



EMPLOYMENT TRIBUNALS

Claimant: Miss J Levell

Respondent: Demicon Limited

Heard at: Manchester (by CVP)

On: 5 May 2023

Before: Employment Judge Leach
Ms J Whistler
Mrs J Byrne

REPRESENTATION:

Claimant: In person

Respondent: Mr Fakunle, Solicitor

JUDGMENT setting out remedy having been sent to the parties on 11 May 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

Introduction

1. This hearing was listed to determine remedy, findings having already been made in the claimant's favour in some (but not all) of her complaints.
2. . It was apparent to us from the schedule of loss and counter schedule provided by the parties that there was little between them on some of the remedy calculations. The parties also had an opportunity to discuss certain differences during this day that the remedy hearing was held and were able to reach agreement on some of the calculations.
3. We thank the parties for discussing and agreeing calculations on various the matters that we needed to reach decisions on.

Unauthorised deduction from wages

4. The claimant was entitled to receive a statutory guarantee payment of £30 a day for up to five days. She also had a contractual expectation of that payment because the respondent promised that it would make that payment to her, and it did not. The non-payment of the statutory guarantee pay is £150.

5. The claimant was not paid for two days' work which she carried out in June during her notice period, and she should have received gross pay for the two days combined of £192.30.

6. The total amount of unpaid wages in relation to the claim under Part II of the Employment Rights Act 1996 is **£342.30**. That is a gross amount, and the respondent must now pay that amount less any tax due. They are wages – they must be paid as wages and taxed as such.

Breach of section 15 Equality Act 2010

7. The claimant succeeded in her complaint that the respondent breached section 15 Equality Act 2010. There are different types of loss applicable

8. There was a loss of salary up to date of termination of employment. We reached a decision in our Liability Judgment that the discriminatory act was placing the claimant on short time working. That discriminatory act caused the claimant to lose **£2,675.89** of net pay. The parties discussed and agreed that calculation.

9. There was then a loss of salary after the termination of employment up to the date that the claimant obtained other employment (1 January 2021 - from which date she suffered no financial loss). That amount has also been capable of agreement by the parties, and it is **£11,539.20**.

10. We also calculated and added loss of pension contributions. During her employment, the claimant received £46.90 per month as a pension contribution. The claimant was not paid that amount when placed on short-time work. We calculate her loss of pension contributions to be £74.99. We reached that amount by taking into account the two months when the claimant was not paid but also taking into account a small overpayment in relation to previous months.

11. We calculated loss of pension contributions from the end of employment up to 31 December 2020. That amount is £328.30.

12. We added the 2 loss of pension amounts to those amounts that the parties agreed as loss of salary figures. That resulted in loss of income figures as follows:-

a. up to the date of termination of employment - £2,750.88

b. from termination of employment up to the end of December – an adjusted amount of £11,867.30.

Injury to Feelings

13. We applied the “Vento” bands, now updated by Presidential Guidance. Employment Tribunals must:-

- a. ensure that awards for injury to feelings compensate a claimant fully but do not punish respondents, regardless of views about the respondent's behaviour in the relevant factual circumstances of a case.
- b. Not make awards that are so low as to diminish respect for the the discrimination legislation,
- c. Not make awards that are so excessive: that they might be regarded as "untaxed riches"
- d. must bear in mind the value in everyday life of the amounts awarded and the need for public respect for the level of the awards made.

14. We considered Mr Fakunle's submissions, particularly the submission that this was a one-off event. We do not agree that this was a one-off occurrence in the sense that the decision to place the claimant on short-time working was made. It was communicated in the way that it was, which was upsetting to the claimant. The claimant then tried to achieve a solution over the weeks that followed but was unsuccessful. Whilst we agree with the parties that this is a case where an injury to feelings award should be in the lower band we did not agree with Mr Fukunle's submission that the award should be towards the lower end of the lower band.

15. We also took into account the claimant's own evidence of the impact on her of that decision to cut her income, effectively overnight and we have decided that the claimant's suggested amount of **£6,000** is an appropriate award in this case.

Interest

16. Under regulation 2(1)(b) of the Employment Tribunals (Interest on Awards) Regulations 1996 ("Interest Regulations") we are required to consider awarding interest even where the parties have not raised it. We made an award for interest, calculated in accordance with the Interest Regulations. We calculated simple interest at a rate of 8%.

17. As far as the injury to feelings award is concerned, that rate of 8% starts being applied from the date of the discriminatory act, being the end of March 2020. That gives a period for which we applied an 8% rate over three years and six weeks. The amount of interest payable on that basis is **£1,495**.

18. As far as the loss of income is concerned, we took a mid-point calculation date of 15 August 2020. We identified that date as the mid-point between the date when the income started to be lost and the date when the claimant started to receive income from her new job. (1 January 2021). The period over which interest is paid at that rate then is two years and 38 weeks, and that amounts to **£3,193**.

Employment Rights Act 1996 Complaints

19. We then considered the claimant's successful detriment complaints made under Employment Rights Act 1996. Although we made findings in the claimant's favour, we did not make any separate compensatory award in respect of those findings. The losses incurred and the feelings injured were the same as those for

which we have awarded compensation under the Equality Act 2010. It would not be just and equitable to make additional awards in this case.

Breach of Contract

20. There is nothing further we needed to award in relation to pension contributions and as the claimant worked her notice period no additional amount is payable in relation to notice either.

21. The claimant was not fully compensated for the work that was done during her notice period, but again that is already reflected in the awards made under the other complaints.

ACAS Uplift

22. Finally, we needed to apply the ACAS uplift pursuant to section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992. We had already made a finding (and recorded in the liability Judgment in this case) that there should be an uplift of 10%. The separate amounts awarded above provide a total award of £25,648.48. 10% of that total is **£2,564.85**.

Summary and conclusion

23. In summary

- a. we awarded a gross amount of £342.30 which needs to be paid less tax
- b. we awarded a net amount of £25,648.48 plus the 10% uplift of £2,564.85 which is £27,871.03.

Employment Judge Leach
Date: 9 June 2023

REASONS SENT TO THE PARTIES ON
9 June 2023

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