



# THE EMPLOYMENT TRIBUNAL

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**SITTING:** at London South (by CVP)

**BEFORE:** Employment Judge Tueje

**BETWEEN:**

**ELENA BOLOTINA**

**Claimant**

**-and-**

**FRIENDSHIP SOCIETY LIMITED**

**Respondent**

**ON:** 22<sup>nd</sup> November 2023

**Appearances:**

For the Claimant: Mr Giuseppe Tomaselli (lay representative)

For the Respondent: No attendance

## **JUDGMENT**

1. Ms Bolotina is awarded compensation of £56,202.00, calculated as follows:
2. Basic award for automatically unfair dismissal agreed at £474.00, being one week's net pay.
3. Compensatory for automatically unfair dismissal award:
  - 3.1 Past loss for loss of earnings, I assess at the capped figure of £31,200.00 gross.
  - 3.2 Loss of statutory rights agreed at £500.00.
4. Holiday pay for 4 days' leave accrued but not taken, I assess at £480.00 gross.
5. The Respondent is ordered to pay the Claimant an additional uplift assessed at 10% in respect of the awards at paragraphs 3.1 and 4 above,

for its unreasonable failure to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015. The amount of the uplift is £3,168.00.

6. Contrary to Part II of the Employment Rights Act 1996, the Respondent made unauthorised deductions from Ms Bolotina's monthly pay from 14<sup>th</sup> December 2018 to 1<sup>st</sup> December 2019. Accordingly, the Respondent is to pay the agreed sum of £16,643.00 gross representing the deductions made throughout this period.
7. Contrary to Part II of the Employment Rights Act 1996, the Respondent made unlawful deductions from Ms Bolotina's net salary paid in January 2019, which consisted of the following:
  - 7.1 Certificate of Sponsorship - £149.00
  - 7.2 Immigration Skills Charge - £1,092.00
  - 7.3 Application fee for national insurance number - £96.00

Accordingly, the Respondent is ordered to Ms Bolotina £1,337.00

8. The Respondent failed in its duty to provide Ms Bolotina with a written statement of the main terms of employment pursuant to section 1 Employment Rights Act 1996. Under section 38 of the Employment Act 2002 the above award is increased, and the Respondent is ordered to pay Ms Bolotina £2,400.00 being four weeks' gross pay.
9. In light of the basic award at paragraph 2 above, no compensation was awarded for the breach of contract claim.
10. Ms Bolotina's claim for the cost of her visa application and Immigration Health Surcharge is dismissed following withdrawal.
11. Ms Bolotina's claim for misuse of image and injury to feelings was struck out for want of jurisdiction.

## **REASONS**

### **Rule 47**

12. At the final hearing on 23<sup>rd</sup> and 24<sup>th</sup> August 2023, I announced Ms Bolotina's claims for automatically unfair dismissal, breach of contract, and unauthorised deductions from pay were well-founded and succeeded. The reasons were given at the hearing and in a written judgment with reasons dated 20<sup>th</sup> September 2023.
13. At the hearing on 24<sup>th</sup> August 2023, the matter was listed for a remedy hearing on 22<sup>nd</sup> November 2023; all parties were present and confirmed they were available.

14. Further to a case management order made dated 20<sup>th</sup> September 2023, Ms Galina Clark prepared a witness statement on behalf of the Respondent, dealing with compensation. In particular, it stated Ms Bolotina had failed to mitigate her loss of earnings, and Ms Clark provided various 2023 advertisements for gymnastics coaches. Ms Bolotina provided a witness statement and exhibited documents showing she made enquiries in December 2019 regarding alternative job opportunities. Ms Bolotina's statement continues, she was unable to find a new job before clubs closed when the country went into lockdown in 2020. And after lockdown, clubs were reluctant to take on the financial commitment of the visa requirements.
15. Following the judgement announced at the hearing on 24<sup>th</sup> August 2023, and ahead of the remedy hearing on 22<sup>nd</sup> November 2023, the Respondent prepared a counter schedule of loss agreeing some items on Ms Bolotina's schedule of loss.
16. In an e-mail sent on 21<sup>st</sup> November 2023, the Respondent's former solicitor wrote:

*Dear Sir/Madam*

*We write as the Respondent representatives to inform you that we are no longer instructed in this matter. We will not be attending the remedy hearing due to take place by CVP tomorrow 22/11/22.*

*The SFP Group Ensign House, Admirals Way, London, E14 9XQ are acting as liquidators for the company. This has been confirmed by Yanish Gopee, overseeing the liquidation, and the Claimant.*

*Any further correspondence or details of award should be referred to the SFP Group.*

17. At the hearing on 22<sup>nd</sup> November 2023 no one attended on behalf of the Respondent. Contrary to the Respondent's solicitor's e-mail, the Claimant could not confirm any information regarding the liquidation. It seems this may have been an error in the e-mail, and the penultimate sentence should have read: This has been confirmed by Yanish Gopee, overseeing the liquidation, and the *Respondent*.
18. In light of the Respondent's non-attendance, the Tribunal service made enquiries, including of its former solicitor and Mr Gopee. The latter confirmed the Respondent had instructed his firm regarding voluntary liquidation, but as at that date, the process had not yet been initiated.
19. I noted the Respondent attended the hearing on 24<sup>th</sup> August 2023, when the date for the remedy hearing was set. I did not consider the prospective voluntary liquidation affected the remedy hearing proceeding in the Respondent's absence.

### **Remedy**

20. As stated, the parties agreed some items on Ms Bolotina's schedule of loss.

The agreed items are dealt with at paragraphs 2, 3.2, and 6 above.

21. Paragraphs 22 to 25.4 below set out the reasons for the awards made where no agreement was reached, which relates to the awards at paragraphs 3.1, 4, 5, 7 and 8 above.

22. Compensatory award: past loss of earnings

22.1 Ms Bolotina claimed £51,350 representing 25 months net loss of earnings, which was the period she was out of work from December 2019 to January 2022. The Respondent argued Ms Bolotina could have found alternative employment within 4 weeks if she had mitigated her loss. Therefore, it states, compensation should be limited to four weeks' net weekly pay, which is £1,941.44.

22.2 The Respondent bears the burden of proving Ms Bolotina failed to mitigate her loss. There was no live evidence from the Respondent, and its supporting evidence were advertisements for gymnastics coaches in 2023.

22.3 I found that Ms Bolotina sought alternative employment in December 2019, which was immediately after she was dismissed. I also accept that clubs would have been closed over Christmas (noting the Respondent closed during the festive period). I also accepted Ms Bolotina's evidence that in early 2020 she had little opportunity to secure alternative employment before the country went into lockdown, during which period, clubs were closed. I also accepted Ms Bolotina's evidence that after lockdown, she found it difficult to find a club that would employ her, bearing in mind the additional investment required to meet her visa requirements.

22.4 I did not find the Respondent's evidence relating to 2023 job advertisements for gymnastics coaches helpful to assess whether Ms Bolotina mitigated her loss when searching for work in 2020 during the Pandemic.

22.5 Taking all of the above factors into account, I concluded Ms Bolotina used her best endeavours to try to secure alternative employment, and the Respondent has not discharged the burden of proving she failed to mitigate her loss.

23. Holiday pay

23.1 Ms Bolotina bore the burden of proving she had not been paid for annual leave accrued but not taken prior to her dismissal. She claimed she was owed for 4 days annual leave.

23.2 The Respondent's counter schedule dealt with this point as follows:

*"The Claimant asserts 4 days holiday pay is owed*

*The Respondent submits all holiday pay has been paid and none is owed.”*

- 23.3 I found Ms Bolotina’s evidence regarding holiday pay was credible. She claimed a relatively modest amount of her annual leave entitlement, which was consistent with someone presenting an accurate claim rather than an embellished claim. The Respondent did not provide any evidence of its records as to what holiday Ms Bolotina had actually taken. The Respondent’s challenge amounted to a bare denial, without providing direct evidence or documentary evidence to support it. Therefore, I was satisfied with Ms Bolotina’s evidence that she was owed 4 days holiday pay.

24. ACAS Code of Practice 1: Disciplinary and Grievance Procedures (2015)

- 24.1 Paragraph 2 of the Code states disciplinary procedures should be in writing, and employees should know where the procedure can be found. Paragraphs 9 to 12 deal with informing the employee of the allegation. Paragraphs 13 to 17 deal with the appropriate steps to take as part of a disciplinary procedure. Paragraph 24 of the Code states disciplinary procedures should provide examples of the conduct that could amount to gross misconduct. The title to paragraphs 26 to 29 of the Code states a right to appeal against a decision should be afforded to employees, and those paragraphs provide guidance on the appeal process.
- 24.2 Ms Bolotina’s unchallenged evidence was that she never received a copy of the disciplinary policy, despite requesting a copy on 1<sup>st</sup> December 2019. Accordingly, Ms Bolotina had no prior notice of what conduct the Respondent may consider amounts to gross misconduct. Furthermore, the 1<sup>st</sup> December 2019 gave no reason for her dismissal. Amongst the reasons subsequently given for her dismissal during these proceedings was that she allegedly criticised the Respondent and other employees in the presence of parents. Ms Bolotina was summarily dismissed without any prior information regarding this allegation, nor was she given an opportunity to provide an account of what happened. The steps at paragraphs 13 to 17 of the Code were not taken. Finally, contrary to paragraphs 26 to 29 of the Code, Ms Bolotina was not informed whether there was any right of appeal, and no appeal was conducted.
- 24.3 The Respondent has not provided any evidence explaining the reason it failed to comply with the ACAS Code. Therefore, without any explanation justifying the Respondent’s failure, I find it unreasonably failed to comply with the Code.
- 24.4 Accordingly, in all the circumstances, it would be just and equitable to award an uplift in light of the Respondent’s

unreasonable failure to comply with the ACAS Code.

24.5 I assess the appropriate uplift to be 10% in accordance with the amount Ms Bolotina claims.

25 January 2019 deductions

25.1 This relates to the finding I made at the hearing on 24<sup>th</sup> August 2023 after hearing oral evidence from both parties. My reasons for this decision are dealt with at paragraphs 112 of the written judgment dated 20<sup>th</sup> September 2023.

26 Statement of main terms

26.1 At the hearing on 24<sup>th</sup> August 2023 I found that the Claimant had an oral contract of employment which began on 14<sup>th</sup> December 2018 by which the Respondent agreed to pay an annual gross salary on £31,200.00.

26.2 Ms Bolotina was given a document supposedly setting out the terms of her employment although the date this was given to her was disputed. Ms Bolotina refused to sign this document because her stated salary was incorrect, and I find her salary was incorrectly stated in that document.

26.3 Accordingly, I find the Respondent failed to comply with section 1 of the Employment Rights Act 1996.

26.4 I have not seen any evidence of exceptional circumstances that would justify me refusing to increase the Claimant's award. Therefore, I make an award under section 38 of the Employment Act 2002.

26.5 I consider it is just and equitable to award four weeks' pay. The Respondent initially failed to provide a written statement regarding any of the main terms of Ms Bolotina's employment. When it purportedly provided a written statement of terms, the document was inaccurate in at least one important respect, namely regarding her pay. I take into account that this was not a case where the Respondent merely failed to provide a written statement, but where it provided an inaccurate statement of terms, and relied on that inaccurate statement to try to resist Ms Bolotina's claim for the pay she was contractually entitled to. Therefore, in my judgment, it's appropriate to make the maximum award.

Employment Judge Tueje

Date: 18<sup>th</sup> December 2023