



EMPLOYMENT TRIBUNALS

Claimant: Miss Bably Ony

Respondent: Makeup Specialist Ltd

Heard at: London Central (in public, video) **On:** 11th and 12th September 2023

Before: Employment Judge: A Isaacson
Members: Mr S Pearlman and Mr F Benson

Representation

Claimant: In person

Respondent: Ms SJ Wood, solicitor

JUDGMENT

1. Following an application to reconsider the judgment of EJ Glennie dated 7 September 2023 striking out the response, and after hearing representations from both parties, the judgment striking out the response was revoked.
2. The claimant's claim for notice pay succeeds. The claimant is entitled to one week's notice. The claimant was paid a gross annual salary of £28,000. The respondent is ordered to pay to the claimant one week's gross pay of **£538.46** (28,000 divided by 52) or pay to the claimant the net amount and pay any tax and NIC deducted directly to HMRC.
3. The claimant's claim for holiday pay succeeds. The claimant was entitled to be paid for 3 days accrued holiday entitlement. The claimant's daily rate of gross pay was £107.69. The respondent is ordered to pay to the claimant 3 days gross holiday pay **£323.07** or pay to the claimant the net amount and pay any tax and NIC deducted directly to HMRC. This has been calculated based on a holiday year commencing on 3 May 2022 until the date of dismissal 20 July 2022.
4. The claimant has withdrawn her claim for outstanding wages and that claim is dismissed.

5. The claimant's discrimination claim succeeds. The Tribunal finds that the claimant was dismissed because of her pregnancy or because of illness suffered by the claimant because of her pregnancy.
6. The Tribunal finds that the claimant was automatically unfairly dismissed because she was pregnant.
7. The Tribunal awards the claimant two weeks gross pay for failing to provide the claimant with a written statement of employment particulars. $£538.46 \times 2 = £1076.92$. The respondent is ordered to pay **£1076.92** to the claimant.

Remedy for discrimination and automatic unfair dismissal

8. The claimant is awarded a basic award equivalent to one week's gross pay of **£538.46** based on one year's continuous service and being 27 years old.
9. The claimant is awarded loss of earnings because of her discrimination calculated as follows:
 - a) Loss of earnings for 6 months July 2022 to 27 January 2023 $6 \times$ net monthly pay $£1894.97 = £11,369.82$.
 - b) Statutory Maternity Pay (SMP) calculated based on 6 weeks gross pay $£538.46 \times 90\% = £2907.68$.
 - c) Plus SMP 33 weeks based on a weekly rate of $£156.66$ pre 6 April 2023 and $£172.48$ for weeks from 6 April 2023 = $£5484.16$ – total SMP $£8391.84$.
 - d) Total $£19,761.66$
 - e) Less income received in the period $£237.38$ and notice pay $£538.46$.
 - f) Total loss of earnings $£18,985.82$.
10. A Tribunal should take into account benefits received when assessing how much compensation to award. The claimant received Universal Credit (UC) from August 2022 and continues to receive it. The UC is split into a standard allowance, housing and, after the baby was born, child support. The actual amount the claimant received into her account is set out in the screen shots from the UC website.
11. The Tribunal finds that the claimant would have been entitled to the full amount of UC, from when she would have been entitled to statutory maternity pay (SMP). Therefore, the Tribunal concludes that credit should only be given for the amount of UC received by the claimant into her bank account for the 6 months she has been awarded full pay, from 20 July 2022 to 27 January 2023. This does not include the amount paid directly to her landlord for rent. The total amount of UC received by the claimant for the 6 months period was $£1496$.
12. The recoupment provisions do not apply to compensation for loss of earnings in discrimination cases.
13. The total amount of compensation awarded to the claimant for loss of earnings because of discrimination are $£18,985.82 - £1496 =$ **£17,489.82**.
14. Plus 20% uplift for failure to follow ACAS code of practice of 20% of

£17489.82 = **£3497.96**.

15. Total loss of earnings = 17489.82 + 3497.96 = **£20,987.78**.

16. The Tribunal awards the claimant **£17,000** compensation for injury to feelings.

17. The total amount the respondent is ordered to pay to the claimant, before interest is calculated is:

- a) £538.46 notice pay
- b) £323.07 holiday pay
- c) £1076.92 award for failure to provide statement of employment particulars
- d) £538.46 basic award
- e) £20,987.78 compensation for discrimination
- f) £17,000 injury to feelings award

Total = **£40,464.69**

18. Injury to feelings award – The Tribunal awards the claimant **£17,000** compensation for injury to feelings. 8% interest is awarded on the injury to feelings award from the act of discrimination complained of (the dismissal on 20 July 2022) until the Tribunal's calculates the compensation.

19. Interest on the rests of the award for discrimination of **£20,987.78** is calculated at 8% from the mid-point of the date of the act of discrimination complained of (the dismissal on 20 July 2022) and the date the Tribunal calculates the award.

Employment Judge Isaacson
15 September 2023

JUDGMENT SENT TO THE PARTIES ON

.16/09/2023

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FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.