



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms Debra Gilbert  
**Respondent:** Slough Borough Council  
**Heard at:** Reading **On: 24 May 2023**  
**Before:** Employment Judge Gumbiti-Zimuto  
Members: Ms F Potter and Ms B Osborne

## Appearances

**For the Claimant:** Mr A Ross, counsel  
**For the Respondent:** Mr S Harding Counsel

## REMEDY JUDGMENT

The respondent is ordered to pay to the claimant a compensatory award in the sum of £60,625.84 in compensation for unfair dismissal.

## REASONS

1. The hearing date fixed of 19 October 2023 is vacated.
2. The claimant has been paid a redundancy payment by the respondent and therefore is not entitled to a basic award.
3. The Tribunal heard evidence from the claimant who was questioned by Mr Harding. We accept the evidence that the claimant has given. In the course of being questioned by Mr Harding the claimant stated that she was confident that she would have been promoted to a level 10 role if she had continued in employment with the respondent. We note that following the restructure referred to in the liability judgment the levels and spinal column points of the respondents roles were different to that which pertained before the restructure. The claimant's old role did not exist in the new structure.
4. The claimant is currently working with Bracknell Forest Borough Council on an interim contract, she has also had a period of assignment with Royal Borough of Windsor and Maidenhead Council. The claimant is looking for permanent full-time employment, she has not been able to achieve this so far despite the fact that she has "skills that are still useful and needed". The

claimant has worked almost continuously since her dismissal, she has found work via an agency. The claimant has been given work on interim contracts and she has found that there is not very much permanent work and she has not been offered anything permanent so far. The claimant is not aware of the role which she is currently undertaking having any prospect of being converted into a permanent position in the near future or at all. The claimant considers that her age is making it more of a challenge for her to secure permanent employment, she is 57 in the next two weeks.

5. The Tribunal broadly accept the claimant's schedule of loss on which we have relied in coming to our conclusion on the remedy in this case. We have reminded ourselves that 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 in so far as that loss is attributable to action taken by the employer.
6. The Tribunal is satisfied that the claimant has taken steps to mitigate her losses by seeking and obtaining employment via an agency.
7. The Tribunal note that there has not been presented any evidence to challenge the facts, assertions and assumptions contained in the schedule of loss produced by the claimant. We note that some of the material put forward by the respondent has been tested and challenged but there has been no evidence produced to gainsay what the claimant states is the case.
8. The respondent tested the claimant's claim about past losses of £9,980.95 but did not have an evidential basis of challenging that figure. The Tribunal accept the claimant's past loss was the sum of £9,980.95.
9. There are a number of entries in the schedule of loss which make assumptions about the claimant's pay in years 2021 to 2027. The latter year being the claimant's planned year of retirement. We note that these figures have been based on the assumption that the claimant would have been able to achieve a level 10 role with the respondent and then have applied annual spinal column point increments from year 2022/2023 until 2027.
10. The Tribunal consider that this is a difficult point for the claimant to sustain as there is in our view really no evidence that supports a conclusion that the claimant would have been able to achieve a level 10 role in the relevant period of time. There is no evidence to support a conclusion that this might happen beyond the claimant's assertion.
11. The Tribunal have therefore disregarded that part of the claimant's evidence but then gone on to consider whether the figures set out in the assumptions about the years 2021 to 2027 have any justification so that they can be relied on. We started with the claimant's final salary with the respondent and then applied to that an annual increase of 2%. We came to different but similar figures to those that the claimant relied on. We applied a 2% annual increase on the assumption that if the claimant was at the top spinal column point of level 9 she would not go into level 10 without a job promotion. However, even

if she remained at the top of level 9 she would receive cost of living pay rises, we considered that 2% was a fair amount to test the robustness of the claimant's figures. There was some difference in the figures reached at 2% increases and the claimant's figures but they were sufficiently close to allow the Tribunal to consider that the figure set out in the claimant's schedule of loss represent a just and equitable basis on which to assess the claimant's future loss.

12. In the schedule of loss the claimant gives credit for the claimant's earnings on the basis of her earning while working for the Royal Borough of Windsor and Maidenhead Council. The Tribunal consider that in this case it is reasonable for the claimant to do so. We note that the claimant's agency pay may have been slightly higher however, it should be noted that adjustments should be made for the fact that there is no holiday pay, and there is no sick pay in the agency work and that the agency sum includes an element of rolled up pay to account for these matters.
13. The Tribunal therefore accept the claimant's assessment of her future loss in the sum of £42, 373.96 as set out in the schedule of loss.
14. We have considered the question of pension loss. The pension loss in this case is by far the largest element of the award for compensation. The Tribunal considered firstly whether this was a case for a simple calculation of pension loss or a case where the more complex method of calculating pension loss by using the Ogden Tables is appropriate. We came to the conclusion that this was an appropriate case for using the seven step method of calculating pension loss using the Ogden Tables. This approach is the one that has been used by the claimant in the schedule of loss.
15. The reasons why we considered that this a case where the seven-step approach is appropriate is because we came to the conclusion that the claimant is entitled to make a career long loss in relation to pension. We note that the claimant was 54 at the date of her dismissal and that her pension age for the purposes of the calculation is the age of 60. In the period that remains of her working life we have considered whether it is more likely than not that the claimant will be able to find employment which will put her in the position she would have been before her dismissal, or at least allowed her to acquire further benefits under the local government pension arrangements. The Tribunal concluded that there is a chance that may happen but that there is a good chance that it will not happen. We decided it is more likely than not that the claimant will not be able to find permanent employment that puts her in the same position as she was before her dismissal or to acquire further benefits under the local government pension arrangements. We came to this conclusion because the claimant has mitigated her losses by looking for employment, including looking for permanent employment in local government. She has not been able to find that employment, what she has found is employment on interim contracts where she is contracted to agency not the local authority. The Tribunal note that the claimant's age today is almost 57 years and the claimant considers that this may present her with problems getting employment. The claimant in our view, after two years of

interim contracts, may well spend the remaining three years of her planned working life employed on interim contracts or agency work.

16. The Tribunal having noted the methodology used in calculating the pension loss as set out in the schedule of loss consider that the claimant has proven pension losses of £160,651.50. We note that while the respondent does not accept these figures it presents no alternatives and does not challenge the methodology of calculation.
17. The Tribunal consider that the claimant is entitled to an award of compensation in respect of loss of statutory rights. We make an award in the sum of £800, representing approximately one weeks pay.
18. The claimant's compensatory award is subject to the limitation contained in section 124 Employment Rights Act 1996 is the sum of £89,493 or 52 multiplied by a week's pay. The amount of a week's pay for the purposes of calculating in accordance with section 124 (1ZA) (b) the upper limit of compensation which may be awarded for unfair dismissal is the amount of remuneration payable under the contract of employment. This includes pension contribution paid by the employer to a pension fund.
19. The total of the claimant's compensatory loss before grossing up is £213,806.41. The statutory limit in the claimant's case is therefore £60,625.84. We therefore make an award of compensation in that amount.

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Employment Judge Gumbiti-Zimuto

Date: 24 May 2023

Sent to the parties on: 22/6/2023

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For the Tribunals Office

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