



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr P Boyton

**Respondent:** The Parochial Church Council of the Ecclesiastical Parish of Holy Trinity Barnes

**Heard at:** London South Employment Tribunal (a hearing via CVP)

**On:** 22 February 2023

**Before:** Employment Judge T Perry

## Representation

Claimant: In person

Respondent: Mr D Flood (Counsel)

**JUDGMENT** having been sent to the parties on 1 March 2023 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

# REASONS

## The Law

1. The calculation of a Basic award is set out in section 119 Employment Rights Act 1996 (ERA 1996).
2. The amount of a Compensatory award is governed by section 123 ERA 1996, which provides that it 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.”
3. There are a number of parts to that definition including that loss must be sustained by the complainant in consequence of the dismissal. That is the

part of the definition that allows (or requires) the Employment Judge to consider whether employment would have ended at some other point.

4. The Employment Judge has to have regard to the loss sustained by the Claimant but is not bound solely by that. The amount of the award is what is just and equitable. The Employment Judge may take quite a broad brush approach to what is just and equitable.
5. There is a duty on the Claimant to take reasonable steps to mitigate their loss. The burden of showing that the Claimant has not done so rests solely on the Respondent.
6. I referred in my liability judgement to the EAT decision of Langstaff P (as was) in **Wright v North Ayrshire Council** [2014] IRLR 4 at paragraph 32, which states:

*“As to compensation we should note that where there are a variety of reasons for a resignation but only one of them is a response to repudiatory conduct the compensation to which a successful claimant will be entitled will necessarily be limited to the extent that the response is not the principal reason. A tribunal may wish to evaluate whether in any event the claimant would have left employment and adjust an award accordingly. This does not affect the principle to be applied in deciding breach: it is merely to recognise that the facts have a considerable part to play in determining appropriate compensation.”*

7. In this case, there is a wrongful dismissal claim in respect of notice pay, which has succeeded. The Claimant has not specifically set out an amount in his Schedule of Loss for notice. However, I note that the notice period is three months. The amount of damages for this period is very easy for me to calculate. I am conscious that there is a risk of possible overlap with compensation for unfair dismissal. I have to ensure that there is no double recovery. The duty to mitigate losses applies to the Wrongful Dismissal claim too.

## **The Facts**

8. The Claimant's employment ended on 30 November 2020, when he resigned with immediate effect. By this point his adult son, who has ASC, had returned to live with the Claimant. The Claimant lost a job paying £22,000 a year. It was a job that required him to work 25 hours a week. The

Claimant was afforded some flexibility as to where work could be done, albeit some work needed doing at the church.

9. On 2 December 2020 the UK came out of lockdown.
10. On 12 April 2021 non-essential services reopened.
11. On 19 July 2021 legal limits on social contact were lifted.
12. The government's "furlough" scheme wound down in the second half of 2021.
13. The Claimant is in receipt of a police pension of circa £2,000 per month. In evidence before me, the Claimant confirmed that he has not applied for any paid jobs since leaving the Respondent's employment. The Claimant cited the dent to his confidence arising from his dismissal, that it would be harder for him to get job because of his age, and his need to care for his son. The Claimant says that he would have needed a part time job that allowed him to work from home, which he says would have been hard to find in part because so many employees were still on furlough.

## **Conclusions**

14. Notwithstanding the factors that the Claimant identifies as making it harder for him to secure employment, I do consider that, based on his own evidence that he has not apply for any roles, the Claimant has failed to take reasonable steps to mitigate his losses.
15. I ask myself what it would have been reasonable for him to do. I accept that there was an initial period during which the shock of the end of his employment relationship would have made looking for work difficult. I consider that it would have been reasonable for the Claimant to start to look for work after about three months. I accept that given his domestic situation with his son and the fact that the Claimant was seeking to mitigate a role paying £22,000 a year that it would have been reasonable for the Claimant to only look for part time roles possibly with some flexibility to work from him. However, I also note that the Claimant applied for a role as a volunteer

park ranger so it is clear that he did not have to be exclusively working from home. I accept that furlough was ongoing and that not all that many roles would likely have fit the Claimant's specifications but I think that it is likely that the Claimant could and would have found something within 3 months of starting to look. Therefore, I think it likely that had he not failed to take reasonable steps to mitigate his losses, the Claimant would have been able to mitigate his losses after 6 months.

16. In deciding on the amount of the Compensatory award, I am not limited solely to considerations of what the Claimant's period of loss was or would have been.

17. One further relevant factor is whether compensation should be limited because the Claimant relied on a number of factors in deciding to resign, most of which were not (I have found) breaches of contract. I note here that the Claimant's resignation letter starts with reference to his role being removed (which I did find was a breach of contract). I find that this was a significant part of the reason for the Claimant's resignation. However, it is also clear that issues with the management of Mrs Burn's situation and in particular how issues regarding the bags left in the church were likely to be resolved were important factors too in reaching the decision to resign. Per **Wright**, I consider that it would be just and equitable to apply a 50% reduction to the Compensatory award to reflect this.

18. With this in mind, I am also entitled to ask whether the Claimant would have resigned in any event had there been no breach of contract or alternatively to what extent this was a recoverable situation. I am conscious of the Claimant's submission that this is all speculation but it is clear to me from the fact that the Claimant was monitoring his manager's emails due to the bag incident and that the Claimant recorded the discussion with Reverend Cooke, that this was a relationship under serious strain regardless of the historic changes to the Claimant's role and the proposed changes to finance software. That strain was in large part because of Mr Boyton's hostile attitude towards Reverend Cooke regarding (for example) the handling of issues with Mrs Burn. I think it very likely that the Claimant would have resigned in any event because of his concerns about Reverend Cooke's

residual resentment regarding the bag incident. I find it very unlikely that the employment would have continued beyond a further 3 months in any event. Accordingly, I apply an 80% deduction to compensation beyond that point.

### **Calculations**

19. I make a basic award of £4,493.90 (7 years x 1.5 age multiplier x £427.99 weekly gross salary);
20. I make an award of damages for breach of contract in relation to notice pay of £5,683.87 (including employer pension contributions); and
21. As to the Compensatory award, including employer and employee pension contributions, the Claimant was earning £320 a week (net). This equates to £16,640 a year. I find that the Claimant should get nothing for the first three months to the end of February 2021 as this would be double recovery with damages for wrongful dismissal. Thereafter for the six months from March to the end of August the Claimant's losses were £8,320 (£16,640 / 2). I apply an 80% reduction to this because of the likelihood of employment ending in any event for the reasons given above. I thereafter apply a 50% reduction due to the Claimant resigning due to a combination of matters other than breaches of contract as set out above. This reduces the Compensatory award to £832 (8,320 x 20% x 50%).

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Employment Judge **T Perry**

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Date 27 March 2023