CASE NUMBER: 1402246/2022

EMPLOYMENT TRIBUNALS

Claimant: Ms L A Crabtree

Respondent: Marc Bandemer

Heard at: Southampton **On:** 16 and 17 January 2024

Before: Employment Judge Dawson, Mr English, Mr Knight

Appearances
For the claimant: Mr Franklin, counsel
For the respondent: Mr van Coller, legal representative

JUDGMENT

1. Of its own motion the tribunal reconsiders its judgment dated 1 September 2023.

2. Upon reconsideration, the judgment is varied so that the claimant's claim of unauthorised deductions from wages for the difference between the sums of £11550 per month and £6625 per month from 3rd February 2022 to 23 June 2022 succeeds. The claim is quantified below.

3. The respondent is ordered to pay to the claimant the sum of £20,000 for injury to feelings

4. The respondent is ordered to pay to the claimant the sum of £3439.55 in respect of interest.

5. The respondent is ordered to pay the claimant the sum of £4306.25 in respect of unauthorised deductions from wages for employee pension contributions.

6. The respondent is ordered to pay the claimant the sum of £22958.31 in respect of unauthorised deductions from wages for the period from 3rd February 2022 until 23 June 2022.

7. The respondent is ordered to pay the claimant the sum of £34649.94 in respect of breach of contract.

8. The respondent is ordered to pay the claimant the sum of £8529.28 in respect of outstanding holiday pay.

9. The respondent is ordered to pay the claimant the sum of £5330.76 pursuant to s38 Employment Act 2002.

REASONS

1. This is the remedy decision in following a liability judgment dated 1 September 2023.

The Hearing

2. Prior to the hearing commencing, there were a number of email exchanges about whether the case would be heard remotely and whether there would be an adjournment. In the end, matters were resolved with Mr Van Coller attending remotely from South Africa to represent Mr Bandemer and Mr Bandemer being physically present at the hearing on 16th January 2024. In those circumstances Mr Van Coller did not proceed with an application to adjourn and the hearing proceeded.

3. Mr Bandemer was unable to attend before 10:30 a.m. on 17 January 2024, due to a medical procedure. The tribunal agreed to start at that time. On 16 January 2024, Mr Bandemer invited the tribunal to carry on in his absence if he could not attend by 10:30 on 17 January 2024. Mr Bandemer had not attended (either in person or remotely) by 10:30 on 17 January 2024 and Mr Van Coller confirmed that he was happy for us to continue with the hearing in the absence of Mr Bandemer on the basis that he was representing his interests. In those circumstances, we agreed to do so.

4. For the purposes of this hearing we have been provided with:

    a. A remedy bundle of some 114 pages including the Schedule of Loss.

    b. A witness statement from the claimant running to 9 pages which she confirmed on oath and was crossed examined on.

    c. Written submissions from both the claimant's counsel and from Mr Van Coller for which we are grateful and which we have considered.

5. The only evidence which we heard was that of Ms Crabtree, the respondent called no evidence and we have heard submissions from both sides.

Overview of the Issues

6. The claimant's claim for remedy was presented by reference to the schedule of loss which appears at pages 113 and 114 of the bundle. In brief summary she claimed;

   a. an award of injury to feelings

   b. damages for personal injury

   c. interest on those sums

   d. compensation for unauthorised deduction from wages in respect of the employee's pension contributions that were deducted from her pay but not paid to a pension fund,

   e. compensation for unauthorised deduction of wages in respect of the employer pension contributions which the respondent did not make,

   f. a bonus of 1.5 months' wages (but as we will explain in due course the claimant sought to amend that to a further claim of deduction from wages)

   g. a sum of £28,484 in respect of wages which were not paid after the claimant was promoted,

   h. 3 months' notice pay,

   i. 16 days' holiday pay,

   j. 4 weeks' pay because she was not provided with a written statement of changes to her contract

   A claim for a loss of statutory rights was withdrawn because the claimant is not bringing a claim of unfair dismissal.

Findings of Fact and Conclusions

7. In an attempt to make this judgment more accessible will set out our findings of fact, the law we have applied and our conclusions in respect of each head of claim in turn. We will address the claims in the order in which they appear in that schedule.

Injury to Feelings & Personal Injury

8. The first question for us is how much should be awarded in relation to injury to feelings.

The Law

9. In his submissions Mr Franklin drew our attention the case of *Prison Service v Johnson* [1997] IRLR 162 which provides that:

a. Awards are compensatory and should be just to both parties. They should compensate fully without punishing the discriminator.

b. Awards should not be too low, as that would diminish respect for the policy of the anti-discrimination legislation. Society has condemned discrimination and awards must ensure that it is seen to be wrong. On the other hand, awards should be restrained, as excessive awards could be seen as the way to untaxed riches.

c. Awards should bear some broader general similarity to the range of awards in personal injury cases – not to any particular type of personal injury but the whole range of such awards.

d. Tribunals should take into account the value in everyday life of the sum they have in mind, by reference to purchasing power or by reference to earnings.

e. Tribunals should bear in mind the need for public respect for the level of awards made.

10. Having noted that guidance, in the course of our deliberations we have considered a number of different types of award for personal injury under the Judicial College guidelines, including awards for psychiatric injury, awards for whiplash injuries and awards for facial scarring. Obviously there can be no direct correlation between the quoted categories and what has happened to the claimant but, given that we are required to consider the whole range of personal injury awards, we felt it helpful to look at those by way of background information.

11. We have considered the bands of compensation set down by the Court of Appeal in *Vento v Chief Constable West Yorkshire* [2003] IRLR 102 and the updated awards set down in the 5th addendum to *"Presidential Guidance: Employment Tribunal Awards for injury to Feelings and Psychiatric Injury Following De Souza v Vinci"*.

12. Having looked at *Vento* we note that the top band should be for the most serious cases such as where there has been a lengthy campaign of discriminatory harassment on the grounds of sex or race. The middle band is for those cases which do not merit an award in the highest band and the lower band is for acts of isolated or one off occurrence. The updated value of the bands is an upper band of £29,600 - £49,300, a middle band of £9,900 - £29,600 and a lower band of £990 - £9,900.

Analysis

13. In considering the level of injury to feelings award, we bear in mind that our job is to assess the level of injury to this claimant's feelings. It is not our job to penalise the respondent nor is it our job, however, to down-play what has happened to the claimant. We must look at this claimant and the evidence in relation to this claimant and decide to what level her feelings have been injured.

14. We take account of all of the findings which we made in our liability judgment and, generally, it is unhelpful to attempt pick out particular parts of those findings.

They must be read as a whole. Overall the findings were that there was a period of harassment when the claimant was asking Mr Bandemer to stop and he was not respecting her request.

15. Within that period there were times when the claimant was receiving gifts from the respondent, both for her and for her children, where she was happy to receive those gifts and in circumstances where her feelings were not injured. To the extent that Mr Franklin suggested that if we consider those things (the willing acceptance of gifts) we are in some way "victim blaming", we disagree with him. We are not saying that the claimant brought what happened upon herself or that the harassment which we have found to be proved was acceptable. She did not bring it on herself and it was not acceptable, but we have to consider to what extent her feelings were injured and in looking at that we look at all the evidence including the fact that she was happy to receive gifts for some of the period of the harassment.

16. We consider that the fact that the claimant was demoted when she resisted the advances of the respondent would have caused particular injury to feelings and is an aggravating feature in this case.

17. Before setting out precisely where we find the claimant's injury to feeling lies, we must address the question of the claim for personal injury.

18. The claimant submits that as a result of the harassment, she has suffered personal injury including anxiety and depression, insomnia and flashbacks and possibly a bad back caused by mental health conditions.

19. The claimant has provided some medical records; in the original bundle she provided a snapshot of her medical records going back to July 2022 and a further set of medical evidence has been provided to us in addition to the medical evidence in the bundle of documents for use at the remedy hearing. The earliest of the entries is 15 July 2022 which describes the claimant as having anxiety disorder but says that the nature of that entry is a "review". It is not clear to us what the review related to. On the basis of the medical records that we have seen, we have no way of identifying whether the claimant had a pre-existing condition (given the reference to a *review*) or when the anxiety and depression started or what that condition was caused by.

20. In the original liability bundle there is a letter from the claimant's GP dated 25 October 2022. That letter referred to a consultation on 15 July 2022 and recorded what the GP had been told by the claimant including the statement; "she stated that the stress of this episode was compounded by the fact that her employer had been in contact with her abusive ex partner. As a result of this consultation she agreed to take Citalopram antidepressants on a daily basis". That is the nearest we have to medical report giving us any details of what has caused the claimant's current medical conditions. We do not doubt what is set out in the medical evidence which we have, which is that the claimant now has low back pain with neurological symptoms in her lower limbs and that she has ongoing mental health struggles variously described as stress related problems and an anxiety disorder. However, what we do not have in the evidence before us, is any clear medical evidence that the ongoing conditions were caused by

the harassment which she suffered. We do not even have any evidence that the ongoing conditions have been exacerbated by the harassment or, if they have been exacerbated, to what extent they have been exacerbated and to what extent they will continue in the future.

21. We are not, therefore, satisfied on the basis of the evidence that we have that the particular medical conditions which the claimant has were caused or contributed to or exacerbated by the harassment which she suffered.

22. In those circumstances we are not willing to make a separate award for personal injury.

23. However, we do accept that when awarding a figure for injury to feelings, we can take account of the claimant's medical conditions and the fact that it is likely that the injury to feelings will be greater as a result of those conditions. In those circumstances we have increased the award which we would have otherwise have given for injury to feelings to reflect the ongoing medical conditions which the claimant has, because is likely that they were impacted by the harassment.

Conclusion on Injury to Feelings & Personal Injury

24. Taking all of those matters into account we consider that this case falls within the middle band of Vento between £9,900 - £29,600. We reach that conclusion having regard to the length of the harassment, the type of harassment the claimant suffered and that part of the harassment was that the claimant suffered a demotion when she said that she was not happy to go along with the respondent's advances.

25. Taking all of those matters into account, we consider the appropriate award for injury to feeling is £20,000.

Interest

26. The next sum claimed by the claimant is interest on that award.

27. We agree that the claimant is entitled to interest. The earliest act of discrimination that we found proved was on 17 July 2021 when the claimant was pulled onto the knee of the respondent. The final act was the demotion on 31 May 2022.

28. The claim for interest runs from the mid-point of those two acts (which is 17 December 2021) and continues to today's date. That is 761 days ,at the rate of 8% per annum the amount of interest we award is £3,439.55.

Deduction from Wages Claims

Employee Pension Contributions

29. The first claim is in respect of unauthorised deduction of employee's pension contributions.

30. In our judgment on liability that claim was found proved. It was not disputed that there was a deduction of £331.25 per month in this respect.

31. In his submissions, counsel for the claimant submitted this was a claim for 13 months; being 13 months during which the claimant was paid wages when the sum of £331.25 was deducted each month but not paid into a pension fund.

32. No challenge was made in relation to the amounts claimed and therefore the award is for 13 months at £331.25. The total amount awarded in respect of employee pension contributions is £4,306.25.

Employer Pension Contributions

33. We then come to the claim in respect of employer's pension contributions.

34. The initial difficulty with this claim is that the claimant was not awarded judgment on liability in respect of this head of loss.

Application for Reconsideration of our Judgment on Liability

35. In the list of issues the only wages claim made in relation to pension contributions was in respect of employee pension contributions. The tribunal understood, and set out in its judgment on liability, that there was no claim in respect of employer pension contributions, although we did also make reference in passing to the case of *Somerset County Council v Chambers* which suggested that unpaid employer pension contributions are not recoverable as deductions from wages in any event.

36. Mr Franklin, for the claimant, says that we should, of our own volition, reconsider that part of our judgment and award sums for the employer's pension contribution. He says we should do that because the claim form claims sums in respect of employer pension contributions and therefore the claimant is entitled to a determination in that respect.

37. In terms of the procedural history, after the claimant presented her claim form there was a case management hearing. The case management hearing was conducted by Employment Judge Rayner on 17 November 2022. It is apparent from the minute of that case management hearing that Employment Judge Rayner went through the claims which were being presented with great care and created a list of issues. That list of issues at, paragraph 7.1, asks "did the respondent make unauthorised deductions from the claimant's wages in respect of employee pension contributions, PAYE tax contributions, and National Insurance contributions and if so how much was deducted". It is silent on the question of employer pension contributions

38. The Case Management Order made clear that unless any person wrote to the tribunal by 7 January 2023, the list of issues would be seen as definitive. No one contacted the tribunal. This tribunal went through the list of issues with the claimant's counsel and the respondent at the start of the hearing as is clear from the terms of the judgment on liability. At no point was it suggested that the list of issues was erroneous because it did not include employer pension contributions.

39. Undeterred by that, Mr Franklin says now, at the remedy hearing, that we should put aside the list of issues and reconsider our findings of fact to look at whether there was a deduction of employer pension contributions.

Case Law on Reconsideration and Lists of Issues

40. Rule 70 of the Employment Tribunal Rules of Procedure, provides as follows.

> *70. A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again*

41. In approaching the application for reconsideration we have considered the cases of *Flint v Eastern Electricity Board* [1975] ICR 395 and *Outasight VB v Brown* [2015] ICR D11. The principles set out in those judgments are helpfully summarised in the more recent case of *Ministry of Justice v Burton* [2016] ICR 1128, where at paragraph 21 the Court of Appeal stated "An employment tribunal has a power to review a decision "where it is necessary in the interests of justice": see rule 70 of the Employment Tribunals Rules of Procedure 2013. This was one of the grounds on which a review could be permitted in the earlier incarnation of the rules. However, as Underhill J pointed out in *Newcastle upon Tyne City Council v Marsden* [2010] ICR 743, para 17 the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (*Flint v Eastern Electricity Board* [1975] ICR 395) which militates against the discretion being exercised too readily; and in *Lindsay v Ironsides Ray & Vials* [1994] ICR 384 Mummery J held that the failure of a party's representative to draw attention to a particular argument will not generally justify granting a review. In my judgment, these principles are particularly relevant here"

42. In *Petrica v Central London Community NHS Trust* UKEAT/0059/20/AT Mr Justice Choudhury, President, said at paragraphs 58 – 59. "Turning then to the full hearing the tribunal there was faced with what appeared to be an agreed list of issues. This is not a case of a list of issues being thrust upon a litigant at a late stage where there might be some undue pressure to accept without having the opportunity to give the matter proper thought. In fact the position was very far removed from that sort of scenario. The list of issues was first submitted by the respondent as far back as May 2018 almost a year before the hearing. The claimant had had an opportunity to add to the list of issues and did so. Furthermore, I am told that there was some discussion about the list of issues at the outset of the hearing as two or three items had not been agreed by the respondent. It was only after the discussion that the list of issues was treated as

agreed. It seems to me that it would impose a near impossible burden on a tribunal at the full hearing to require it in those circumstances to disregard the earlier decisions of the Employment Tribunal and to go back to the claim form".

Conclusion on Employer Contributions

43. We think *Petrica* applies here, the tribunal was entitled to rely upon the list of issues. To reopen list of issues now would contravene the principle of finality of litigation. We decline to reconsider our earlier decision in that respect. We further observe that given that Mr Franklin did not suggest that the *Somerset County Council* case was wrong or was not binding on us, it appears likely that that claim would have failed in any event.

44. In those circumstances no award is made in respect of employer's pension contribution,

1.5 Month's Bonus

45. The next claim is for a bonus of 1.5 months. A claim in the sum of £3,998.07 is made.

46. Mr Franklin sought to amend that claim so that it was not a claim in respect of a bonus but in respect of regular unpaid wages and the sums claimed were not £3,998.07 but rather £17,324.97.

47. In making that application Mr Franklin relied upon the fact that there was a statement in box 9.2 of the claim form stating "unpaid salary: 1/4/21 – 9/6/22 salary received £79,500 pa 14 months plus period 13 payments received now claiming additional 1 month 9 days salary £8,612.50". There, he says, is a claim for 1 month's salary. In addition, he says that the claim form only refers to sums due to 9 June 2022 but the tribunal found that the effective date of termination was 23 June 2022. There, he says, is the other half month. Thus, the claimant is entitled to $1^{1/2}$ months' pay amounting to £17,324.97.

Application for Reconsideration of the Judgment on Liability

48. Again, the initial difficulty for Mr Franklin, is that the judgment on liability did not make a judgment in this respect. He, therefore, invites us to reconsider our liability judgment of our own motion

49. In this respect Mr Franklin confirmed the following:

    a. Firstly, there was no claim in the list of issues for those sums.

    b. Secondly, there was no evidence in the claimant's witness statement either at the liability hearing or at this hearing that justifies the figure claimed or indeed any figure.

50. Mr Franklin says that the claim is in the claim form and, also, in the remedy bundle at pages 87 – 89 is a list of payments received into the claimant's HSBC bank, from which we should conclude that the claim is a good one.

Conclusions on Claim in respect of 1.5 Months' bonus

51. There are a number of difficulties with that argument.

    a. Firstly, as we have already said that a tribunal is entitled to rely upon the list of issues,

    b. Secondly, in any application for reconsideration we must take into account the principles of finality of litigation.

    c. Thirdly, if we were going to reconsider the decision, we would still have to decide the case on the basis of the evidence before the tribunal and the claimant has given no evidence of the alleged deduction of wages.

    d. Finally, and in any event, adding up the list of payments at pages 87 and 88 we find that there were 14 significant payments, not 13 as referred to in the claim form (as well as other smaller payments).

    e. Thus, it seems to us that even if we had considered this issue the claimant's claim would have been bound to fail. She simply gave no evidence on the point.

52. In those circumstances we decline to reconsider our judgment and no award is made in respect of the bonus claim of one and a half months.

Unauthorised Deduction of Wages for the Period following Promotion

53. The next claim is for wages in the amount of £28,484.

54. This is a claim for the difference in salary between the amount that the claimant should have been paid in her promoted role from February 2022 and the amount she was actually paid. It arises in this way:

    a. The claimant says that if one looks to her original contract of employment at p2 of the remedy bundle[1], paragraph 5 says that the claimant's starting salary was £6,625 per month. That is not disputed.

    b. Paragraph 7 says "should you remain with the company and the relationship is mutually beneficial within the scope of this agreement then the next promoted position would be Strategic Development Director"

    c. Paragraph 7.1 stated, in respect of the Strategic Development Director role "suggested package with a salary of £124,200 (£10,350 per month)".

    d. Paragraph 7.4 stated "monthly vehicle allowance of £1,200 with MOT and insurance contributions of 45%"

[1] the same contract was also in the original bundle

e. We, as a tribunal, found at paragraph 165 of our judgment on liability, that the claimant had been promoted to the role of Strategic Development Director from 3 February 2022.

f. The claimant says that the respondent agreed to pay her at the higher rate referred to in paragraph 7.1 and 7.4 of the original contract.

g. The claimant says that she was not paid at the higher rate and therefore there is a straightforward deduction of wages.

55. Again, our liability judgment did not deal with this point and we found that the only wages claim that was successful was in relation to the pension contribution in respect of employee deductions.

56. The reason for not dealing with this aspect of the claim in our liability judgment is set out at paragraph 348 of our Reasons where we stated

> Issue 7.2 of the list of issues refers to deductions from wages during particular periods. That point was not pursued by the claimant's counsel in submissions and is not dealt with in his skeleton argument. Beyond saying that payments were late on occasions, the claimant's witness statement does not appear to deal with this point. The schedule of loss which appears at page 579 of the bundle in respect of "Unlawful deductions from Wages" states "described as being PAYE , tax and National Insurance deductions and pension contributions". Thus it appears that the claim is limited to those sums and, in any event, we are not satisfied that any further sums are due to the claimant.

57. Having heard Mr Franklin's submissions and gone back and considered the various documents which were before us on the last occasion, we think that we misunderstood the claimant's position. The tribunal believed that the claimant was not pursuing a claim for the difference in salary between what she should have been paid as a Strategic Development Director and what she was being paid. We are satisfied, having looked again at all of those matters that in fact, although perhaps not forcefully, the claimant was pursuing that claim for the difference in wages. In particular we note;

a. at paragraph 63 of Mr Franklin's skeleton argument he says "likewise the claimant should be paid at the rate she was promised and understood to be her package in line with the purported contract",

b. in the claimant's witness statement at paragraph 77, she said "I also believe that I was entitled to wages from 1 February 2023 – 9 June 2023 to follow my promotion as confirmed by the first respondent",

c. the list of issues at paragraph 7.3 says "[were the wages paid to the claimant during the periods] … from 1 February 2022 following the claimant's promotion to Wealth Capital Limited Strategic Development Director less than the wages she should have been paid?"

58. It appears, therefore, that we lost sight of this issue and it was not determined by us, except in a brief obiter statement that we were not satisfied that sums were due to the claimant (but even that statement failed to take account of the content of the claimant's witness statement).

59. We accept therefore that this issue was not determined by us on the last occasion.

60. Again, Mr Franklin asks us to reconsider our decision in this respect.

Reconsideration

61. Rule 71 of the Employment Tribunals Rules of procedure says that a tribunal may either on its own initiative or on the application of a party.

62. In fact, an earlier application for reconsideration was made by the claimant in which she asked of the tribunal "to make determinations on the issues regarding the promotion from executive director to strategic development director as of February 1st 2022 as it is not clear in the judgment". Employment Judge Dawson dismissed that application because, at that stage, he still believed that the claimant was not pursuing a claim for the difference between the salary as a strategic development director and the amount the claimant was being paid.

63. We have reminded ourselves of the various principles of case law as set out above. In particular we note that a tribunal should only reconsider its decision in particular circumstances; reconsideration is not an opportunity for a party to have a second bite of the cherry and the principle of finality of litigation is important. However, it is important that a claimant who brings a claim should have a determination of the claims which she brings. The latter point was reinforced by the Employment Appeal Tribunal in the case of *AB v The Home Office*.

64. We are at the stage of a remedy hearing. The claim has not finally concluded.

65. Taking all of those matters into account we think that we should reconsider this point and we do so. We will make our findings primarily on the basis of the evidence which was before us on the last occasion since that is the evidence which we would have relied upon in forming our judgment on liability. When we come to consider question of quantification, we can also take into account the evidence which is before us for the remedy hearing.

Findings on This Point

66. As we have said, the tribunal found that the claimant was promoted. It was not disputed that the contract which we have quoted was given to the claimant when she started and it states that the package when the claimant becomes Strategic Development Director will be £10,350 per month plus vehicle allowance of £1,200 per month. It was not suggested to the claimant during the course of her cross-examination that she was not entitled to the sums referred to in her contract.

67. There is an email exchange dated 9 June 2022 which appears at pages 78 and 79 of the remedy bundle[2] where the claimant put to Mr Bandemer "I was promoted to Strategic Development Director as of 1 February and you told me my salary as per my contract would be payable once the revenue for the company was created and backdated." He replied "yes this is correct…"

68. We do not think reference to the salary being payable once the revenue for the company was created amounted to a condition precedent such that the claimant was not entitled to be paid until the revenue was created. We find that the claimant was entitled to payment at the rate she had been promised for as long as she was doing the Strategic Development Director. To the extent that Mr Bandemer said that he could not pay her then and would pay her once the revenue stream had been created, that was simply an attempt to delay payment. The payment was due and was payable; it was simply that Mr Bandemer did not have the money to pay her.

69. We find on the balance of probabilities that when the claimant was promoted in February 2022 she was promoted with the increase in salary set out in the contract at page 2 of the remedy bundle.

70. In those circumstances we find that the claimant was entitled to be paid her salary at the higher rate from 3 February to the point when her employment terminated on 23 June 2022.

71. Turning to the question of quantification, there is no doubt that that calculation in the Schedule of Loss is wrong to the extent that the claimant is said to have been earning £985 per day. The correct calculation, which we went through in argument with the parties is as follows:

    a. In the claimant's pre promoted job she was entitled to be paid £6,625 gross. After her promotion she was entitled to be paid, as set out in the schedule of loss, £11,550 per month.

    b. Based on a five day week, the day rate in the promoted job was £533.08. Under her previous earnings, the claimant was being paid £305.77 per day. Thus the loss is a sum of £227.31 per day (which is almost exactly the sum claimed in the schedule of loss) .

    c. The period for which the claimant was entitled to be paid the higher rate is 3 February – 23 June which we calculate to be 101 working days. 101 days at £227.31 is a figure of £22,958.31. That is the sum which is awarded in respect of the wages. It is awarded on a gross basis because we understand that it will be taxable in the hands of the claimant.

Breach of Contract- Notice Pay

72. We come then to the claim for breach of contract. Our finding at the liability stage was that the claimant was entitled to a notice period of three months. We think

[2] it also appears in the bundle for the liability hearing at page 552

that that figure will be taxable and therefore we work on the gross figure. 13 weeks at £2,665.38 is £34,649.94

73. In relation to notice pay the claimant is awarded the sum of £34,649.94.

Holiday Pay

74. In relation to holiday pay, it is not disputed that the claimant is entitled to 16 days' pay at a gross daily rate of £533.08 per day amounting to £8,529.28.

Written Particulars

75. The next claim is for "loss of s1 Written Particulars 4 weeks". The way in which this claim is put is as follows:

76. Under Section 38 of the Employment Act 2002, if a tribunal finds for a claimant and makes an award in their favour and at the time of the hearing the respondent had not complied with its obligations under section 1 or section 4 of the Employment Rights Act 1996, save in exceptional circumstances the tribunal must award the claimant 2 weeks' pay and may award the claimant 4 weeks' pay if it considers it just and equitable.

77. The claimant says, and it was not challenged in evidence, that when she was promoted she did not receive a statement setting out what her new rate of pay was or what her car allowance was.

78. Although it is undoubtedly the case that the claimant should have been given such a statement, it is also the case that in the contract she was given a year earlier (to which we have referred above) the claimant was told what sums she would be paid on promotion.

79. In those circumstances, whilst we do not think there are exceptional circumstances which warrant no award being made nor do we think this is a case where it is just and equitable to award 4 weeks' pay. The claimant did have something in writing which set out what her pay was. The breach alleged is only in relation to the failure to set out what the wages were and what the car allowance was and we conclude that the appropriate award is of 2 weeks' pay which on is £5,330.76.

80. Those are the sums which we award. Mr Franklin agrees that there is no need for any further grossing up calculation.

Employment Judge Dawson
Date 22 January 2024

Judgment sent to the Parties: 16 February 2024

FOR THE TRIBUNAL OFFICE

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https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/