



EMPLOYMENT TRIBUNALS

Claimant Ms V Candiotti Vega
Represented by Ms C Elves of Counsel
Respondent Clearlake Cleaning Ltd
Represented by Ms E Mayhew-Hills, Consultant
Employment Judge Ms A Stewart (sitting alone)
Held at: London Central by CVP **on:** 27 April 2023

REMEDY JUDGEMENT

It is ordered that the Respondent pay to the Claimant the total sum of £11,226.61 pence, being an award for unfair dismissal of £8,981.29 pence under section 118 of the Employment Rights Act 1996 plus an uplift of £2,245.32 pence under the provisions of section 207A of TULR(C)A 1992.

Signed: Employment Judge A Stewart

Date 10 May 2023

Judgment sent to the parties on

25/09/2023

FOR THE TRIBUNAL OFFICE



EMPLOYMENT TRIBUNALS

Claimant Ms V Candiotti Vega

Respondent Clearlake Cleaning Ltd

REASONS

Introduction:

1 This Remedy Hearing follows on from a Full Merits Hearing held on 16 to 20 March 2023, at which the Tribunal found the Claimant to have been unfairly dismissed for having asserted a statutory right (**section 104(1)(b)**) and further and alternatively unfairly dismissed within the meaning of **section 98 of the Employment Rights Act 1996**. The **Judgment of the Tribunal, dated 21 March 2023**, also found that the Claimant had not contributed by her own conduct to her own dismissal.

2 The Claimant seeks her full net loss of earnings from the date of dismissal, 17 March 2022, until she started a new job on 1 August 2022, and thereafter, the shortfall in her net earnings from 1 August 2022 until today's Remedy hearing date. She also seeks loss of statutory rights and a 25% ACAS uplift for the Respondent's failure to carry out any disciplinary/dismissal procedures.

3 The Respondent contends that the Claimant cannot reasonably claim more than 12 weeks loss of earnings because with the very large number of cleaner vacancies always available in London, the fact that the Claimant did not get another job within that time demonstrates that she has failed to take all reasonable steps to mitigate her loss.

4 The factual findings set out in the full merits Judgment of the Tribunal form the basis of this remedy hearing. In addition, the Claimant gave evidence on oath today, both parties made oral submissions and the Tribunal had the benefit of the services of Mr A Hurtado, interpreter for the Claimant.

The Facts:

5 The parties agreed that the fairest way of arriving at the Claimant's gross and net weekly earnings was to use the average of the last 12 weeks actual earnings leading up to the date of dismissal because the Claimant had worked varied hours over the previous months and years and the payslips were often atypical, showing under payment followed by payment of amounts owing. The agreed gross weekly pay was therefore £478.00 and net £300.00.

6 The Claimant's date of birth is 19 July 1980. Accordingly, she became 41 years old 8 months before the date of dismissal and had 4 completed years of continuous service with the Respondent.

7 The Claimant told the Tribunal that after she was dismissed by the Respondent on 17 March 2022, she felt very shocked, upset and low in mood and confidence, crying a lot and she phoned her GP on the day of dismissal who promised to give her some medication and to call her to say when the prescription was ready. This call never came and the Claimant did not feel up to chasing it up. She continued to work at her other cleaning job, which she had had since 2015, until 15 May 2022, when she was dismissed from that job for incapacity due to her arthritis, although the Claimant resisted the dismissal strongly, saying that she was still capable of doing the duties of the job.

8 The Claimant stated today that the loss of this second job was "the straw that broke the camel's back and my mental symptoms started to worsen". She went to Spain to stay with her family on 8 June 2022, for support, and started to feel better, returning to London on 29 July 2022.

9 The Claimant stated that during this period after her dismissal by the Respondent, she looked for other work by asking around among her ex-colleagues and via the contacts of her partner Cesar. She did not use the internet or agencies to seek other jobs. She started a new job with lighter duties and at lower pay, on 1 August 2022. During September 2022 she tried a few possible jobs but was unable to accept any of them because of her arthritis. She needs light rather than heavy cleaning duties.

10 Eventually, in January 2023, the Claimant saw her GP and has started to take anti-depressant medication since that date. She still has not started a second job as at today's date.

The Figures:

11 The Basic Award – section 119(1)(b) and (2)(a) and (b) ERA 1996:

Reckoning backwards from the date of dismissal, the Claimant was only aged 41 for 8 months during the final year of employment, therefore, the number of years of employment in which the Claimant was not below the age of 22 = 4 years.

4 x £478.00 gross pay = **£1,912.00.**

12 Compensatory Award – section 123 ERA 1996: ‘the amount of the compensatory award shall be such sum as the Tribunal considers just and equitable in all the circumstances having regard to the loss sustained by complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer’.

For the period 17 March to 1 August 2022:

The Claimant seeks 19.5 weeks full loss at £300.00 net per week = £5,850.00

Plus pension contributions at the rate of £14.34 per week x 19.5 = £279.63

Total: £6,129.63 pence

For the period 1 August 2022 to the date of today’s hearing:

The Claimant seeks 38.5 weeks at a net shortfall in earnings of £115.00 per week = £4,427.50 plus pension contributions, pro rata, at the rate of £3.45 per week = £132.82.

Total: £4,560.32 pence

13 The Claimant also seeks **£500.00** for loss of her statutory rights.

Mitigation:

14 The Respondent must take the victim of its unlawful act as it finds them, known at common law as ‘the thin skull rule’. In the Claimant’s case, this includes a considerable English language handicap which severely limits her ability to undertake a wide variety of jobs, particularly public-facing roles. It also includes arthritis which limits her ability to undertake heavier cleaning tasks, which limits the range of cleaning vacancies for which she can apply.

15 The duty upon the Claimant is to take all reasonable (not heroic) steps to mitigate her loss by finding other paid work, in all the circumstances in which she finds herself, after having been unfairly dismissed.

16 All the circumstances in this case include her distress at having been dismissed and the manner of her dismissal, after what she regarded as loyal service throughout the covid lockdown, when the Respondent could find no-one else to cover. However, this distress did not prevent her from continuing with her other job, which she had held for 2 years longer than her job with the Respondent, until her arthritis caused her capacity dismissal from that other job. She stated herself that this second dismissal was ‘the straw that broke the camel’s back’ and caused a real downturn in her mental health state. Thus, it seems that the Claimant’s distress to the extent of needing to go to Spain for the care of her family was the result of both dismissals and not solely to be attributable to the Respondent. It may be said that each dismissal compounded the adverse effect of the other. Further, the Claimant did not begin treatment for depression until January 2023, some 10 months after her dismissal by the Respondent.

17 The Tribunal concluded that it was not reasonable for the Claimant to have sought other work only by way of personal contacts with ex colleagues and those of her partner Cesar. She is well able to use the internet and had the potential support of her partner, her trades union and the Latin American Women's Rights Service (LAWRS). It would have been reasonable to use the internet to search and also to register with some of the many cleaning agencies which exist online. There are a huge number of cleaning jobs constantly available in London. Even though the Claimant cannot do heavy duties, there must be a small proportion (although perhaps a significant number) of light duty jobs available among the many vacancies. The Claimant could reasonably have registered specifically with agencies and have flagged up light duties only and could also have followed up certain promising internet vacancies, as she did through personal contacts in September 2022, even if many turned out to be heavy rather than the promised light duties.

18 Had the Claimant taken these reasonable steps, even after her return to work in London on 1 August 2022, the Tribunal concluded that she would have found other work in full mitigation of her loss within 13 weeks. Therefore she is entitled to 13 x £115.00 plus £3.45 per week shortfall, **being £1,539.85 pence.**

19 Further, taking account of the adverse effect on the Claimant's mental health of the second dismissal, causing her to go to Spain for 6 weeks, as set out in paragraph 16 above, it is just and equitable to reduce the Claimant's loss attributable to the actions of the Respondent, within the provisions of **section 123 of the Employment Rights Act 1996**. Had she not been dismissed from the second job and therefore been less distressed and had she then taken all reasonable steps to mitigate, as outlined in paragraph 17 above, she may well have found work sooner. It is therefore in accordance with justice and equity to reduce the 19.5 weeks claimed to a notional 16 weeks, **being 16 x £314.34 = £5,029.44.**

20 **The Claimant is therefore entitled to £1,539.85 + £5,029.44 = £6,569.29 in compensatory award under section 123 ERA 1996. She is also entitled to £500.00 for loss of her statutory rights.**

21 Her total award, including the Basic award, is therefore: **£8,981.29**

The ACAS uplift:

22 In all of the respects set out in the Tribunal's merits Judgement, the Respondent, in dismissing the Claimant after 4 years service, showed a complete disregard for the ACAS code of practice, any norms of fair process, particularly when dealing with an employee who could not understand English, and even for its own purported policies and procedures, in that it included a warning which had expired 6 months before. This was entirely unreasonable. In these circumstances it is just and equitable to increase the above award by the maximum permitted percentage of 25% under **section 207A TULR(C)A 1992**. This amounts to: **£8,981.29 x 25% = £2,245.32 pence.**

23 The Claimant is therefore entitled to **a sum total of £11,226.61 pence.**