



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH
BEFORE: EMPLOYMENT JUDGE K ANDREWS
MEMBERS: Ms B Brown
Ms B Leverton

BETWEEN:

Ms J Simpson (deceased)

Claimant

and

Air Business Limited

Respondent

ON: 4 April 2023

Appearances:

For the Claimant: No attendance

For the Respondent: Miss H Williams

JUDGMENT ON REMEDY HEARING

The Judgment of the Tribunal is that:-

1. The respondent is ordered to pay forthwith compensation to the claimant's estate calculated as follows:

<u>Basic Award:</u>	£ 7,335.00	
Less 60% contribution	<u>£ (4,401.00)</u>	
		£ 2,934.00
<u>Compensatory Award:</u>		
Loss of earnings to 19 June 2018		
£532.63 x 32.9 weeks	£17,523.53	
Less notice pay	<u>£ (5,326.30)</u>	
	£ 12,197.23	
Plus loss of employer's pension contribution		
£2,317.92 pa x 32.9 weeks	£ 1,466.53	
Plus travel expenses	<u>£ 300.00</u>	

	£ 13,963.76
Less 60% contribution	<u>£ (8,378.26)</u>
	£5,585.50
Plus loss of statutory rights	<u>£ 500.00</u>
Total	£ 9,019.50

2. The Recoupment Regulations apply to this award and the following details are given as required by the Regulations.

(a)	Monetary award:	£9,019.50
(b)	Prescribed element	£5,585.50
(c)	Prescribed period:	1 November 2017 to 4 April 2023
(d)	Monetary award exceeds prescribed element by	£3,434.00

REASONS

- 1) In determining the question of compensation payable to the claimant's estate for her unfair dismissal, we have had regard to the claimant's schedule of loss that she filed prior to the liability hearing in 2019 as well as the respondent's counter schedule (as updated from time to time) and the claimant's brother's comments on that counter schedule. We have also received correspondence from Mr Simpson which we have taken into account and we thank him for his participation and assistance. We are also grateful to the respondent's Counsel for her open and constructive approach to the matters in dispute.
- 2) We have also taken time to double-check that there was no documents relevant to the issue of remedy in the original evidence and documents other than those brought to our attention in the remedy bundle.
- 3) Much of the factual background necessary to calculate the compensation in accordance with sections 118, 119, 122 & 123 of the Employment Rights Act 1996 was agreed between the respondent and Mr Simpson. In particular the respondent took no issue in respect of the claimant's efforts to mitigate her loss and her financial loss therefore falls to be calculated until she started her new job on 20 June 2018 (less the notice pay that she received during that period).
- 4) There was disagreement however in respect of three key matters and our findings on those issues are as follows. The calculation of the compensation set out above is based on these findings and the areas of agreements between the parties.
- 5) Correct net weekly pay: the amount paid by the claimant in respect of employee pension contributions does fall to be deducted from her net weekly pay as corresponding credit is given in respect of the employer's pension contributions. To do otherwise would give the claimant an unfair advantage.
- 6) In other respects the amount of net weekly pay was agreed (or at least Mr Simpson acknowledged that his copies of payslips matched the respondent's figures) and the period of loss was agreed.

- 7) Correct amount of notice pay: this also falls to be calculated by reference to the net weekly pay as described above. A copy of the claimant's payslip for December 2017 showing the actual notice pay received was provided during the course of the hearing..
- 8) Should the job seeker's allowance (JSA) received by the claimant be expressed gross or net: in fact this is irrelevant to our calculation (although Mr Simpson is right that JSA is potentially taxable) because JSA is not deducted from the compensation awarded but instead is dealt with by way of recoupment by the Department of Work and Pensions, hence the recoupment notice that appears above (and is further explained in the attached note).
- 9) Expenses: the principle is that expenses are recoverable if they were incurred by the claimant as a result of the dismissal and if there is evidence to support the amount claimed.
- 10) In the schedule of loss the claimant claimed £700 as costs of relocation from London to Liverpool. There was not unanimity in the panel as to whether such expenses fall within the principle described above but even if they do, there is no evidence in the documents and statements before us to support the sum claimed, or even a breakdown of it, and therefore it does not fall to be compensated.
- 11) The claimant had claimed £433.69 in her schedule for travel costs to the appeal hearing and job interviews. She had also prepared a detailed table setting out her efforts at mitigation which gave details of all her interviews and any costs incurred in attendance. Some of those costs were specific figures supported by receipts, some were figures paid in cash with no receipts and some were general statements without figures or receipts.
- 12) The respondent has accepted that the receipts provided amount to £195.10 and that is payable. We have calculated that in addition the specific but unreceipted figures in the schedule take that total to £236. We have rounded up that figure to £300 to reflect the additional undocumented cash expenses that we are satisfied the claimant incurred.

Employment Judge Andrews
04 April 2023

**ANNEX TO THE JUDGMENT
(MONETARY AWARDS)**

Recoupment of Jobseeker's Allowance and Income Support/Universal Credit

The following particulars are given pursuant to the Employment Protection (Recoupment of Jobseekers Allowance and Income Support) Regulations 1996, SI 1996 No 2349, Reg 4.

The Tribunal has awarded compensation to the claimant, but not all of it should be paid immediately. This is because the Secretary of State has the right to recover (recoup) any Jobseeker's Allowance or Income Support or Universal Credit paid to the claimant after dismissal. This will be done by way of a Recoupment Notice, which will be sent to the respondent usually within 21 days after the Tribunal's judgment was sent to the parties.

The Tribunal's judgment states: (a) the total monetary award made to the claimant; (b) an amount called the prescribed element, if any; (c) the dates of the period to which the prescribed element is attributable; and (d) the amount, if any, by which the monetary award exceeds the prescribed element. Only the prescribed element is affected by the Recoupment Notice and that part of the Tribunal's award should not be paid until the Recoupment Notice has been received.

The difference between the monetary award and the prescribed element is payable by the respondent to the claimant immediately.

When the Secretary of State sends the Recoupment Notice, the respondent must pay the amount specified in the Recoupment Notice to the Secretary of State. This amount can never be more than the prescribed element of any monetary award. If the amount is less than the prescribed element, the respondent must pay the balance to the claimant. If the Secretary of State informs the respondent that it is not intended to issue a Recoupment Notice, the respondent must immediately pay the whole of the prescribed element to the claimant.

The claimant will receive a copy of the Recoupment Notice from the Secretary of State. If the claimant disputes the amount in the Recoupment Notice, the claimant must inform the Secretary of State in writing within 21 days. The Tribunal has no power to resolve such disputes, which must be resolved directly between the claimant and the Secretary of State.