



EMPLOYMENT TRIBUNALS

Claimant: Miss Katy Evans

Respondent: Northern Belle Ltd

Heard at: by CVP **On:** 10 July 2023

Before: Employment Judge Britton

Appearances

For the claimant: In person

For the respondent: Mr S Proffitt, Counsel

REMEDY JUDGMENT

1. The decision of the Tribunal is that the Claimant is entitled to compensation in the sum of £250 for unfair dismissal.
2. The Recoupment Regulations do not apply to this award.

Reasons

Background

3. The claim came before me on 01 June 2023 and the reserved Judgment was that the claim of unfair dismissal was successful. The redundancy payment claim did not succeed.
4. At the Hearing today, I used the agreed bundle of documents that have been available at the Liability Hearing, which included the Claimant's most recent Schedule of Loss. For the reasons explained below, it was unnecessary to hear evidence today.

Reinstatement or Re-engagement

5. I gave consideration to the Orders available having found that the claim for unfair dismissal was well founded. However, Orders under Section 114/115 of the Employment Rights Act 1996 as the Claimant had not indicated on her Claim Form

that she wished to be reinstated or re-engaged the appropriate choice of remedy in this case has therefore been compensation.

Basic Award

6. According to Section 118 of the Employment Rights Act 1996 a basic award is calculated in accordance with Sections 119-122 and 126 of that Act. In this case, however, the Claimant's basic award of £7616 (£544 x 14) is completely extinguished by the payment of £8070 made by the Respondent on the ground that the dismissal was by reason of redundancy. This reduction which, in effect, completely extinguishes the basic award is required by Section 122 (4)(b) of the 1996 Act.

Compensatory Award

7. According to Section 123 of the Employment Rights Act 1996 the compensatory award should be the amount that the Tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the Claimant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.
8. Section 123 (2) states that the losses that form part of the compensatory award shall be taken to include any expenses reasonably incurred by the complainant in consequence of the dismissal and the loss of any benefit which the complainant might reasonably be expected to have had but for the dismissal.
9. The Claimant's Schedule of Loss included amounts for both immediate loss of earnings and future loss on the basis that the Claimant has not found alternative employment and has therefore been unable to mitigate her losses. However, as explained to the Claimant at the outset the finding that I made at paragraphs 70-72 of the Liability Judgment significantly impacts upon her ability to claim any losses post the termination of her employment, including not only loss of earnings but also expenses incurred in consequence of the dismissal.
10. The amount of the compensatory award must be that which is "just and equitable" based on the loss arising out of the unfair dismissal (Section 123) (1) of The 1996 Act. In *Polkey v AE Dayton Services Limited [1987] IRLR503* it was held that the compensatory award may be reduced or limited to reflect the chance that the Claimant would have been dismissed in any event and that the employer's procedural errors accordingly made no difference to the outcome. This is commonly referred to as a Polkey deduction (or reduction).

Loss of Statutory Rights

11. The finding that I made as part of the Liability Judgment is that the element of unfairness was the Respondent's failure to consider the Claimant for the part-time Reservations Executive role. However, I also found that the Claimant would not have accepted the role even if offered. As a consequence, I found that there was a 100% chance that the Claimant would still have been dismissed and that the effective date of termination of her employment would have remained the same. In my judgment, therefore, the Claimant has not sustained any loss of earnings or incurred any job seeking expenses that have arisen out of the unfairness of her dismissal.

12. This head of loss forms part of the compensatory award. It has for some years been a conventional sum which is increased in line with inflation. Although the appropriate rate is now thought to be between £400-£500, e.g., *Shittu v South London and Maudsley NHS Foundation Trust [2022] EAT* the amount of the award is, however, a matter for the Tribunal and should be just and equitable.
13. In my judgment, the appropriate award for loss of statutory rights in this case is £250. It is just and equitable that the Claimant should receive an award under this head because she now has to start afresh building up enough service to qualify for statutory rights, such as the right not be unfairly dismissed or to be eligible for a statutory redundancy payment. I have taken into account the Claimant's length of service and age as potentially relevant background factors in order to assess the level of award that may be appropriate under this head and I have substantially discounted the amount that I would otherwise have awarded in order to take into account the fact that the Respondent evidently miscalculated the statutory redundancy payment and overpaid the Claimant by £454 (seen at page 27 of the Liability Hearing Bundle).
14. I heard submissions from both sides in relation to the losses claimed by the Claimant, the level of the award for loss of statutory rights and the extent to which the Claimant had suffered losses that were not impacted by the Polkey deduction. However, notwithstanding the potential for the Polkey reduction to impact upon the level of the award for loss of statutory rights I have not found it to be appropriate to make any further reduction.
15. In summary, therefore, the Claimant is awarded compensation of £250.

EJ Britton

10 July 2023