



EMPLOYMENT TRIBUNALS

Claimant: Mrs D DeSouza
Respondent: London Borough of Havering
Heard at: East London Hearing Centre (by video)
On: 12 May 2023
Before: Tribunal Judge Overton acting as an Employment Judge

Representation

Claimant: In person
Respondent: Mr Moher, Counsel

REMEDIES JUDGMENT

1. The Claimant does not seek engagement or reinstatement.
2. The Claimant is awarded the following:

Basic Award	6 weeks x 1.5 x £544	£4,896
Less contributory fault	25%	(£1,224)
		£3,672
Compensatory Award		
Loss of earnings	25.05.2021-21.11.2022 78 weeks x £526.61	£41,075.58
Loss of other employment benefits	£220 per annum/52 weeks x 78 weeks	£330
Loss of statutory rights		£300
Less mitigation - contribution-based Employment and Support Allowance		(£4,994.50)

Loss of employer pension contributions	£5,856.84 per annum	£8,785.26
Adjustments to Compensatory Award		
Failure by employer to follow statutory procedures	uplift by 10%	£4,549.63
Less contributory fault	reduced by 25%	(£12,511.49)
		£37,534.48
Statutory Cap - one year's annual salary		£35,496
Total	Basic Award (£3,672) + Capped Compensatory Award (£35,496)	£39,168

3. As Mrs DeSouza was in receipt of Jobseekers Allowance, the award is subject to recoupment. The 'prescribed period' is 25.05.2021 to 11.05.2023 (the period between the date of termination and the remedy hearing). The 'prescribed element' is the immediate loss of earnings element of the Compensatory Award: £41,075.58 + £330 = £41,405.58 less £4,994.50 (mitigation) = £36,411.08. This sum is reduced by 25% for contributory fault = £27,308.31. This sum is reduced by 5.43% to reflect the application of the statutory cap = **£25,825.37**. This is the prescribed element and will be held back by the respondent from the total award of £35,496.
4. The balance payable immediately to the claimant is **£9,670.63** plus the basic award of **£3,672**. The remaining £25,825.37 being payable if the DWP does not serve a recoupment notice or, if a recoupment notice is served by the DWP, the balance of the prescribed element will be payable minus the amount recouped.
5. It was not necessary to carry out a 'grossing-up' calculation to take account of the tax that will be paid under s.401 of Income Tax (Earnings and Pensions) Act 2003 as the statutory cap was already engaged and therefore grossing-up would have no effect on the amount payable to the claimant.
6. Mrs DeSouza's application for a preparation time order was refused.

**Tribunal Judge Overton acting as
an Employment Judge
Date: 23 June 2023**