EMPLOYMENT TRIBUNALS

Claimant: **D**
Respondent: **Guy's and St Thomas' NHS Foundation Trust**

On: **6 January 2022**

At: **London Central Employment Tribunal (by CVP)**

Before: **EJ Brown**

Members: **Ms Z Darmas**
Mr D Shaw

Representatives:

Claimant: **Ms H Platt, Counsel**
Respondent: **Ms A Rumble, Counsel**

REMEDY JUDGMENT

The unanimous judgment of the Tribunal was that:

1. **It was 80% likely that the Claimant would have resigned in any event, had the Respondent acted fairly.**

2. **An ACAS Uplift of 10% is to be applied to the compensatory award for unfair dismissal.**

3. **The Claimant has mitigated for past loss.**

4. **It is just and equitable to apply a deduction of 50% to the Claimant's future pension loss, to take account of the Claimant's duty to mitigate losses and the likelihood that she would not have remained in NHS employment in any event.**

5. **The Respondent shall pay the Claimant £13,990.92 for wrongful dismissal**

6. **The Respondent shall also pay the Claimant a total of £52,599 by way of a compensatory award for unfair dismissal. Recoupment does NOT apply.**

7. **That total of £52,599 already includes:**
    a. **All losses including 8 fewer days holiday each year;**
    b. **An 80% Polkey deduction;**
    c. **An ACAS uplift of 10%**
    d. **Grossing up for tax.**

REASONS

1. The Claimant succeeded in her unfair and wrongful dismissal claims.

2. At an adjourned hearing on 7 September 2022 the parties agreed that the proper amount of the basic award in the Claimant's successful unfair dismissal complaint was £4,304. The Tribunal issued a consent judgment in that regard. At that hearing, the parties agreed, and the Tribunal ordered, that other matters of remedy would be decided at a hearing today, 6 January 2023.

3. The Claimant gave evidence at this hearing. There was a bundle of documents. Both parties made submissions. The Tribunal reserved its judgment.

4. The following matters were agreed:

5. The Claimant's gross annual salary at the Respondent was £55,963.63. The statutory cap is to be applied to the Claimant's compensatory award in her unfair dismissal award in this sum.

6. The notice period was agreed as being 12 weeks and in the sum of £13,990.92.

7. Past net pay was agreed at £36,963 annually, weekly £710.83.

8. The EDT was 18 December 2020. The Claimant commenced work for Technomed Limited on 18 January 2021. The Claimant's pay is higher in her new job, however her benefits in terms of pension, maternity and holiday benefits are lower.

9. Her pay at her new employer was agreed: she receives £3,369.45 net per month – weekly £777.57.

10. The parties agreed that the correct order of deductions / calculations is as follows:

    a. Deduction of sums earned by way of mitigation, or to reflect the employee's failure to take reasonable steps in mitigation. The Claimant has successfully mitigated her losses.

    b. Apply any percentage *Polkey* deduction under the principle in *Polkey v AE Dayton Services [1987] IRLR 503* (that is, where an employer has dismissed for a substantively fair reason but has failed to follow a fair procedure, the employer may be able to argue that the compensatory award should be reduced on the basis that a fair procedure would have resulted in a dismissal anyway).

    c. Increase or reduction where the employer or employee failed to comply with the *Acas Code of Practice on Disciplinary and Grievance Procedures*.

    d. Ensure that the figure is grossed up to reflect the tax position.

    e. Application of the statutory cap (in this case agreed at £55,963.63).

11. The following matters were in dispute:

12. Polkey. The Respondent argued for a 100% Polkey reduction.

13. Mitigation was in dispute, particularly regarding pension loss.

14. Regarding past loss, the Respondent accepted that the Claimant has less holiday entitlement in her new work, an inferior pension and maternity benefits However, it contended that, even taking into account the difference in these benefits, her past loss was still below zero. The parties agreed that the Respondent's maternity pay scheme, p215, gave the Claimant a maternity pay entitlement of 8 weeks' full pay, plus 18 weeks' half pay (plus SMP). The Respondent calculated this, p291, at £9,350.94.

15. Pension loss was disputed.

16. Regarding past pension loss, the Respondent contended that this is calculated as 9.3% of gross salary , as shown on the Claimant's wage slips. The Claimant contended that the NHS Pension Contribution is 20.6% employer contribution. The Claimant relied on a document, "NHS Pension Scheme employer contribution rates 2022/23", which said, "The NHS Pension Scheme employer contribution rate increased on 1 April 2019 from 14.3% to 20.6%, plus the employer levy of 0.08%."

17. Regarding future loss, the Claimant relied on the report of Dr Pollock p236 / 239pdf, which calculated a pension loss of £403,000 to age 65. The Claimant reduced that figure by 25% to account for the chance that she would not have stayed in the NHS for her whole career. She claimed £370,110 future pension loss. Those figures gave credit for the pension she will accrue with her new employer. The Claimant's claim for future loss related entirely to her pension entitlement.

18. The Respondent did not challenge the calculations in Dr Pollock's report, but contended that the Claimant should have mitigated her loss by obtaining another job in the NHS, with the benefit of the NHS pension scheme. It therefore said she was only entitled to 2 years' pension loss.

19. The Claimant sought an uplift for a breach of the ACAS Code, which the Respondent disputed.

Relevant Facts

20. The Claimant started working for a private company, Technomed Ltd, as a Deputy Clinical Lead on 18 January 2021.

Polkey

21. The Claimant had submitted a workplace grievance to the Respondent on 17 September 2020. The Respondent's grievance policy stated that the process would take 25 working days. On that basis, the report should have been received on or before 28 October 2020. The Respondent did not send its report to the Claimant until 11 December 2022.

22. In evidence at the remedy hearing, the Claimant told the Tribunal that she felt so let down by the delay and the outcome of the report that she resigned, because she had lost trust and confidence in the Respondent. She told the Tribunal that she would not have resigned if the grievance had been dealt with properly. She was cross examined about this and maintained her evidence.

23. In its judgment, the Tribunal decided, at paragraph 289 of its liability judgment, that :

    a. the delay in providing the grievance outcome;

    b. compounded the First Respondent's failure, without reasonable or proper cause, to provide an outcome to the Claimant's allegations that the Second Respondent had touched her inappropriately and had made comments which amounted to sexual harassment;

    breached the duty of trust and confidence. At paragraphs 291 – 293, it noted that, in her combined grievance appeal and resignation letter, she specifically complained, "No attempt has been made within this past nine weeks to hear my Grievance fully. It is evident from many of the outcomes, factual errors and omissions within the report that I was not fully heard or understood." … "The outcome did not discuss episodes of sexual harassment by Piers as detailed in my evidence. From memory, I was also not allowed to discuss these events during the investigation meeting." P590. The Claimant concluded her letter by saying, "Given the length of time this process has taken, the failure of the Trust to follow their own policy's pertaining to the grievance process and the Trust's disregard for my mental wellbeing, I have been left with no choice but to resign with immediate effect."

Past Pension Contributions

24. In the Claimant's new job, Technomed Ltd make a formal pension contractual payment of 3% of the Claimant's salary to a Legal & General Worksave Pension Plan. The Claimant also makes a payment of 5%, making a total of 8%. Her contribution is taken by way of a salary sacrifice. The pension statement records that the Claimant's employer has made all the payments and the Claimant has made none. However, the Tribunal accepted her evidence that her new employer has only actually paid 3%. She referred to a payslip for the month ending 30 April 2022, p197, showing her gross monthly pay as £4,982.83. 3% of that was £149.48. Her salary sacrifice was £249.14, 5% of gross pay. The total "employer" pension payment was £398.63, of which the Claimant sacrificed £249.14 from her salary.

25. The Tribunal found that the NHS employer pension contribution rate was 20.6%. It noted a document, "NHS Pension Scheme employer contribution rates 2022/23", which said, "The NHS Pension Scheme employer contribution rate increased on 1 April 2019 from 14.3% to 20.6%, plus the employer levy of 0.08%."

Holiday and Maternity Pay

26. The Claimant has 8 fewer holiday days per year in her new employment. Her new contract, p172 pdf 175, provides for 25 days holiday, in addition to public holidays. Her NHS entitlement, Pdf 136, after 10 years' NHS service was 33 days per annum plus eight bank holidays. The Claimant had 8 years' service at the Respondent, but had previous NHS service so was already receiving 10 years' holiday entitlement with the Respondent.

27. The Claimant started maternity leave on 1 September 2022. Her maternity pay with her new employer is statutory maternity pay (SMP).

28. Had the Claimant remained in the Respondent's employment, she would have been entitled to 8 weeks full pay (less SMP) and 18 weeks half pay (plus SMP).

Mitigation

29. The Claimant told the Tribunal that she had no plans to leave the NHS until she resigned from the Respondent. She told the Tribunal that she had an established career in the NHS and was working in the best hospital for her area of specialism.

30. The Claimant accepted, in evidence, that there was a possibility that she would have moved out of the NHS at some point in her career. She said, however, that she would not have done that whilst she had children and a young family, as the provision for maternity leave is good, the possibility for flexible and part time working is good and the stability of her job whilst she had a young family would have been essential. The Tribunal accepted her evidence on this.

31. The Tribunal accepted the Claimant's evidence that most of her colleagues work for all of their careers in the NHS.

32. The Tribunal accepted the Claimant's contention that she had been working in a very specialised field as a Cardiac Physiologist; only around ten hospitals in the UK do similar work and each hospital has up to 5 - 6 Cardiac Physiologists. Many Cardiac Physiologists know one another. It is a highly skilled job and these skills degrade quickly.

33. The Claimant has not been undertaking cardiac physiologist work since she left the Respondent. The Tribunal accepted the Claimant's evidence that, as she has not performed the relevant procedures for almost 3 years, she could not return to her previous role due to continuing advances in medicine, without retraining. Whilst it is lifesaving work, getting it wrong can be fatal. The Claimant would therefore have to return to a lower grade or non-invasive post, probably a band 6 and there would be no overtime. She could not afford the drop in salary at present. Just before going on maternity leave, she was offered a promotion to a band 8b post. This would have resulted in a pay rise, although the pension would still only be a percentage of the pay. The Claimant was unable to accept as she was going on maternity leave, but the Claimant told the Tribunal that she is likely to be offered this promotion again. The Tribunal accepted the Claimant's evidence that going back into the NHS would therefore involve taking a step backwards from band 8a to band 6.

34. The Respondent produced 4 job adverts and contended that the Claimant failed to mitigate her loss by failing to apply for these jobs p244, 255, 265, 277. The Respondent did not call any evidence about the suitability of these jobs for the Claimant. It did not call evidence about the availability of jobs as a cardiac physiologist more generally.

35. The Tribunal found that 2 of the job adverts were for Band 7 Paediatric Chief Cardiac Physiologists at the Evilina Children's Hospital.

36. The first, p244, said, "Our cardiac program manages the full spectrum of congenital heart problems on one campus and provides continuous care from the foetus (Fetal Cardiology Unit, Evelina), through childhood (Paediatric Cardiology, Evelina) into adult life (Adult Congenital heart disease at St. Thomas' Hospital)."

37. The second job advert was entitled, "Chief Cardiac Physiologist - Congenital Heart Disease". It repeated the description of the Evilina cardiac programme in the first advert, p255. In its person specification it specified as desirable, "Experience in congenital cardiology."

38. The Tribunal accepted the Claimant's evidence that the Claimant's training and expertise is in adult, not paediatric, cardiac physiology. The Claimant's work had been carried out on normal adult hearts and her specialisation had been in electro physiology, not congenital physiology. The Tribunal accepted the Claimant's evidence that adult and child cardiac conditions and complexities are very different; the Claimant would take time to learn relevant

childhood congenital abnormalities. At band 7 grade, a practitioner would be expected to perform the procedures independently and the Claimant would not have been able to do this.

39. The Tribunal also accepted the Claimant's evidence that, in her experience, there would be about 10 candidates for a chief cardiac physiologist post and that she would be highly unlikely to be successfully appointed at a competitive interview for a grade 7 paediatric cardiac physiologist post.

40. The second 2 posts advertised were for band 7 Chief Cardiac Physiologists at the Royal Brompton and Harefield Hospitals, p265 and 277. The Tribunal accepted the Claimant's evidence that the Harefield is the sister hospital of the Brompton Hospital, from which the Claimant was constructively dismissed. It accepted her evidence that she would be required to work on both sites and cover for other cardiac physiologists. The Tribunal accepted the Claimant's evidence that the HR personnel, who she felt had let her down, were still in post, including Gail Lyons and David Widdowson. It also accepted her evidence that her previous managers, Nicola Kebell, Karen Lascelles were still in post and so she would be likely to come into contact with them.

Relevant Law

41. By *s123 ERA 1996* the amount of the compensatory award for unfair dismissal 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.

42. In *Polkey v AE Dayton Services Ltd* [1987] IRLR 503 Lord Bridge cited with approval the judgment of Browne-Wilkinson J in *Sillifant v. Powell Duffryn Timber Ltd* [1983] IRLR. 91 at p. 96: "There is no need for an 'all or nothing' decision. If the industrial tribunal thinks there is a doubt whether or not the employee would have been dismissed, this element can be reflected by reducing the normal amount of compensation by a percentage representing the chance that the employee would still have lost his employment."

43. In *Shittu v South London Maudsley NHS Foundation Trust* [2022] EAT 18 at paragraphs 52 – 55 the EAT said that

    a. Polkey calls for a predictive exercise, asking what the chances were that the employer would have dismissed fairly in the circumstances, and requiring a focus on the employer's likely thought processes: Grantchester Construction (Eastern) Ltd v Attrill [UKEAT/0327/12] at [10]. It is therefore not right to move from an assessment of 50 per cent chance to a conclusion that the employer inevitably would have dismissed: Grantchester at [25]. The tribunal may apply a percentage reduction, or limit losses to a fixed period: Zebrowski v Concentric Birmingham Limited UKEAT/0245/16 at [50], [53], [54].

    b. For a tribunal to decide that an employee would have been dismissed after a specific period the tribunal must be certain (i.e. find a 100% chance) that the employee would have been dismissed (or resigned) at that point: Zebrowski at [34]. It therefore follows that to conclude that the employment would have ended on the same date as the unfair dismissal is to make a strong finding that there was no chance that the employment would have continued: Hamer v Kaltz Ltd UKEAT/0502/13.

c. The burden is on the employer, not to prove any fact on the balance of probabilities, but to satisfy the tribunal that a future chance would have happened: Grayson v Paycare UKEAT/0248/15 per Kerr J at [17], [32], [46 – 48], [51].

Mitigation

44. When calculating the compensatory award in an unfair dismissal case, the calculation should be based on the assumption that the employee has taken all reasonable steps to reduce his or her loss. If the employer establishes that the employee has failed to take such steps, then the compensatory award should be reduced so as to cover only those losses which would have been incurred even if the employee had taken appropriate steps.

45. Sir John Donaldson in *Archibald Feightage Limited v Wilson* [1974] IRLR 10, NIRC said that the dismissed employee's duty to mitigate his or her loss will be fulfilled if he or she can be said to have acted as a reasonable person would do if he or she had no hope of seeking compensation from his or her employer.

46. In *Savage v Saxena* 1998 ICR the EAT commented that a three-stage approach should be taken to determining whether an employee has failed to mitigate his or her loss. The Tribunal should identify what steps should have been taken by the Claimant to mitigate his or her loss. It should find the date upon which such steps would have produced an alternative income and, thereafter, the Tribunal should reduce the amount of compensation by the amount of income which would have been earned.

ACAS Uplift

47. Employers considering an employee's grievance are required to have regard to the Acas Code of Practice on Disciplinary and Grievance Procedures (Acas Code). Where the employer has failed to follow the Acas Code and the tribunal considers that the failure was unreasonable, it may increase the amount of compensation that would otherwise have been payable to the employee by no more than 25% if it considers it just and equitable to do so (section 207A, Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA)).

48. In *Allma Construction Ltd v Laing* UKEATS/0041/11 (25 January 2012, unreported) Lady Smith suggested that a tribunal should approach an ACAS uplift in the following way: 'Does a relevant Code of Practice apply? Has the employer failed to comply with that Code in any respect? If so, in what respect? Do we consider that that failure was unreasonable? If so, why? Do we consider it just and equitable, in all the circumstances, to increase the claimant's award? Why is it just and equitable to do so? If we consider that the award ought to be increased, by how much ought it to be increased? Why do we consider that that increase is appropriate?' Similar guidance on structured decision-taking here was given by Judge Tayler in Rentplus UK Ltd v Coulson [2022] EAT 81, [2022] IRLR 664.

49. The ACAS Code of Practice of Grievance Procedures provides at paragraphs [33] – [34] & [40]:

33. Employers should arrange for a formal meeting to be held without unreasonable delay after a grievance is received.

34. Employers, employees and their companions should make every effort to attend the meeting. Employees should be allowed to explain their grievance and how they think it should be resolved. Consideration should be given to adjourning the meeting for any investigation that may be necessary.

40. Following the meeting decide on what action, if any, to take. Decisions should be communicated to the employee, in writing, without unreasonable delay and, where appropriate, should set out what action the employer intends to take to resolve the grievance. The employee should be informed that they can appeal if they are not content with the action taken.

Discussion and Decision

Polkey

50. The Claimant resigned partly in response to the Respondent's failure to acknowledge and respond to some of her grievance allegations.

51. The Tribunal noted that the allegations which Ms Lyons ignored were not minor or trivial. They could reasonably be considered to have been some of the most serious in the Claimant's grievance. The Tribunal accepted the Claimant's evidence that a failure even to acknowledge them had a significant effect on the Claimant's trust and confidence.

52. The Tribunal took into account the fact that the Respondent would almost certainly have not upheld the Claimant's allegations of sex harassment.

53. Nevertheless, it considered that, if the Respondent had acknowledged and investigated them and given a reasoned outcome, the Claimant would have felt that her complaints had been acknowledged, rather than ignored. The Tribunal also considered that, if the Respondent had considered these most serious allegations, and acted reasonably in its outcome, it would very likely have offered some additional support, specifically to the Claimant and Mr Wright, in dealing with their ongoing working relationship, whether through agreed working arrangements or mentoring or otherwise.

54. In considering the likelihood that the Claimant would have resigned in any event, if the Respondent had considered all the Claimant's allegations and given a reasonable outcome to them, the Tribunal took into account that many of the sex harassment allegations were historic. The Claimant had continued to work, despite her perceptions about the way Mr Wright had behaved in the past. She had stayed in the workplace for a very long time and, in some ways, was moving on with her life.

55. On the other hand, the Tribunal also noted that, in her resignation letter, the Claimant complained of sex harassment and numerous other matters which the Tribunal has not upheld. The Tribunal has found that the vast majority of her complaints did not give rise to a breach of the duty of trust and confidence.

56. In her Tribunal claim form, the Claimant gave 3 reasons for her resignation: at paragraph 41 of her claim form, she said, "I believe that the sex and sexual harassment, discrimination related to my sex and the First Respondent's continuing failure to protect me in the workplace including the failure to deal with my grievance in a timely and proper manner constituted a fundamental breach of trust and confidence, entitling me to resign with an immediate effect." The first 2 reasons she therefore gave for her resignation were not upheld by the Tribunal: Mr Wright's alleged sex harassment and then other sex discrimination in the workplace.

57. At the liability hearing, the Claimant's evidence predominantly concerned her sex harassment complaints against Mr Wright and sex discrimination allegations against him and others.

58. In reality, the Tribunal considered that the preponderance of the Claimant's unhappiness in the workplace was caused by her perception of sex harassment and sex discrimination against her. It considered that, in reality, it was likely that the Claimant would have resigned, in any event, when her complaints in this regard were dismissed following a reasonable investigation by the Respondent.

59. However, the Tribunal also decided that there was still a small but significant likelihood that, had the Respondent listened to the whole of her grievance and provided her a reasonable outcome to all her allegations, she would not have resigned at all. This was not a negligible likelihood.

60. Taking into account all these matters, the Tribunal considered that it was 80% likely that the Claimant would have resigned at the same time, in any event, had the Respondent conducted a reasonable investigation of her grievance and provided a reasonable outcome.

Mitigation and Future Loss

61. Taking into account all its findings, the Tribunal found that the Claimant had not failed to mitigate her loss. She had found alternative employment at a higher rate of basic pay very soon after she left the Respondent.

62. It was reasonable for her not to apply for the 4 jobs which the Respondent produced.

63. The Claimant did not have the relevant paediatric knowledge or experience to be able to undertake a band 7 paediatric cardiac physiologist role. Even if she had applied for the paediatric posts, it was highly unlikely that she would have been successful at a competitive interview.

64. She also acted reasonably in not applying for jobs at the Harefield hospital, the sister hospital of her previous employer, the Brompton (both of which are now part of Guy's). The Harefield and Brompton hospitals were part of the same small Trust when the Claimant worked there. She would be required to come into contact with HR employees in whom she had lost confidence and would be required to cover for work at the Brompton and have contact with her previous managers.

65. There was no evidence that there were other suitable jobs available for the Claimant since she left the Respondent, which had a higher rate of pay or pension entitlement.

66. She has mitigated her loss to date.

67. However, the Claimant also claims career-long loss in relation to her NHS pension. That is a very large loss. The Respondent agreed Dr Pollock's calculation of that loss. Her career-long pension loss is £403,480.

68. Given the magnitude of that future loss, the Tribunal considered that the Claimant would only act reasonably to mitigate her future loss if the Claimant returned to the NHS at some reasonable time in the future. It would not be reasonable for the Claimant never to seek to return to NHS employment - and to claim full career-long pension loss.

69. The Claimant is currently on maternity leave from her new employer. The Tribunal accepted her evidence that she considers the stability of a job whilst having a young family is important. It would not be appropriate for her to change employment while she has a young family.

70. The Tribunal accepted the Claimant's evidence that she has become deskilled and would have to retrain to undertake her cardiac physiologist role again in the NHS, which would mean taking a reduction in pay and a significant step down in job level. She would also not be able to undertake lucrative additional work independently while she retrained and was on a lower job grade.

71. She would need to be appointed following a competitive interview. The field of cardiac physiologists is small and the Claimant reasonably does not wish to return to her previous employer. That would reduce the likelihood of a swift return, once she starts to look for NHS jobs.

72. The Claimant has about 33 years until her retirement.

73. The Tribunal considered that the Claimant would reasonably mitigate her loss if she sought to return to NHS employment after her young family has grown up, when she may be in a position to afford the immediate drop in pay and the extra burden of retraining. That would be in 10 – 15 years' time.

74. The Tribunal took into account that the Claimant accepts that there should be a reduction of 25% in future loss in any event, to take into account the possibility that she might not have stayed in the NHS anyway.

75. Taking this into account and the fact that the Claimant should also seek to mitigate her future loss by returning to the NHS in 10 – 15 years, the Tribunal concluded that it was and equitable to reduce her future pension loss by 50%. That reflected, both, the likelihood that the Claimant might not have continued to work in the NHS, in any event, and her duty to act reasonably to mitigate her future pension losses.

Grossing Up

76. The Claimant sought grossing up, to reflect the tax position. The Tribunal agreed that losses over £30,000 should be grossed up, so that she receives proper compensation for unfair dismissal.

ACAS Uplift

77. The Claimant relied on the Tribunal's finding that the Respondent did not address her most serious allegations in the grievance process. She contended that that was a failure to follow the ACAS code and her award should be uplifted. The Respondent contended that no uplift was appropriate, or a minimal uplift.

78. The Tribunal considered that the Respondent had breached at least paragraphs [34] and [40] of the ACAS Code, in that the Claimant was not allowed to explain her sex harassment allegations at a meeting and no outcome was decided on those allegations.

79. However, the Respondent did follow a proper grievance process in respect of most of her allegations and provided an appropriate outcome for those. At the same time, it ignored the more serious allegations, which was significantly wrong. The purpose of the ACAS Code is to ensure that grievances are heard and addressed properly.

80. This was not a case of a wholesale failure to comply with the ACAS Code.

81. An uplift of 10% appropriately reflected the Respondent's partial failure to follow the Code.

Calculations

82. Applying those findings, the Tribunal has calculated the appropriate compensation. It has used the parties' agreed basic figures in its calculations.

Past loss

83. The parties agreed that the Claimant should be paid her notice pay in her wrongful dismissal claim.

84. Her losses in her unfair dismissal claim therefore did not start until 19 February 2021, when her notice would have expired.

85. Loss of net pay 19 February 2021 – 7 January 2023:

86. 19 February 2021 – 18 February 2022 = 52 weeks x £710.83 = £36,963.17

87. 19 February 2011 – 31 August 2022 = 27.6 weeks x 710.83 = £19,618.91

88. Maternity pay from 1 September 2022 – 8 weeks full pay - 8 x £710.83 = £5,686.64 until 27 October 2022.

89. Maternity pay 28 October 2022 – 7 January 2023 - 10 weeks at half pay plus SMP. Half pay is £355.42. SMP is £156.66. £355.42 + £156.66 = £512.08 x 10 = £5,120. 80.

Past employer pension contributions

90. 20.6% - of gross pay for 97.6 weeks (since 19 February 2021).

91. 20.6% of £55,963.63 = £1,076.22.

92. £1,076.22 x 97.6 x 0.206 = £21,638.12.

Lost Holidays

93. 2 years at 8 days per year = 16 days lost holiday.

94. £ 710.83/5 = £142.17 per day. 16 x £142.17 = £2,274.72.

95. <u>Total past losses = £91,302.36</u>

Past Sums Received in Mitigation

96. The Claimant's pay at her new employer was agreed: she receives £3,369.45 net per month – weekly £777.57.

97. The Claimant started her new employment on 18 January 2021.

98. She earned 18 January 2021 – 17 January 2022: 52 weeks x £777.57 = £40,433.64.

99. From 18 January 2022– 31 August 2022 she earned 32.3 weeks x £777.57 = £25,115.51.

100. From 1 September 2022 she has received SMP- which is 90% of net pay weekly for 6 weeks and £156.66 for next 33 weeks.

101. 90 % of net pay is £699.81. £699.81 x 6 = £4,198.88

102. She has received a further 12 weeks' SMP. 12 x £156.66 = £1,879.92.

103. Pension contributions for weeks from her new employer at 3% gross pay.

104. Weekly gross pay £58,186.16 / 52 = £1,118.96

105. 3% x £1,118.96 = £33.57 x 102.2 weeks = £3,372.60.

106. The Claimant has received £75,000.55 in her new employment.

107. Her net losses to date are £91,302.36 minus £75,000.55 = £16,301.81.

108. The Claimant's career loss future loss pension loss has been calculated at £403,480.

109. The Tribunal has awarded her 50% of that loss - £201,740.

110. She is entitled to an award for loss of statutory rights agreed at £500.

111. Her total past loss, future loss and loss of statutory rights is £218,541.81.

112. The order of deductions was agreed.

113. Apply 80% Polkey deduction, leaves 20% of total loss.

114. 0.2 x £218,541.81 = £43,708.36.

115. Add 10% for ACAS Uplift 1.1 x £43,727.62 = £48,079.20

116. The Claimant has a tax free element of £30,000

117. Gross up £18,079.20 for 20% tax.

118. £18,079.20 x (100 / 100 – 20) = £22,599.

119. The total compensatory award for unfair dismissal is £30,000 + £22,599 = £52,599.

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Employment Judge Brown 6 January 2023

Sent to the parties on:

09/01/2023

For the Tribunal: