



EMPLOYMENT TRIBUNALS

Claimant

Mrs C Carter

v

Respondent

Sew On and Sew Forth Limited

Heard at:

Norwich

On: 21 November 2022

Before:

Employment Judge M Warren (sitting alone)

Appearances:

For the Claimant: In person

For the Respondent: Did not attend and was not represented

JUDGMENT having been sent to the parties on 16 December 2022 and written reasons having been requested by email from the Claimant on 22 December 2022, in accordance with Rule 62(3) of the Employment Tribunal Rules of Procedure 2013, the following reasons are provided:

REASONS

Delay

1. I apologise to the Claimant for the delay in these Reasons being prepared and sent out. The request for written reasons was not actioned by the Administration until 24 February 2023 and unfortunately, I have been absent from work due to ill health between 27 December 2022 and 15 March 2023.

Background

2. Mrs Carter was employed by the Respondent as a Sewing Machinist between 9 April 2014 and 12 February 2022. After Early Conciliation between 4 March and 22 March 2022, she issued these proceedings claiming unfair dismissal, a redundancy payment and notice pay, on 22 March 2022.
3. No response having been received from the Respondent, Judgment was entered in default in Mrs Carter's favour and handed down by Employment Judge George on 18 August 2022, in the sum of £2,205.00 in respect of the breach of contract claim for notice pay and the sum of £3,307.50 in respect of the claim for a redundancy payment.
4. That same Judgment found in favour of Mrs Carter in respect of her complaint of unfair dismissal and directed that there should be a Remedy Hearing. The purpose of today's hearing was therefore to determine the

Remedy Mrs Carter should receive in respect of her claim for unfair dismissal.

Today's Hearing

5. Mrs Carter attended today's Hearing in person, unrepresented. The Respondents did not attend and were not represented.
6. A search at the Companies House Register this morning reveals that there is a proposal to remove the Respondent from the Register. Mrs Carter is aware of that, she informed me that she has taken legal advice in this respect and has written to object.
7. Mrs Carter gave evidence under oath and the findings of fact set out below are based upon that evidence, which I found to be credible and which I accept.

Findings of Fact

8. Mrs Carter's net weekly pay was £277.00. She worked for the Respondent as a Sewing Machinist between 9 April 2014 and 12 February 2022. Her date of birth is 4 November 1960. She was paid to 12 February 2022. That was the date her employment came to an end.
9. On 8 February 2022, Mrs Carter was called into a meeting with a Director of the company, Mr John Pickering, in which he informed her that she would be made redundant along with the rest of the staff due to the business closing down. At that meeting, she was handed a letter, back dated to 2 February 2022, inviting her to the meeting. There was reference in the letter to there being a note taker present, (Mr Mark Pickering, another Director), but he was not present. No one was present as a note taker.
10. Although there were seven employees when she was told that everybody was to be made redundant, in fact she was the only person dismissed.
11. After losing her employment with the Respondent, Mrs Carter received Job Seeker's Allowance for four weeks. Following an interview at the Job Centre, she applied on advice for Employment Support Allowance because of arthritis in her neck. Because of that arthritis, she cannot sit or stand for too long. Sewing was something that she had been able to manage because she could stand, sit and keep on the move whilst doing the work. She has not been able to find that sort of work in the area in which she lives, (Hunstanton, North Norfolk).
12. Mrs Carter agreed the spring and holiday season of 2023 might bring opportunities for work. She also said that she was thinking of setting herself up as a Curtain Maker.
13. As Mrs Carter pointed out, the National Minimum Wage went up to £9.50 per hour on 1 April 2022. She worked 35 hours a week.

The Law

14. When a Claimant has succeeded in a claim for unfair dismissal, the award of compensation falls into two categories. The first is in respect of a Basic Award pursuant to sections 119 to 122 of the Employment Rights Act 1996 (ERA). Where a redundancy payment has been made, the amount of the redundancy payment should be deducted from the Basic Award, (section 122(4)).
15. The second element of the award is to compensate the Claimant for losses sustained as a result of the dismissal, known as the Compensatory Award. The amount of such an award is governed by sections 123 to 126 of the ERA. Section 123 (1) states:

“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 insofar as that loss is attributable to any action taken by the employer.”

16. Section 123 (4) provides that a Claimant has the same duty to mitigate her loss as would a Claimant under the common law. The burden of proof lies with the employer to show that the Claimant has failed to mitigate loss.
17. By an amendment to the Trade Union and Labour Relations (Consolidation) Act 1992 at section 207A, where in a case of unfair dismissal, it appears that a relevant code of practice applies, the employer has failed to comply with that code and that failure was unreasonable, then the Tribunal may, if it considers it just and equitable in all the circumstances to do so, increase the award by up to 25%.

Conclusions and Calculations

18. I find that Mrs Carter ought to be able to find new employment eliminating her ongoing loss by 1 April 2023.
19. I calculated that with the increase in the National Minimum Wage to £9.50 per hour on 1 April 2022, Mrs Carter’s former gross pay of £315 per week would be increased to, (35 x £9.50) £332.50. That is an increase of £17.50 gross pay, or 5.55%.
20. On the information available to me and adopting a broad brush approach, I applied that percentage increase of 5.55% to Mrs Carter’s net weekly pay, (£277.28 x 5.55% = £15.39) to arrive at a net weekly pay going forward from 1 April 2022 of £292.67.
21. I assessed loss of statutory rights at £250.
22. Apart from holding a single meeting with Mrs Carter, the Respondent made no attempt to follow the ACAS Procedure for Dismissals. Nobody else was dismissed.

23. I therefore calculate the unfair dismissal compensation payable to Mrs Carter, bearing in mind that the basic award is eliminated by the redundancy payment already awarded, as follows:

Compensation payable to Mrs Carter	Amount
12 February 2022 to 1 April 2022 is 7 weeks: (7 x £277.28)	£ 1,940.96
2 April 2022 to today's Hearing 21 November 2022 is 33 weeks: (33 x £292.67)	£ 9,658.11
<i>Total of the above two figures, representing the Prescribed Element: £ 11,599.07</i>	
Loss ceases with anticipated new employment by 1 April 2023 is 19 weeks: (19 x £292.67)	£ 5,560.73
Loss of Statutory Rights	£ 250.00
SUB – TOTAL	£ 17,409.80
Mark up for breach of ACAS Code at 20%	£ 3,481.96
TOTAL unfair dismissal compensation	£ 20,891.76

Employment Judge M Warren

Date: 29 March 2023

Judgment sent to the parties on

30/3/2023

NG
For the Tribunal office