



EMPLOYMENT TRIBUNALS

Claimant: Dr S Mann

Respondent: Dr F Mulder and Mr R Laver t/a Helios Medical Centre

Heard at: Bristol

On: 5 July 2023 (in chambers)

Before: Employment Judge Street
Ms G Meehan
Ms J Kaye

On the application made by the Respondent on 26 March 2023 headed Opening Note to reconsider the Judgment dated 3 May 2022, and on the Claimant's agreement to the reconsideration and to the calculations set out in that Note and on a hearing in chambers on 5 July 2023 to consider that application, the following Judgment is issued.

JUDGMENT on RECONSIDERATION

It is in the interests of justice to reconsider the Judgment dated 3 May 2023 to substitute in place of the following original paragraph: -

Past losses to 11 March 2022

2019/20 4,144

2020/21 8,424

2021/22 889

Total £13,457

Offset for overpayment July 2019 £1,331

Past losses to 11 March 2022 £12,126

the following substitute paragraph: -

Past losses to 5 April 2022

2019/20 £3598

2020/21 £7228

2021/22 £4310

Total £15,136

Offset for overpayment July 2019 £1,331

Past losses to 5 April 2022 £13,805

Reasons

That is because

- 1 The application was made just before the hearing listed to be on 27 March 2023 as the final hearing on remedy, which could not proceed.
- 2 It is in the interests of justice to consider the application notwithstanding that it is made outside the time limit in Rule 71. That is because it corrects the position and makes the handling of complex pension calculations more practical.
- 3 It was agreed that the application would be considered in chambers with the full panel, provision being made for written representations.
- 4 It is the agreed position that the employee pension contributions are not to be added back in finding net pay given that the assessment of remedy involves approaching future pension loss on a complex basis, contrary to the position adopted in the Judgment. That is to avoid double recovery in respect of those pension contributions.
- 5 It is agreed that in the calculation of actual earnings in the period ending 11 March 2022, the figure of 48 weeks should have been used instead of 43 weeks.
- 6 However, it is further ordered, that as settled between the parties, the finding of actual net earnings up to 11 March 2022 should be replaced by a finding up to the end of the actual financial year, 5 April 2022, based on the claimant's tax return. That is because the period of past loss runs over a number of years and it is preferable to operate within financial years.
- 7 For ease of reference, the full terms of the revised judgment are set out below.
- 8 For the calculations, the source is the Opening Note, supported by the earlier Reasons, the Claimant's Calculation of Earnings and Loss dated 20

March 2023 and her witness statement of 13 March 2023 and the Respondent's Counter Schedule of Loss.

- 9 The Tribunal did not address paragraphs 11 to 14 of the application in the Opening Note. That application, if pursued, must be considered at the oral hearing listed for November 2023.

JUDGMENT following RECONSIDERATION

The effect of reconsideration is shown in red and underlined.

The hearing is adjourned, pursuant to the claimant's application, for further evidence and submissions, to consider in particular future loss and pension loss.

The following are the findings of the Tribunal far.

Findings

In respect of the claim for detriment on the ground of protected disclosures contrary to section 47B of that Act, the Tribunal proposes an award of £31,500 in respect of injury to feelings, inclusive of aggravated damages. Further submissions are invited on the question of taxation and grossing up.

Past financial losses have been calculated to 5 April 2022 but continue.

The Tribunal has not determined the ACAS uplift or interest.

The Tribunal has made the following findings:

Notice pay nil – fully mitigated

Detriment

Injury to feelings £21,000

Aggravated damages £10,500

Unfair dismissal

Basic award (4 years x 1.5) £3,150

Loss of statutory rights £1,300

Past losses to 5 April 2022

2019/20 £3598

2020/21 £7228

2021/22 £4310

<u>Total</u>	<u>£15,136</u>
<u>Offset for overpayment July 2019</u>	<u>£1,331</u>
<u>Past losses to 5 April 2022</u>	<u>£13,805</u>

A further calculation will be required for the final hearing

The calculation and future losses are based on the following

20 July 2019 to 31 January 2022

- Dr Mann would have secured salary of £9,000 per session for four sessions per week from 20 July 2019
- Locum earnings are to be included in the calculation of losses
- Locum work would have been negotiated to be £80 per hour with no triage premium from 20 July 2019, over sessions lasting four hours.
- She would have worked some 26 four-hour sessions per annum on that basis
- Locum earnings would have been £8320 per annum, before expenses or tax/national insurance ("NI").
- Self-employed earnings would be based on expenses at 9.69%
- Self-employed earnings would be pensionable.

1 February 2022 to 31 December 2024

- Dr Mann would have secured salary of £9,400 per session for five sessions per week from 1 February 2022.
- She would have earned £4,160 in locum fees, before expenses or tax/NI.
- Self-employed earnings would be based on expenses at 9.69%.
- Self-employed earnings would be pensionable.

1 January 2025 to 31 December 2030

- Dr Mann had a 75% chance of securing a GP partnership role by 1 January 2025.
- She would not have undertaken locum work as a GP partner.
- She had a 25% chance of continuing as a salaried GP for a further five years.
- As a salaried GP, she would have had salary increases.
- As a salaried GP, her locum work would have continued as above, but her fees would by 2025 have been re-negotiated.
- Self-employed earnings would be pensionable.
- Expenses on self-employed earnings would be 9.69%.

From 1 January 2030

- By 1 January 2030 Dr Mann will again have achieved the status and associated remuneration levels that she had planned to achieve by January 2025.
- There will be continuing losses including to pension because of the set back to her career and the associated financial losses over the whole period.

The level of the ACAS uplift has not been considered in relation to the financial losses, because the overall level of the award requires to be taken into account in assessing the just and equitable sum.

Employment Judge Street
Date: 5 July 2023

Judgment sent to the Parties: 14 July 2023

For the Tribunal Office: