position as to costs.

31. In this claim, a day or so before the final hearing, the Respondent accepted liability and attempted to resolve remedy. Unfortunately, that was not possible.

32. Having heard what I have, I am unable to conclude that the way in which the Respondent has behaved meets the high threshold of vexatious, abusive, disruptive or otherwise unreasonable behaviour.

33. I appreciate the huge amount of obvious work that the Claimant and Miss Knight have put into this claim and I am very grateful to Miss Knight for her assistance today. However, that does not mean that I should find that the Respondents have behaved vexatiously, abusively, disruptively or unreasonably. Even if I did so find, then I always retain a discretion whether to award a Preparation Time Order or not. Even if I found that the Respondent had behaved vexatiously, abusively, disruptively or unreasonably, it does not follow that a Preparation Time Order would be made.

34. The application for a Preparation Time Order was therefore refused.

Employment Judge Apted
Date: 13 December 2022

Sent to the parties on
Date: 19 December 2022