EMPLOYMENT TRIBUNALS

Claimant: Miss S Beasley
Respondent: Hozelock Ltd

JUDGMENT

UPON a reconsideration of the remedy judgment dated 21 November 2022 under rule 70 and 72 of the Employment Tribunals Rules of Procedure 2013, and without a hearing, the remedy judgment dated 21 November 2022 is varied to the following extent. Paragraph 6 of the judgment is deleted and replaced with this paragraph:

"The total amount ordered to be paid by the respondent to the claimant is £62971.75. The claimant will have to pay tax on the award as it exceeds £30000. A grossing up calculation has therefore been performed which results in a total of £71185.05. 75% (£18779.80) of the injury to feelings award was apportioned to pre-termination discrimination and this sum has been excluded from the sum to be grossed because injury to feelings awards in respect of pre-termination discrimination are not subject to tax and should therefore not be grossed up. This means that the total outstanding to be paid by the respondent to the claimant is £46145.32 (71185.05 – 25039.73)."

REASONS

1. In a remedy judgment dated 21 November 2022 the tribunal awarded the claimant £62971.75. A grossing up calculation was undertaken by the tribunal which resulted in a total award of £78952.82.

2. On 5 December 2022 the respondent applied for a reconsideration of the remedy judgment. The basis of the reconsideration application was that the grossing up calculation carried out by the tribunal was incorrect. The respondent had performed its own calculation and submitted that the total award after grossing up should amount to £71185.05.

3. The tribunal wrote to the parties on 8 December 2022 to give the claimant an opportunity to respond to the application and also to say whether they thought a hearing was required. The claimant responded on 13 December 2022. She said that she trusted in the tribunal's calculations and would be guided by the judge. Neither party suggested a hearing was required.

4. It was appropriate to reconsider the remedy judgement but a hearing was not necessary in the interests of justice as neither party suggested it was, the

reconsideration was about one error of calculation only and the parties did not disagree on the approach to be taken because the claimant was content to leave the matter in the tribunal's hands.

5. The tribunal and the respondent's calculations were checked. The salient point is that in the remedy judgment the tribunal ordered that 75% of the injury to feelings award should be apportioned to pre-termination discrimination and 25% in connection with the termination of employment. The respondent's calculations excluded the pre termination element from the sum to be grossed up whereas the tribunal's did not. The tribunal was in error here. This is because injury to feelings awards in respect of pre-termination discrimination are not subject to tax and should therefore not be grossed up. When the tribunal's calculation was reperformed to take account of the error the same figure was arrived at as the respondent - £71185.05.

6. It therefore seems clear that it is necessary in the interests of justice to reconsider and vary the remedy judgement. This is because the error identified above should be corrected so as to prevent the claimant being overcompensated. It is important to note that this gives effect to the tribunal's intention as to how the claimant should be compensated and she has not lost out through the reconsideration as she should not be taxed on 75% of the injury to feelings award as it related to pre termination discrimination.

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Employment Judge Meichen 11.1.23 Sent to the parties on:

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For the Tribunal:

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