



EMPLOYMENT TRIBUNALS

Claimant: Mrs A Allen

Respondent: Worcestershire Health and Care NHS Trust

Heard at: Birmingham (hybrid) **On:** 11, 12, 13 April 2023

Before: Employment Judge Miller
Mr N Howard
Mr K Hutchinson

Representation

Claimant: Mr J Horan – counsel

Respondent: Mr J Jarvis – counsel

REMEDY JUDGMENT

The claimant's claims for unfair dismissal, discrimination because of something arising in consequence of disability, harassment related to age and unauthorised deductions from wages were upheld in a corrected reserved judgment dated 5 August 2022. The respondent is ordered to pay the claimant the following sums.

Unfair dismissal	
Basic award	£15,240.00
Unauthorised deductions from wages	
Compensation for unauthorised deductions from wages	£8083.48
Discrimination damages	
Loss of earnings from 22 May 2018 to 31 July 2019	£27,576.54
Pension losses from 22 May 2018 to 31 July 2019	£3,298.39
Loss of earnings from 1 August 2019 to 31 July 2024	£81,210.00
Loss of statutory rights arising from the discriminatory dismissal	£500
Injury to feelings	£19,000
Adjustments	
10% ACAS uplift (on discrimination damages and unauthorised deductions from wages)	£13,966.84

Interest on injury to feelings award from 22 May 2018 to the date of the hearing	£7,441.75
Interest on discriminatory pecuniary losses from midpoint from 22 May 2018 to date of hearing	£19,704.46
Grossing up	£101,166.79
Total	£297,188.25

Details of the calculations are set out in the attached appendix.

1304655/2018

Employment Judge **Miller**

13 April 2023

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Appendix – calculations

1. We have awarded the following sums:
2. In respect of unfair dismissal, an agreed basic award of **£15,240.00**

3. Compensation for unfair dismissal is dealt with as compensation for the discriminatory dismissal
4. Compensation for unauthorised deductions from wages in relation to the period from 27 March 2017 to 15 March 2018 is agreed as the net sum of **£8083.48**. Because this is the net sum, and it likely to be taxable, it will be included in the grossing up figure.
5. In respect of financial losses arising from the discriminatory dismissal, the only financial losses arise from the ending of the claimant's employment.
6. We have found that the claimant would, on the balance of probabilities, have continued working until 31 July 2019. This is agreed as a period of 62 weeks from 22 May 2018 until 31 July 2019 split between two period is 45 and 17 weeks during which the relevant net pay rates were £436.59 and £466.47. The claimant's award for losses during this period is:
7. $(45 \times £436.59) + (17 \times £466.47) = £19,646.55 + £7,929.99 = £27,576.54$
8. The agreed pension losses for this period are the employer's contribution at 9.3% of the agreed gross wages for each period.
9. The gross weekly wages for period 1 are $£29,608/52 = £569.38$
10. Gross weekly wages for period 2 are $£30112/52 = £579.08$
11. Total gross sum for period 1 = $45 \times £569.38 = £25,622.10$
12. Total gross sum for period 2 = $17 \times £579.08 = £9844.36$
13. Pension contributions for period 1 = $(9.3\% \text{ of } £25,622.2) = £2382.86$
14. Pension contributions for period 2 = $(9.3 \% \text{ of } £9844.36) = £915.53$
15. Total pension contributions = $£2382.86 + £915.52 = £3,298.39$
Total losses for period from 22 May 2018 to 31 July 2019 are 27,576.54 + 3,298.39 = £30,874.93
16. We have found that, on the balance of probabilities, the claimant would have gone to work for her daughter in law during her retirement and we have found that that would have been likely to have been for a period of five years.
17. We have found that the claimant would have worked on average 30 hours per week at a rate of £11 per hour. We have not considered any pay rises nor any offset for early payment on the basis that they are likely to balance each other out.
18. This means the claimant would have earned £330 per week equating to £17,160 per year. Applying the current standard tax code of 1257, and assuming no other income or national insurance liability at that time, this gives a net annual figure of £16,242. For five years, this equates to earnings of £81,210.
19. We have found that the claimant is now unlikely to return to work.
20. The claimant's losses from 1 August 2019 are therefore **£81,210**
21. Finally, we make an agreed award for loss of statutory rights arising from dismissal of **£500**

22. We consider now non-pecuniary losses:
23. We award the claimant a total sum of **£19,000** for injury to feelings for the three discriminatory acts
24. We do not make an award of aggravated damages
25. The remaining matters for us to consider are ACAS uplift, interest on discrimination awards and grossing up.
26. The order in which to apply the adjustments is as follows:
 - a. Apply ACAS uplift of 10 % to each award to which it applies
 - b. Add interest to each award to which it applies
 - c. Gross up.
27. The ACAS uplift applies to the payment in respect of unauthorised deductions from wages and compensation for discrimination. It does not apply to the basic award.
28. The ACAS uplift is therefore 10% of (£8083.48 + £30,874.93 + £81,210 + £500 + £19,000) = 10% of £139,668.41 = **£13,966.84**
29. The next issue is the adding of interest. This applies only to damages for past losses and injury to feelings awarded for discrimination.
30. For injury to feelings awards, interest is calculated for the period from the date of discrimination to the date of this hearing. In our view, having regard to the provision of reg 6 and Dr Hallstrom's report, the date of the last act of discrimination is the appropriate date in these circumstances, so the date of the claimant's dismissal being 22 May 2018.
31. The period from 22 May 2018 to today, 13 April 2023, is 1787 days.
32. Interest at 8% per day on the award of £19,000 is therefore $1787 \times (0.08 \times 1/365) \times £19,000 =$ **£7,441.75**
33. Interest on pecuniary (financial) losses is calculated from the mid-point between the act of discrimination giving rise to the award and the date of calculation.
34. The losses to which this applies are losses from 22 May 2018 to 31 July 2019 (including pension losses) and losses from 1 August 2018 to today.
35. We have found that the claimant would have continued working until 31 July 2024. We have awarded £81,210 for that five year period. 74% of that period has elapsed, so that interest is payable on 74% of that award, being £60,095.40.
36. Interest is therefore payable on a total of (£60,095.40 + £500 + £30,874.93) + the ACAS uplift of 10% on those figures which totals £91,470.33 + 9,147.03 = £100,617.36
37. The losses flow from the dismissal and it is appropriate to use the same period as for the ITF award.
38. Interest = $(1787/2) \times (0.08 \times 1/365) \times £100,617.36 =$ **£19,704.46**
39. Total payable, before grossing up, is therefore:
 - a. basic award £15,240.00

b. unauthorised deductions from wages	£8083.48
c. losses for period from 22 May 2018 to 31 July 2019	£30,874.93
d. losses from 1 August 2019 to 31 July 2024	£81,210.00
e. loss of statutory rights	£500.00
f. injury to feelings	£19,000.00
g. ACAS uplift	£13,966.84
h. interest on discrimination award	£27,146.21
i. total before grossing up	£196,021.46

Grossing up

40. The first £30,000 is tax free. Because the unauthorised deduction from wages figure is the agreed net figure, this also falls to be included in the grossing up calculation. Consequently, every element of the award is, subject to the £30,000 threshold, taxable.
41. We assume that the £30,000 is used first by the basic award of £15240, leaving £14760 tax free allowance for the remaining compensatory award.
42. The remaining compensatory award is £180,781.46. Therefore, £166,0121.46 is taxable.
43. Different tax rates will apply to different elements of this figure.
44. Effectively, the claimant will pay tax at 20% on the first 37,700, 40% on amounts up to £125,140 and 45% on amounts over that. We have assumed that the claimant is receiving the basic state pension of 203.85 per week which uses up £10,600 of her personal allowance. That would be further reduced to zero by virtue of the fact that the claimant will receive in excess of £125,000 in the tax year.

Band	Proportion of ET award	Grossing up calculation	Grossed up amount	Tax
20%	£37,700.00	$£37,700 / (1 - 0.2)$	£47,125	£9425
40%	£87,440.00	$£87,440 / (1 - 0.4)$	£145,733.33	£58,293.33
45%	£40,881.46	$£40,881.46 / (1 - 0.45)$	£74,329.92	£33,448.46
Total	£166,021.46		£267,188.25	£101,166.79

The total compensation payable is therefore the grossed up sum of £267,188.25 plus the tax free allowance of £30,000 = **£297,188.25**