



EMPLOYMENT TRIBUNALS

Claimant: Ms R Christie

Respondent: British Airways plc

Heard at: Reading **On: 21 November 2022**

Before: Employment Judge Gumbiti-Zimuto

Appearances

For the Claimant: Mr Ben Jones, counsel

For the Respondent: Ms Elizabeth Grace, counsel

JUDGMENT

The respondent is ordered to pay to the claimant a compensatory award pursuant to section 123 Employment Rights Act 1996 in the sum of **£43,932.72**.

REASONS

1. The claimant's employment with the respondent started on the 27 March 1987 and came to end on 3 May 2019. The claimant had been employed by the respondent for 32 years, and when dismissed was aged 58 years.
2. The claimant's basic salary was £37,342.00, her employer made pension contributions of £402.72 per month. The claimant was entitled to a notice period of 12 weeks. I have already made an award in respect of the claimant's basic award for unfair dismissal, this judgment is concerned only with a compensatory award.
3. In her schedule of loss the claimant seeks an award of £72,182.83 (including a basic award).
4. The claimant says that bearing in mind the cap on awards for unfair dismissal I should concentrate on the period of 12 months from the end of the notice period. After her dismissal in May 2019 the claimant was bereaved in August 2019. The final stages of her appeal were in October 2019.
5. The claimant states that she had intended to draw her BA Pension on her 60 birthday and continue to work for BA part-time. She has not secured a

permanent full-time job since her dismissal. The claimant did not look for work during the appeal stages, she was hoping to be reinstated. The claimant says that at the time she had recently, “lost my mother and that, together with the loss of my lifelong career, meant I was not in a fit state to look for a new career.” After Christmas 2019, she began looking earnestly for work. She stated that in early March she secured work to start on 27 March 2020 but was not able to start work because of COVID19. The claimant also secured work as a steward at the Reading Festival in August 2020, this event was however cancelled in that year.

6. The claimant has been able to secure other casual work and states that since her dismissal to the date she made her statement her earnings were approximately €16,800 (£14,312.80).
7. The respondent says that the claimant should not be compensated at all because her own conduct breaks the chain of causation. The claimant did not look for work in the period from May 2019 to 5 March 2020. It was only in 2020 that the claimant starts to look for work. The respondent goes on to say that the pandemic was not foreseeable in 2019 and that events from March 2020 were also an intervening act which could not have been foreseeable. The claimant has had some ad hoc work but has not otherwise done anything to mitigate her loss.
8. The respondent has produced some documents which it says are reflective of the job market and therefore had the claimant looked for work she could have found alternative employment. The respondent states that to the extent that the claimant was unable to work because of bereavement that is not arising from her dismissal. The respondent says that it is not reasonable for the claimant to take 10 months to consider her position. The respondent suggests that the claimant was in fact making lifestyle choices which meant that she meant that she did casual work while enjoying an ‘*ex pat*’ life in France, the respondent should not have to pay for the claimant’s lifestyle choices. The respondent says that the claimant had transferable skills that were highly desirable which would have been a boon in her search for employment.
9. The claimant says that it was reasonable to put her energies into pursuing the internal appeal during the period of bereavement and that the respondent’s suggestion that the claimant should have been carrying out a full-blown search for jobs in hospitality in the summer of 2019 is unrealistic.
10. 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 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.

11. The burden of showing a failure to mitigate is on the respondent. Where the respondent has shown a failure to mitigate loss the compensation should be reduced only by the amount by which the loss would probably have been reduced if there had been no failure to mitigate.
12. I am satisfied that the claimant has conducted herself reasonably in the period after her dismissal. The claimant was clearly knocked out of her stride in life by the dual calamity of losing her employment and then very soon after suffering the loss of her parent in August 2019. It would not be just and equitable for me to ignore these matters. The claimant dedicated the energies that she had to the appeal until that option was closed to her. Then within a reasonable period of time after the final appeal she began a more committed search for alternative employment and was able to secure the prospect of employment in early March 2020 which unfortunately due to Covid-19 came to nothing as the start date was due to be 27 March 2020, a week or so after the first Covid-19 "lock down". I do not accept that the circumstances arising from Covid-19 operate as an intervening event to extinguish the respondent's obligation to compensate the claimant.
13. I am satisfied that the claimant's losses have until at least the summer of 2020 been entirely due to the loss of her employment.
14. The claimant is entitled to recover the sum of £10,384.61 in respect of the notice period, the claimant is also entitled to receive a compensatory sum representing the employers contributions in this period that sum is £1,115.22.
15. The claimant's basic salary is £37,342.00 but calculating the claimant's pay for the purposes of section 124 ERA the claimant's pay is £43,932.72.
16. The claimant's loss of earnings in the period from the end of the notice period up to August 2020 is about £43, 932.72.
17. The claimant is also entitled to recover an award for loss of statutory rights and I make an award in the sum of £844.86 in respect of that loss.
18. The claimant stated that between her dismissal and the date 15 November 2021 the claimant had earned the sum of £14,312.80. The claimant has not stated how much of that was earned in the period of up to August 2020 so I have simply assumed that the money was earned evenly spread over the period up to 15 November 2021 and arrived at the sum of £7,156.40¹ which the claimant should give credit to the respondent.
19. The claimant's compensatory award is therefore:

Notice pay	£10,384.61
Employers pension contributions in the notice period	£1,115,22

¹ £14,312.80 (earning up to 15 November 2021) ÷ 30 (months between dismissal and November 2021) x 15 (months between dismissal and August 2020) = £7156.40

Loss of statutory rights	£844.86
Loss of earning	£43,932.72
Sub-Total	£56,277.41
Credit for earnings since dismissal	(-£7,156.40)
Total	£49,121.01
Statutory cap pursuant to section 124 ERA	£43,932.72

20. The respondent is therefore ordered to pay the claimant the sum of **£43,932.72.**

Employment Judge Gumbiti-Zimuto

Date: 23 December 2022

Sent to the parties on: 5/1/2023

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For the Tribunals Office

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