



EMPLOYMENT TRIBUNALS

Claimant: Mrs L Lyddall

Respondent: The Wooldridge Partnership Limited

Heard at: Reading **On: 28 March 2023**

Before: Employment Judge Gumbiti-Zimuto
Members: Ms M Thorne and Mr F Wright

Appearances

For the Claimant: Ms C Step-Marsden Counsel
For the Respondent: Ms S Berry, counsel for respondent

JUDGMENT ON REMEDY

The respondent is ordered to pay compensation to the claimant the sum of £32,351.36.

REASONS

1. Following a hearing on 12 and 13 December 2022 the claimant succeeded in her claim that she was discriminated against by the respondent when she was dismissed. The claimant was employed by the respondent from 30 March 2021 until 2 August 2022. She was employed in the position of Marketing Manager.
2. The claimant states that the decision to dismiss her was “*completely unexpected and shocked me*”. The Tribunal noted that while there were “*some clear and obvious failings by the claimant in her performance*”, it was not made clear that the claimant’s performance was below an acceptable standard. Any concerns about the claimant’s performance were not so serious as to justify termination of the claimant’s employment for a performance shortfall.
3. The claimant immediately began looking for employment following her dismissal and she was able to secure the offer of employment from a care home. The employment on offer was a full-time role of a marketer, on a salary of £31,500 per annum, plus a conditional bonus of £3,500. The claimant was to have a start date in that new employment from 15

September 2021. The claimant initially accepted the role but subsequently retracted her acceptance of the role in the following terms: *“unfortunately I’m going to have to retract my acceptance for the marketer role. I think getting the hub up and running by the end of October is not deliverable. It will be a highly stressful project which will not be in my best interests at the moment.”*

4. The claimant explains these actions by saying that she was diagnosed with breast cancer on the 26 May 2021 followed soon after by hospital treatment involving surgery. The claimant’s doctors informed her she would need further treatment in the form of intensive radiotherapy to take place between 2 September and 15 September 2021. The claimant’s treatment was going to result in her suffering side effects, which she was advised to expect to continue for some weeks after the treatment was carried out. The claimant concluded that the *“role would have been too stressful so was unsuitable for me at the time given I was still being treated for breast cancer”*.
5. The claimant also obtained job interviews with other companies. On one occasion she withdrew and did not go through with the interview. There were other interviews for roles that the claimant applied for, but she was unsuccessful in these applications, until the claimant was offered the role of an assistant merchandiser. The claimant accepted the role and began work with her new employer on 15 November 2021.
6. In the role of assistant merchandiser, the claimant’s normal hours of work are 21 hours a week, Monday, Tuesday, and Wednesday earning £12.00 per hour. The claimant explains that she applied for the assistant merchandiser job because she has an interest in interior design and she finds the work rewarding. The claimant has developed good relationships with her new colleagues.

Level of compensatory award

7. The respondent contends that the Tribunal should find that the claimant’s employment would have lawfully terminated in any event soon after she was in fact dismissed and factor this into our calculation of the compensatory award by reducing it by 50%. We reject this argument.
8. The respondent never alerted the claimant to what is now claimed to have been her performance issues. The claimant was not told of a need to improve or given any directions on what was considered acceptable performance. Such performance issues as were evident in the time of the claimant’s employment would not have justified dismissal. There is in our view no justification for concluding that, had the claimant been informed of her performance shortfalls, she could not have addressed them so as to enable her employment with the respondent to continue.
9. The respondent says that mitigation ought to have commenced in early September 2021 as the claimant could have taken up a role which would have extinguished any loss of earnings. The fact that the claimant chose not

do so “*should not rebound to the respondent’s detriment in the calculation of the compensatory award*”.

10. The Tribunal considers that there is a need to recognise that the claimant had some success in her search for work following her dismissal. The claimant was clearly an adept and competitive applicant in the job market when looking for equivalent roles to the one that she held with the respondent. She was offered one job and offered interviews for other roles where, but for better candidates on a couple of occasions, she could have been appointed to a number of roles. On one occasion the claimant chose not to take up the offer of an interview. We consider that, had the claimant continued to seek alternative equivalent roles to that which she held with the respondent, it would have taken her no more than six months to find a new role.
11. The Tribunal accepts the claimant’s evidence that she considered the role that she had secured, at the relevant time, would have been too stressful for her so that at that time it was unsuitable for her. We consider that the fact that the claimant had surgery for cancer and then underwent radiotherapy, a treatment which was going to have side effects outlasting the treatment itself, enables us to conclude that the claimant’s approach to mitigating her loss was reasonable, and for a period of about six months from her dismissal it was reasonable for the claimant to seek work that was not as stressful as her previous role, even if it was paid at a lower rate.
12. The evidence before us is that from 15 November onwards the claimant did not seek employment in roles equivalent or better than her previous role. She chose to work as an assistant merchandiser, for perfectly understandable and reasonable reasons; however the respondent should not pay for the claimant’s choices beyond a reasonable period of time for the claimant to mitigate her losses. In our view that is a period of six months from her end of her employment.
13. The claimant in our view is entitled to recover compensation for a period of 26 weeks, losses at the rate of £336.91 per week totalling £8,759.66. For a period of up to 26 weeks from the end of her employment the claimant should give the respondent credit for her earnings. This amounts to £2876.50. The claimant’s loss of earnings in the relevant period is therefore £5883.16.
14. The claimant asks that we make her an award for loss of statutory rights. We do not consider that it is appropriate for us to make her an award in respect of loss of statutory rights due to the length of time that her employment with the respondent lasted. The claimant’s employment with the respondent having ended after only a short period of time means that the claimant has lost little by way of statutory rights. We do not consider that there is a loss that it is just and equitable to compensate.
15. The claimant makes a claim in respect of pension contributions that would have been made by the respondent. We consider that the claimant is

entitled to recover this head of loss. That amounts to a figure of £595.00 in respect of a 26-week period.

16. The claimant should also give credit to the respondent in respect to £500 pounds which was paid for in lieu of notice.

ACAS Uplift

17. We consider that this is a case where and ACAS uplift is just and equitable. The manner of the claimant's dismissal was such that it failed to follow any fair procedure at all. This was a case where the claimant's purported dismissal for capability grounds should have been one where a procedure was followed that enabled the claimant to have an understanding of how she was failing and offered her an opportunity to improve. Having regard to the complete failure to follow any reasonable procedure we consider that in all the circumstances a 20% uplift is just and equitable.

Injury to feelings

18. We consider that this is a case which has had a serious and significant impact on the claimant. The claimant's injury to feelings is in our view illustrated most starkly by the fact that, creditably attempting to get back to work the claimant sought and achieved an offer of employment in a similar role on a better level of pay to her previous role with the respondent but she was unable to go through with it for the reasons explained. This was in part due to the impact of her medical condition giving rise to disability, and also due in part to the effect that the dismissal had on the claimant's confidence. As a result, she gave up the opportunity of a better paying job and possibility of a significant bonus. The claimant had been dismissed by the respondent at a point of exceptional vulnerability so whilst this was a one-off act of discrimination by dismissal of the claimant, it has involved the loss of her job and in her circumstances, where she was receiving treatment for cancer, has meant that the claimant has had to abandon (for the time being at least) a career in marketing for a job that, for the reasons she has explained, she finds more convenient presently. Taking all these factors into account we are of the view that an award for injury to feelings in the sum of £18,250.00 is a fair reflection of the damage sustained by the claimant.

Aggravated damages

19. We do not consider this is a case where an award for aggravated damages is necessary and justified as compensation for the claimant.

Interest

20. We consider that an award of interest is justified in this case. The claimant should recover interest on the award for injured feelings and also on the award for loss of earnings which have all been incurred at the date of calculation. The claimant is therefore entitled to the losses as set out in the table below.

Injury to feelings award	£18,250
ACAS uplift on Injury to feelings @20%	£3,650
Interest on injury to feelings award ¹	£2,412
Sub total:	£24,312.00
Loss of earnings	£5,883.16
Loss of pension	£595.20
Credit for payment from respondent	-£500
Sub total:	£5,978.36
ACAS uplift on £5,978.36 @20%	£1,195.67
Interest on £5,978.36 ²	£395.06
Sub total:	£1590.73
Net Total:	£31,881.09
Gross Total³	£32,351.36

Employment Judge Gumbiti-Zimuto

Date: 3 April 2023

Sent to the parties on: 15 April 2023
T Cadman

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For the Tribunals Office

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¹ £18,250 x 8% = £1,460 ÷ 365(days) = 4 x 603 (days) =£2,412

² £5,978.36 x 8% = £437.27 ÷ 365 (days) = 1.31 x 603 (days) = £790.13 ÷ 2 = £395.06

³ Grossing up calculation: £31,881.09 -£30,000 = 1,881.09 x 100/80 = 2351.36 + 30,000 = £32,351.36