



EMPLOYMENT TRIBUNALS

Claimant: Mrs B Mhindurwa

Respondent: Lovingangels Care Limited

Before: Employment Judge Gumbiti-Zimuto

UPON APPLICATION made by letter dated **10 November 2023** to reconsider the judgment dated **27 October 2023** under rule 71 of the Employment Tribunals Rules of Procedure 2013

JUDGMENT

Upon reconsideration the judgment of the 27 October 2023 is varied as follows:

“The respondent is ordered to pay to the claimant the sum of £9,377.74.
Comprising of:

1. Unfair dismissal compensatory award of £7,225.74.
2. An award pursuant to section 38 Employment Act 2002 in the sum of £2152.”

REASONS

1. The parties have asked that I reconsider the judgment in this case by considering the parties submissions on the papers without the need for a hearing. In doing so I have read the claimant’s application of the 10 November 2023 and the respondent’s submissions of the 15 November 2023.
2. The claimant’s application for reconsideration is made on the basis that the remedy awarded ought to have reflected an element for pension but did not do so. The claimant states I made an error in that I *“omitted the pension contribution element which would have been a contractual entitlement for the same period. This would have been at a rate of £101.75 per month... this is an additional element of the award in the amount of £1221.10.”*
3. The respondent states that although pension contributions are mentioned in the claimant’s schedule of loss, no purported figure, including calculations, are set out for agreement, challenge or decision. The claimant did not provide any further oral evidence on this matter. The

respondent also goes on to state that the amount of the pension would not have been £101.75 a month but significantly less.

4. I have not given any figure representing pension in the calculation for compensatory award made in the judgment. Where there is pension loss arising from dismissal, a just and equitable award would include an element for pension loss.
5. Having reviewed my notes of hearing, the claimant's witness statement for the remedy hearing, the respondent's witness statement for the remedy hearing, my notes of the remedy hearing and having listened to the recording of my oral judgment I note that there was no specific mention of pension loss.
6. There was no specific challenge to the schedule of loss, which the claimant relied upon.
7. I am satisfied that the claimant would be entitled to make a claim for compensation representing her pension losses. The respondent could have challenged the schedule of loss upon which the claimant relies. I note that the respondent called evidence during the remedy hearing and had the opportunity to challenge the figures in the schedule of loss.
8. In the response to the reconsideration application the respondent points to the claimant's contract and states that the claimant's pension loss amounts to a loss of 3% gross pay contribution from the respondent. The respondent further states that to properly calculate the pension loss credit should be given for pension contributions received from other employers/employment during the relevant period.
9. The claimant gave evidence of her earnings in the relevant period after her dismissal for which I made an award of compensation for unfair dismissal, I gave the respondent credit for this in calculating the compensatory award. There is no indication of what the claimant received by way of pension in the relevant period.
10. A just and equitable award of compensation for pension loss is in my view the difference between what the claimant received by way of pension and what the claimant ought to have received. In calculating the amount of pension that the claimant ought to have received I have not used the claimant's figures. The claimant's contract states she is entitled to 3% of gross pay. In the absence of evidence of what the claimant received by way of pension payments in the relevant period I have adopted the approach of determining what is 3% of the claimant's award for loss of earnings in the relevant period.
11. An award representing 3% on the amount awarded for loss of earnings in the relevant period allows the claimant to receive an award for pension loss, that protects the respondent from giving the claimant a bounty because such is arrived at after taking into account the claimant's earnings post-employment in the relevant period subject to mitigation.

12. I therefore make a further award of £197.35. This figure is 3% of £6,578.39 the loss of earnings in the relevant period.

Employment Judge Gumbiti-Zimuto

Date: 22 May 2024

JUDGMENT SENT TO THE PARTIES ON
23 May 2024

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