



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms G Rouse

**Respondent:** Andron Contract Services Ltd

**Heard at:** London South Employment Tribunal

**On:** 22 March 2023

**Before:** Employment Judge Ferguson

**Members:** Ms J Cook  
Mr D Rogers

## Representation

**Claimant:** Ms N Gyane

**Respondent:** Mr J Munro (solicitor)

# REMEDY JUDGMENT

**It is the unanimous judgment of the Tribunal that:**

1. The Claimant is awarded a basic award for unfair dismissal of **£1,560.60**.
2. The Claimant is awarded compensation for discrimination as follows:

|                     |   |
|---------------------|---|
| Financial loss:     | £60,650.20 (£52,703.48 for loss of earnings plus interest of £7,346.72 and £600 for loss of statutory rights) |
| Injury to feelings: | £24,859.40 (£21,000 plus interest of £3,859.40)   |
| Total:              | <b>£85,509.60</b>   |

3. The total amount awarded, £87,070.20, has been grossed up<sup>1</sup> so the Respondent must pay the Claimant the total sum of **£101,028.67**.

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<sup>1</sup> The grossing up has been calculated on the basis that £57,070.20 of the award constitutes taxable income in the tax year 22/23 and the state benefits received by the Claimant in this tax year do not constitute taxable income.

# REASONS

## INTRODUCTION

1. In our Reserved Judgment sent to the parties on 6 December 2022 we upheld the Claimant's complaints of unfair dismissal, wrongful dismissal, discrimination arising from disability, and (in part) failure to make reasonable adjustments.
2. The Claimant claims compensation for unfair dismissal and discrimination.
3. There was substantial overlap between the matters that we found constituted breach of the implied term of trust and confidence, resulting in the Claimant's resignation, and the matters that we found amounted to discrimination arising from disability. We are therefore satisfied that the loss of earnings claimed for the period following the Claimant's resignation flowed from the discrimination, so can be awarded as compensation for discrimination rather than a compensatory award for unfair dismissal.
4. The only issues in dispute are:
  - 4.1. Whether the Claimant took reasonable steps to mitigate her losses;
  - 4.2. The appropriate award for injury to feelings.
5. We heard evidence from the Claimant. The Respondent did not adduce any evidence.
6. Mr Munro for the Respondent, during cross-examination of the Claimant, began to ask questions about whether, if the Claimant had remained employed by the Respondent, she would have been furloughed or taken extended sick leave because of the Covid-19 pandemic. Ms Gyane objected to the questions on the basis that they were not relevant to the issues in dispute. We agreed and did not allow Mr Munro to continue the line of questioning. Mr Munro had agreed at the start of the hearing that he did not take issue with the figures in the schedule of loss, subject to the two issues above. The Respondent had never suggested before today's hearing that the Claimant would not have continued to be paid her normal salary if she had remained employed. Indeed paragraph 107 of the Reserved Judgment noted that it was the Respondent's case that they would have made adjustments to facilitate the Claimant's return to work after her operation, which appears to contradict the suggestion that the Claimant would have taken extended sick leave. If the Respondent wished to pursue that argument it would need to adduce some evidence to support it and the Claimant would need an opportunity to obtain her own evidence on the issue.

## FACTS

7. We accept the Claimant's evidence as an accurate account of her efforts to find alternative employment after her resignation.
8. The Claimant's resignation took effect on 21 February 2020. She had a planned heart operation on 19 March 2020 and had been advised she should not work for 8 weeks afterwards. We accept that she could not be expected to look for work before the operation or during the 8-week recovery period.
9. By end of that that period it was May 2020 and the Covid-19 lockdown was in place. The Claimant was clinically vulnerable due to COPD and her heart operation. The only jobs available at the time were in the health sector, which were not suitable for her due

to her vulnerability.

10. The Claimant had a live page on LinkedIn as a result of which she was approached about a job in November 2020, but this did not result in an offer.
11. In the period January 2021 to June 2022 the Claimant applied for 25 jobs. She had four interviews but no offers.
12. The Claimant received Universal Credit from April 2022 and during this period had a work coach who was helping her look for work. The Claimant was declared unfit for any work from 28 October 2022 due to her physical health problems. She therefore does not claim loss of earnings beyond that date.
13. As for the impact on the Claimant of the discrimination, she gave evidence about the period leading up to her dismissal as follows:

“I was supposed to be on a phased return. That didn’t happen. There was so much pressure, it was getting me down. It created anxiety because every day there was a different tactic or decision. It got to a point where I didn’t want to get out of bed any more. I couldn’t cope with the way they were treating me. I’m now left with anxiety. I put in 110% and that is not what I was getting back. They made me feel worthless.”

14. The Claimant also explained the impact of losing her job and being out of work for an extended period for the first time in her adult life. Her family life was impacted and she ended up losing her home and having to live with her daughter. She also says she suffered from anxiety and depression, albeit not diagnosed and she has never sought medical help for these issues.

## CONCLUSIONS

### Mitigation

1. In Gardiner-Hill v Roland Berger Technics Ltd 1982 IRLR 498, the EAT said that where there is a substantial issue as to failure to mitigate, an employment tribunal should ask itself:
  - 1.1. what steps were reasonable for the claimant to have to take in order to mitigate his or her loss;
  - 1.2. whether the claimant did take reasonable steps to mitigate loss; and
  - 1.3. to what extent, if any, the claimant would have actually mitigated his or her loss if he or she had taken those steps.

While these three questions are logically distinct, they are linked, and the evidence that bears upon them overlaps. The burden of proof is on the employer in respect of all three.

15. We are not convinced there is even a “substantial issue” here. The only evidence is from the Claimant and there is nothing to indicate she did not take reasonable steps to mitigate her losses. In any event the Respondent has certainly not discharged the burden of establishing that the Claimant failed to take reasonable steps, or that if she had done more she would have found employment. We have accepted her evidence that in view of her vulnerabilities there were no suitable jobs available in 2020. From January 2021 onwards she applied for a large number of jobs without success. She was making extensive efforts to mitigate her losses in spite of the pandemic and her

health situation.

16. We are satisfied the Claimant took reasonable steps to mitigate her losses and is entitled to be compensated in full for the whole period until 28 October 2022.

Injury to feelings

17. The discrimination took place over an extended period from September 2019 to February 2020. The gist of our liability judgment was that the Respondent deliberately acted in a way that was likely to lead to the end of the Claimant's employment because of the restrictions caused by her disability. We also found that this led to the Claimant's dismissal. We found:

"The Respondent neglected its responsibilities as regards the Claimant's health and acted so as to make it impossible for the Claimant to continue working without serious risk to her health. Its conduct was either calculated to do so, on the basis that the Respondent was deliberately pushing her out of the business, or it was likely to do so."

18. The Respondent succeeded, in that the Claimant resigned as a result of its conduct. The resignation itself is evidence of the impact on the Claimant and injury to feelings. In her resignation email the Claimant said:

"...I Grace Rouse feel that I have no other choice but to terminate my employment with Andron Facilities Management

...

... the company and its representative have not taken my illness Seriously the continued added pressure and stress is a very unhealthy position to be in and is making me ill.

I am about to enter into a recovery period for Cardio Surgery and cannot have the added pressure and stress wondering if I have a secure position to return to given my current employment status

In view of the above I feel that it is in my healths best interest to Resign with immediate Effect as of Friday 21st February 2020"

19. She resigned at a difficult time in her life, when she was awaiting major heart surgery. She chose to leave secure employment because the situation had become intolerable. She said the Respondent's conduct made her feel worthless.
20. We also accept that the impact of the Claimant's employment ending has been significant, impacting her home and family life. For the avoidance of doubt we reject the Respondent's submission that we can only consider the impact prior to resignation. The resignation flowed from the discrimination and the injury to the Claimant's feelings continued beyond that point.
21. We agree with the Claimant's assessment of the appropriate level of the injury to feelings award, applying the Vento guidance. We award £21,000.

Awards

22. Having delivered our judgment on the above issues, the figures to be awarded were agreed. There was an error in the grossing up calculation but this was corrected by an email from Ms Gyane shortly after the hearing. The Respondent was given an opportunity to object but has not done so.

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**Employment Judge Ferguson**

**Date: 24 March 2023**