

Case: 6002030/2023



# EMPLOYMENT TRIBUNALS

**Claimant:** Edith Edimo Joseph

**Respondent:** Limitless Healthcare Services Limited

## AT A REMEDY HEARING

**Heard at:** Leeds by CVP video conferencing    **On:** 22<sup>nd</sup> February 2024  
**Before:** Employment Judge Lancaster

### Representation

**Claimant:** Dr OTaiwo, lay representative

**Respondent:** Mr A Williams, Peninsula Business Services

**JUDGMENT** having been sent to the parties on 26<sup>th</sup> February 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided taken from the transcript of the decision delivered orally immediately upon the conclusion of the hearing:

## WRITTEN REASONS

1. The Claimant's witness statement dated 10<sup>th</sup> February 2024, so far as material, is accepted as unchallenged evidence, and closing submissions have also been made on her behalf by Dr Taiwo.
2. Mr Williams was invited to make representations as to the quantum of damages, being permitted to participate to this extent under rule 21 (3) of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, but had no instructions upon which to do so.
3. Firstly I am dealing with the remedy on the claim of automatically unfair dismissal as found by Employment Judge Wade.
4. There is of course no entitlement to a basic award because the claimant had not the required minimum 1 year period of employment. Also, of course, there would be no conventional award for loss of employment rights because she had not acquired them by that stage in any event.
5. I am, therefore, simply looking at the loss of earnings flowing from that unfair dismissal on 3 October of last year.

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6. The claimant was engaged on a yearly salary of £22,500 gross. By looking at the calculators on the internet that is equivalent to a net figure, after tax and national insurance, of £19,521 per annum. That equates to £375.40 net per week.
7. From 3 October to date is 19 weeks and two days – 19.4 weeks. That is a total loss to date of £7,282.76.
8. The recoupment provisions do not apply because the claimant has not been entitled to claim benefits.
9. I also award compensation for future loss of earnings for a further period of six months. That is in my view the appropriate time to reflect the uncertainties in this case. The claimant is still seeking to obtain alternative sponsorship and find work, and I trust she will be able to do that. If and when she does she ought then to be able to achieve a similar level of payment within a relatively short time. It also, however, reflects the contingency of her being given short term notice to leave the country if that attempt to secure sponsorship is unsuccessful. If that were to happen it would be a supervening event rendering her unable to work, which would mean that she had reached a “cut-off-point” beyond which no further compensation should be awarded. I take account in reaching that six months’ figure that will take us to just under a year since the end of employment. That is a reasonable period over which to award compensation, up to a time approximately halfway through the duration of the original engagement which was said to be for a period of three years guaranteed. That is a further net figure of £9,760, rounded down slightly.
10. So the total award for loss of net earnings to date and for a further six months is £17,042.76.
11. I now deal with a claim for injury to feelings in respect of the two decisions of Judge Wade that this was a failure to provide work that was discriminatory on grounds of both race and of sex.
12. I do not agree with the contention in the Schedule of Loss that this is a case that warrants an award of aggravated damages. There is nothing that is “high-handed, malicious, insulting or oppressive” in the manner in which there was a refusal on the part of the employer to provide work: it simply did not happen. Nor has the conduct of these proceedings, which have effectively not been defended, done anything to exacerbate the level of injury to feelings. I cannot and do not, of course punish the Respondent for the reprehensible behaviour in charging an apparently exorbitant sum to facilitate the Claimant’s visa application, as recorded in the preamble to Judge Wade’s decision on liability.
13. But I do reflect the fact that I must have regard to the circumstances so vividly outlined in the Claimant’s witness statement as to how she came to this country in accordance with that offer of employment. Given the charges that were enforced upon her. it is not at all unreasonable to suppose that that indeed led to a substantial degree of financial hardship and she was likely to be placed in a position of finding herself in debt, particularly if the respondent did not honour the contract by providing her with the promised work to allow her to earn an income to offset those sums which she had paid in getting to this country. And having come to this country in the expectation of immediately being offered paid employment, again I have regard to the passionately argued case that the Claimant felt humiliation and anguish for her family in the situation of extreme penury to which she was then exposed.

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14. All those matters in my view, although as I say I do not award aggravated damages as part of this claim, mean that I agree with the Claimant's contention that this award should be at the very top end of the middle band of Vento. It was a sustained refusal to offer work over a period of some 5 months, throughout which the level of distress increased, leading to ever more desperate measures on the part of the Claimant and her husband to ameliorate her and her children's financial hardship and lack of proper housing. That is a compensatory award for injury to feelings in the sum of £33,700.
15. The interest on that I award from the date when the contract should have commenced, with work having been offered from 30 April 2023. That is 299 days to date. As a proportion of the full year's interest at 8% of £2,696, that would be a further £2,208.50. I have set the date for awarding interest, not only because that is when the contract should have started, but it seems clear to me that having imposed upon the Claimant a requirement to pay a substantial fee to commence work there was no evident intention ever to honour that agreement, so the discrimination starts from day one.
16. So the total award for injury to feelings plus interest to date is £35,908.50.
17. I do not award any uplift for an alleged unreasonable failure to comply with the ACAS Code of Practice on grievances because the grievance was only in fact submitted on 3 October 2023, the same date the claimant was notified of her termination of employment, with the respondent having withdrawn its sponsorship. So as that was at the end of employment there was no opportunity properly to address those grievances, however valid they may have been, whilst the claimant actually remained in work. Within this factual matrix, the Claimant has, of course, already been compensated for automatically unfair dismissal by reason of her having made a protected qualifying disclosure.
18. In addition to the sums already awarded by Judge Wade I therefore award compensation for unfair dismissal, loss of earnings, of £17,042.76 and a further award of injury to feelings, with interest at the appropriate rate, of £35,908.50. That is a total further award of £52,951.26.

EMPLOYMENT JUDGE LANCASTER

DATE 12<sup>th</sup> March 2024

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