



EMPLOYMENT TRIBUNALS

Claimant: Mrs J Smith
Respondent: Carisway Facilities Support Limited
Heard at: Reading **On: 28 October 2022**
Before: Employment Judge Gumbiti-Zimuto

Appearances

For the Claimant: In person
For the Respondent: Mr Buckle, counsel for respondent

JUDGMENT ON REMEDY

The respondent is ordered to pay to the claimant the sum of £11,438.50 in compensation for unfair dismissal.

REASONS

1. Following the final hearing on liability in this case I invited the parties to make any further submissions on remedy and permitted the parties to adduce further evidence.
2. The claimant provided a letter from her GP dated 1 September 2022. The letter states that the claimant is unable to return to work for at least 12 months. The claimant has also provided a schedule of loss. The claimant in her schedule of loss claims a basic award calculated on the basis of 4 years employment. This is incorrect and should be based on only 3 years employment. The claimant's employment commenced on the 7 May 2017 and ended on the 24 April 2021. The claimant has three completed years of employment. The claimant's gross weekly pay was £243 per week. The claimant has throughout her employment with the respondent been over the age of 41 years old. The claimant's basic award is therefore £1093.50.
3. The respondent accepts that the claimant is entitled to a basic award in the sum of £1093.50.
4. As to compensatory award the claimant seeks £43,835 in respect of past losses. This figure is arrived at by calculating 166 weeks at £243 per week plus 20 days a year for overtime holiday cover for afternoon receptionist.

The claimant has not been able to work since 10 June 2019 and her entitlement to statutory sick pay ended on 31 December 2019.

5. The claimant seeks £25,636 in respect of future losses on the basis that she does not "*envisage being able to work over the next years if ever*".
6. The claimant says that she seeks an increase in the compensatory award by 25% on the grounds that the respondent ignored her grievance. The claimant resigned her employment after waiting many months for the respondent to resolve her grievance, by the time the respondent offered a practical way to consider her grievance she resigned. Shortly before her resignation, and very belatedly, the respondent had offered an impractical way to deal with her grievance: impractical because of the restrictions on the claimant's union representative and the claimant's reasonable unwillingness to return to the place of her bullying and harassment. In the circumstances I am satisfied that it is just and equitable to make any increase in the compensatory award of 25% because up until the claimant resigned the respondent had failed to deal with the grievance which caused the claimant's resignation.
7. The claimant has also included a claim for injury to feelings however she does not continue her claim in respect of any matter for which an award of injury to feelings may be made.
8. The respondent says that the claimant went on sickness absence on 10 June 2019 and did not return to work before the effective date of termination of her employment on 21 April 2021. The claimant was not receiving any pay at that point and had not done so since 31 December 2019 when her statutory sick pay ended.
9. The evidence presented to me does not establish that the respondent's breach of contract caused the claimant's illness which resulted in her absence for work from June 2019 until the end of her employment. That issue was not engaged by the parties in these proceedings.
10. The respondent contends that the claimant is not entitled to any compensatory award because she would only be entitled to what she would earn in employment, therefore, having exhausted sick pay and being incapable of working had she continued in employment, that is nil. The respondent further states that the claimant has said that she "*cannot envisage being able to work over the next years if ever*"; that the claimant has produced a doctor's letter stating that it is going to take at least 12 months to "*sort out*" the claimant's depression. On these facts the respondent says that it is not possible to make a compensatory award for future loss of earning as it appears that on the claimant's own evidence the claimant will not be returning to work. The respondent states that the claimant is therefore only entitled to a basic award and an award for loss of statutory rights.

11. Section 123 Employment Rights Act 1996 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 complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer. The effect of this provision is that on a finding of unfair dismissal the fundamental limit to the compensation that a tribunal may award is that it must only cover loss that flows from the dismissal. The loss shall be taken to include any expenses reasonably incurred by the complainant in consequence of the dismissal, and the loss of any benefit which she might reasonably be expected to have had but for the dismissal. In ascertaining the loss the tribunal shall apply the same rule concerning the duty of a person to mitigate her loss as applies to damages recoverable under the common law of England and Wales. Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.
12. My conclusion is that the claimant is only entitled to a limited award for loss of earnings. The claimant was paid the sick pay she was entitled to while employed and since her dismissal has been unable to work throughout. Had the claimant been continuing in employment she would have not been in receipt of any pay if she remained off work. The claimant does not say that there is any prospect of returning to work at the present time or in the next year. When the claimant can return to employment she will take some time to find new employment. I am of the view that a reasonable period of time for her to seek new employment is about three months, so I make an award of compensation for thirteen weeks loss of earnings. I award the claimant the sum of £3159.
13. The claimant would have been entitled to holiday pay for four weeks a year if her employment had continued. The evidence produced before me does not make it clear whether the claimant was paid holiday pay or not in the period from 10 June 2019 until her dismissal. The claimant wrote to the respondent on 6 March 2020 asking to be paid her holiday pay (p108) there is no evidence as to what happened to that request. The material before me does not make it clear whether the payment was made. I note that the claimant has ticked the holiday pay box in her ET1 claim form but does not set out the amount that the claimant is earning. I have not been provided with a final pay slip so am unable to ascertain whether that contains a payment for holiday pay. I am however satisfied that the claimant would be entitled to 20 days paid holiday pay per year according to her contract of employment or no less than 4 weeks paid leave pursuant to the Working Time Regulations 1998.
14. The claimant claims £972 per year in respect of holiday pay. I am satisfied that had the claimant continued in employment with the respondent she would have continued to work for the respondent until she reached at least state retirement age which in the claimant's case would be the age of 66. I make an award of compensation for holiday pay in the sum of £3, 888

representing holiday pay for four years. I make an award for that period of time noting that the claimant has been off work for a period of 3 years already

15. The claimant resigned without notice. There is no reference to notice in the claimant's contract. Having regard to the claimant's length of employment the claimant would have been entitled to notice period of three weeks. I am satisfied that the claimant should be able to recover the sum of £729 in respect of notice pay as compensation for unfair dismissal in circumstances where she was dismissed without notice.
16. The claimant should also be given an award of £500 in respect of loss of statutory rights.
17. The respondent is therefore ordered to pay to the claimant the sum of £11,438.50. Comprising of the following awards:

Basic award:	£1093.50
Compensatory award: Loss of earnings £3159 Loss of statutory rights £500 Notice pay £729 Holiday pay (x 4 years) £3,888 Section 207A uplift (£8276 x 25%)= £2069	£10,345
Total award	£11,438.50

Employment Judge Gumbiti-Zimuto

Date: 19 December 2022

Sent to the parties on: 24/12/2022

N Gotecha

For the Tribunals Office

Public access to employment tribunal decisions:

All judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the Claimant(s) and Respondent(s) in a case.