



EMPLOYMENT TRIBUNALS

Claimant: Debbie Jacka

Respondents: Steren Surveyors Limited (1), Emma Rowson (now Ellicock) (2), Jason Ratcliffe (3), Peter Ellicock (4)

Heard at: Exeter **On:** 1 May 2024

Before: Employment Judge Volkmer
Tribunal Member Ms Clarke
Tribunal Member Mr Launder

Representation

Claimant: in person
First and Fourth Respondents: Mr Smith (Counsel)
Third Respondent: in person

RESERVED REMEDIES JUDGMENT

as corrected on 13 June 2024

1. The Respondents unreasonably failed to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015 and it is just and equitable to increase the compensatory award payable to the Claimant by 20 % in accordance with s 207A Trade Union & Labour Relations (Consolidation) Act 1992.
2. The First, Third and Fourth Respondents are jointly and severally liable to pay the Claimant a compensatory award of **£38,757.2485,884.94**.
3. The First and Fourth Respondents are jointly and severally liable to pay the Claimant a further compensatory award of **£21,558.58**.
4. The First Respondent shall pay the Claimant **£ 760 (gross)** in respect of the unlawful deduction from wages complaint.
5. The First Respondent shall pay the Claimant **£198.96 (gross)** as damages for breach of contract.

6. When the proceedings were begun the First Respondent was in breach of its duty to provide the Claimant with a written statement of employment particulars. There are no exceptional circumstances that make an award of an amount equal to two weeks' gross pay unjust or inequitable. It is just and equitable to make an award of an amount equal to four weeks' gross pay. In accordance with section 38 Employment Act 2002 the First Respondent shall therefore pay the Claimant **£658.84 (gross)**.
7. **Note** that these are actual the sums payable to the claimant after uplifts have been applied.
8. The Respondents should pay the above sums on a gross basis and the Claimant is responsible for paying any applicable tax in relation to the above sums.

REASONS

Introduction

1. In its amended decision on liability which was sent to the parties on 19 November 2023, the Tribunal upheld complaints of harassment related to sex against the First, Third and Fourth Respondents, and an allegation of victimisation against the First and Fourth Respondents.
2. Complaints of unlawful deduction from wages, wrongful dismissal and a failure to provide written particulars were upheld against the First Respondent.
3. A hearing bundle of 731 pages was provided to the Tribunal.
4. We heard oral evidence from the Claimant. An issue arose in cross examination, regarding the relative income generated by the Claimant. The Third Respondent wished to respond to this point, which had not arisen in the Claimant's written witness statement. The Claimant agreed that a document could be adduced, and that the Third Respondent could give oral evidence on this isolated topic.
5. In relation to weekly gross/net pay, the Judge discussed the Claimant's schedule of loss with her and it became clear that the Claimant's calculations included payments attributable to directors' loans as well as basic pay/car allowance. Following clarification that this should be dealt with separately, the amounts for gross and net weekly pay were agreed by all parties. This comprised basic pay and car allowance.

Issues

6. The issues to be determined in the hearing were as follows.
 1. *Discrimination and victimisation*
 - a. *What financial losses has the discrimination caused the Claimant?*
 - b. *Has the Claimant taken reasonable steps to replace lost earnings, for example by looking for another job?*
 - c. *If not, for what period of loss should the Claimant be compensated for?*
 - d. *What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?*
 - e. *Has the discrimination caused the Claimant personal injury and how much compensation should be awarded for that?*
 - f. *Is there a chance that the Claimant's employment would have ended in any event? Should their compensation be reduced as a result?*
 - g. *Should interest be awarded? How much?*
 2. *Unauthorised deduction from wages*
 - a. *How much was the unauthorised deduction from the Claimant's wages in the period 11 November to 31 December 2021?*

3. *Wrongful dismissal*
 - a. *what damages should be awarded in relation to the private medical insurance for the period 21 November to 31 December 2021.*
4. *Schedule 5 Employment Act 2002*
 - a. *Are there exceptional circumstances that would make it unjust or inequitable to make the minimum award of two weeks' pay under section 38 of the Employment Act 2002? If not, the Tribunal must award two weeks' pay and may award four weeks' pay.*
 - b. *Would it be just and equitable to award four weeks' pay?*

The Law on Remedies

Remedies for discrimination

7. Where a Tribunal finds that an employer has discriminated against an employee, it may award compensation pursuant to section 124 of the Equality Act 2010 ("EqA").
8. If the Tribunal decides to award compensation, then it must be calculated in the same way as damages in tort (sections 124(6) and 119(2)(a) EqA). The aim, as the *EAT* put it in *Ministry of Defence v Cannock and ors 1994 ICR 918, EAT*, is that "*as best as money can do it, the applicant must be put into the position she [or he] would have been in but for the unlawful conduct*". The compensatory award can comprise past and future financial losses, injury to feelings, personal injury, aggravated and exemplary damages.
9. The Tribunal may make an award for injury to feelings and have a broad discretion about what level of award to make. This is intended to compensate the Claimant for subjective feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress and depression caused by the unlawful treatment she has received (see *Vento v Chief Constable of West Yorkshire Police (No2) [2003] IRLR 102*). It is compensatory and not punitive, but the focus is on the actual injury to feelings suffered by the Claimant and not the gravity of the acts of the Respondent(s) (see *Komeng v Creative Support Ltd [2019] UKEAT/0275/18*).
10. The general principles that apply to assessing an appropriate injury to feelings award were set out by the *EAT* in *Prison Service v Johnson [1997] IRLR 162*, as follows:
 - a. injury to feelings awards are compensatory and should be just to both parties. They should compensate fully without punishing the discriminator;
 - b. feelings of indignation at the discriminator's conduct should not be allowed to inflate the award;
 - c. 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;

- d. awards should bear some broad general similarity to the range of awards in personal injury cases;
- e. 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;
- f. Tribunals should bear in mind the need for public respect for the level of awards made.

11. The Court of Appeal in Vento v Chief Constable of West Yorkshire Police (No.2) [2003] IRLR 102 identified three broad bands of compensation for injury to feelings. There is within each band considerable flexibility, allowing tribunals to fix what is considered to be fair, reasonable and just compensation in the particular circumstances of the case. The Fourth Addendum to Presidential Guidance (originally issued on 5 September 2017) states that in respect of claims presented on or after 6 April 2021, taking account of Simmons v Castle [2012] EWCA Civ 1039, the Vento bands shall be as follows: a lower band of £900 to £9,100 (less serious cases); a middle band of £9,100 to £27,400 (cases that do not merit an award in the upper band); and an upper band of £27,400 to £45,600 (the most serious cases), with the most exceptional cases capable of exceeding £45,600. This claim was presented on 30 March 2022 and so falls within this addendum to the Presidential Guidance.

12. In order to be compensated for injury to feelings, it is necessary for the Tribunal to be satisfied, on the basis of the evidence and its findings of fact, that the injury to feelings suffered by the Claimant was caused by the act of discrimination (Essa v Laing Ltd 2004 ICR 746, CA).

13. Compensation for non-financial loss may include an added element of aggravated damages. Aggravated damages awarded to the extent that the aggravating features have increased the impact of the discriminatory act on the Claimant and thus the injury to her feelings. The award continues to be compensatory, not punitive (HM Land Registry v McGlue EAT 0435/11).

14. The circumstances in which aggravated damages may be appropriate was set out in Commissioner of Police of the Metropolis v Shaw 2012 ICR 464, EAT. They fell under three broad categories. Instances when an award of aggravated damages may be appropriate are:

- a. where the manner in which the wrong was committed was in an exceptionally upsetting way, often referred to as “*high-handed, malicious, insulting or oppressive*” manner (deriving from Broome v Cassell & Co Ltd [1972] AC 1027);
- b. where the motive was based on prejudice or animosity or which was spiteful or vindictive or intended to wound (however this is only likely to affect injury to feelings if the Claimant was aware of the motive); and/or
- c. where subsequent conduct adds to the injury such as conducting the hearing in an unnecessarily oppressive manner, failing to apologise, or failing to treat the complaint with the requisite seriousness.

15. A Tribunal must consider whether the overall award of injury to feelings and aggravated damages is proportionate to the totality of the suffering caused to the Claimant so as to avoid double recovery (*Commissioner of Police of the Metropolis v Shaw* 2012 ICR 464, EAT). The Tribunal also needs to explain why the aggravating factor makes an ordinary award for injury to feelings insufficient to compensate the Claimant and the extent to which the aggravating conduct has increased the impact of the discriminatory act on the Claimant (*Wilson Barca LLP and others v Shirin* [2020] UKEAT/0276/19).
16. The Tribunal may also award general damages for physical or psychiatric injury (“personal injury”) caused by unlawful discriminatory acts (*Sheriff v Klyne Tugs (Lowestoft) Ltd* [1999] IRLR 481 and *Virgo Fidelis Senior School v Boyle* [2004] IRLR 268). However, it is not possible to claim under this head of loss for something already claimed for under the head “injury to feelings” as this would amount to double counting.
17. In assessing damages for personal injury Employment Tribunals adopt the same basis as the Courts and will have regard to the Judicial College Guidelines on assessing general damages.
18. Under s124(2)(b) EaA and the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 (“the Regulations”) interest may be added to awards of damages in discrimination cases. The Tribunal is required to consider an award of interest even if the Claimant does not specifically apply for it. Interest is limited to past loss. The current rate of interest is 8%.
19. Interest is awarded on injury to feelings awards from the date of the act of discrimination complained of until the date on which the tribunal calculates the compensation (see reg 6(1)(a) of the Regulations). Interest is awarded on all sums other than compensation for injury to feelings from the midpoint date (reg 6(1)(b)). The mid-point date is the date halfway through the period between the date of the discrimination complained of and the date when the tribunal calculates the award (reg 4).
20. It is for a Claimant to prove loss. It is for the Respondent to prove any alleged failure to mitigate.

ACAS Uplift

21. Section 207A(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“TULR(C)A”) provides that: *“If in any proceedings to which this section applies, it appears to the employment tribunal that – (a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies, (b) the employer has failed to comply with that Code in relation to that matter, and (c) the failure was unreasonable, the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 25 per cent.”*
22. Section 207A(5) of TULR(C)A provides that where an award falls to be adjusted under that section and under section 38 of the Employment Act 2002 the adjustment under Section 207A of TULR(C)A is made first. Section

207A(1) of TULR(C)A states that the section applies in respect of claims proceeding before an Employment Tribunal relating to a claim by an employee under any of the jurisdictions listed in Schedule A2. The schedule includes discrimination claims and claims brought for breach of contract under The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994.

23. It is clearly set out in *Holmes v QinetiQ Ltd 2016 ICR 1016, EAT*, that a 'disciplinary situation' includes misconduct or poor performance, and can extend beyond that to other scenarios.

Unauthorised deduction from wages

24. Under section 23(1) of the Employment Rights Act 1996 (ERA) the Claimant can recover the sums which were found by the Tribunal to have been deducted without authorisation.

Wrongful dismissal

25. Damages for breach of contract are generally calculated so as to put the Claimant in the same position as if the contract had been fulfilled. The measure of damages is assessed on the basis of the employer's contractual liability at the date of dismissal. Only sums which would have been due under the contract are recoverable.

Failure to give statement of employment particulars

26. Under section 38 of the Employment Act 2002 the following applies in relation to the failure of an employer to give a written statement of employment particulars:

(3) If in the case of proceedings to which this section applies—

(a) the employment tribunal makes an award to the worker in respect of the claim to which the proceedings relate, and

(b) when the proceedings were begun the employer was in breach of his duty to the worker under section 1(1) or 4(1) of the Employment Rights Act 1996 the tribunal must, subject to subsection (5), increase the award by the minimum amount and may, if it considers it just and equitable in all the circumstances, increase the award by the higher amount instead.

(4) In subsections (2) and (3)—

(a) references to the minimum amount are to an amount equal to two weeks' pay, and

(b) references to the higher amount are to an amount equal to four weeks' pay.

(5) The duty under subsection (2) or (3) does not apply if there are exceptional circumstances which would make an award or increase under that subsection unjust or inequitable.

27. Section 221(2) of ERA defines a week's pay for those with normal working hours as follows: "if the employee's remuneration for employment in normal working hours (whether by the hour or week or other period) does not vary with the amount of work done in the period, the amount of a week's pay is

the amount which is payable by the employer under the contract of employment”.

28. As such, a weeks’ pay includes contractual bonuses and allowances *May Gurney Ltd v Adshead and ors EAT 0150/06.*

Grossing Up

29. In the case of *Shove v Downs Surgical Plc [1984] I.C.R. 532*, Sheen J set out that *“in assessing the plaintiff’s actual loss, his liability to pay taxes is something which the law does not regard as too remote, then by parity of reasoning, his liability to pay tax should not be regarded as too remote when assessing the sum of money which it is necessary for the court to award to compensate him for his loss”*. This case in effect confirms that damages for breach of contract should be calculated on a net basis and then grossed up to leave the Claimant in an equivalent position as they would have been, had the breach not occurred.

Discussion and Conclusions

Financial Loss: Compensatory Award

30. Whilst the Claimant’s salary was set at £60,000 per year from 1 May 2021, the Tribunal found at paragraph 21 of the Written Reasons that *“In August 2021, for tax efficiency reasons, all three directors changed their monthly income structure to a reduced salary of £1,047.50, car allowance of £380 and a director’s loan of £3,500. The idea was that dividends would be declared by the company at the end of the year to extinguish the directors’ loans. The parties intended to change the shareholding to equal shareholding between the three parties in order for the dividends to be equally divided. It was intended that Mr Ellicock would retain majority voting rights. A draft shareholders agreement was prepared, but this part of the arrangement was never concluded.”*
31. It was accepted by the Respondents that loss of dividends could flow from discrimination against the Claimant. From 1 February 2022 Mr Ellicock and Mr Ratcliffe began trading under a different limited company (which had been formed on 13 December 2021), with a similar name to the First Respondent (Stereon Surveyors UK Limited), operating substantially the same business as the First Respondent. Whilst Stereon Surveyors UK Limited is not a party to the proceedings, it was agreed between the parties that the profits of that entity were good evidence of the profits which were likely to have been made by the First Respondent, had the Claimant not been dismissed.
32. The Tribunal considered accounts of the First Respondent (page 271) and Stereon Surveyors UK Limited (page 366). The Respondents produced letters from the accountants which stated that no dividends had been paid (page 283) to the shareholders of the First Respondent, and that the directors’ loans remained unrepaid. There was a dispute between the parties regarding the accuracy of the amounts shown as owed by the directors, both in relation to the Claimant (who said that she had only received £3,500 per month as agreed), and Mr Ellicock and Mr Ratcliffe –

with the Claimant pointing to the accounts stating that there were payments which appeared to be personal – the implication although not the express position being that the profits had been reduced as a result.

33. The profits in relation to the First Respondent were £78,896 (page 283), which the Respondents stated indicated that the directors' loans were unsustainable since if dividends equal to the directors' loans were paid, this would leave only approximately £3,000 in the company. However, the same sums (£3,500) were paid to Mr Ellicock and Mr Ratcliffe as monthly directors loans within Steren Surveyors UK Limited. This was also said to be unsustainable in circumstances where profits after tax were £127,970 (page 366) with outstanding directors loans at £57,189 (page 373).
34. It was further argued by the Respondents that the Shareholders' Agreement prevented a payment of dividends in the circumstances because it stated at 8.1.2 that "*the Company shall not declare, pay or make any dividend or other distribution: ... until all loans made to the Company by a Shareholder have been repaid in full*" (page 589). It was evident to the Tribunal that this wording related to loans to the First Respondent and not by the First Respondent. Therefore this did not refer to loans made to directors by the First Respondent. This wording was not relevant.
35. The Claimant also put forward that the profits would have been higher had she been there in a fee earning capacity. Her case was that she had brought in around 40% of the fees. Mr Ratcliffe gave documentary and oral evidence that this was much lower at around 9%.
36. Whereas the Claimant put forward her schedule of loss on the basis that she was a one third shareholder, the Respondents pointed out that the Claimant was only a 10% shareholder, which would significantly reduce the dividends paid to her.
37. The Tribunal considered that, but for the discriminatory acts, the parties would have stuck to the original agreement that the Claimant would have been formally made an equal shareholder and would have continued to receive £3,500 per month of director's loan which would then have been extinguished by the payment of dividends at the end of the year. This agreement was reached even in circumstances where the Claimant was bringing in significantly less fees than Mr Ratcliffe, who brought in the majority of fees both in the First Respondent and within Steren Surveyors UK Limited it was therefore unnecessary to make findings regarding the Claimant's contribution. The Tribunal considered that the parties would have simply behaved as they had agreed. There were enough dividends to cover the directors' loans at this agreed rate. Given the nature of the company being a small owner-run business, this was the case even if it only left £3,000 remaining in the company. The Tribunal considered that no further dividends would have been issued in order to retain some capital in the company (even if a small amount).
38. As such losses have been calculated on the basis that the Claimant should have been paid the £3,500 directors loan during the notice period and for the period of loss and subsequently this loan would have been extinguished

by the declaration of equivalent dividends.. During the period of loss should have also received the agreed salary of £1,047.50, car allowance of £380 and medical insurance. The value of the BUPA membership is different in the Claimants and Respondents' schedules of loss. The only document referred to is that at page 291, which refers to a cost of £125.37 per month. As such, the Tribunal have based the award on this figure.

39. The Claimant earned some money doing consultancy work in January and February 2022. The Claimant obtained a new job working for Countrywide Surveyors, where she worked from 4 April 2022 until the date of the remedy hearing. The Claimant qualified as a surveyor in August 2022 and saw a corresponding increase in her remuneration, however this was nevertheless £4,095 per month on average on a gross basis. This was less than the gross monthly pay in total, including the monthly directors loan, at the First Respondent of £5,380 per month.
40. No evidence was put forward by the Respondents regarding any alleged failure by the Claimant to mitigate her past losses. As such, the Claimant's past losses were awarded in full.
41. No evidence was put forward by either party regarding the availability of roles which would fully mitigate the Claimant's losses. However, taking into account all of the evidence, including the Claimant's evidence regarding her performance at work and the fact that she qualified as a surveyor in August 2022 (whereas had only been a trainee surveyor whilst working for the First Respondent), the Tribunal found that it would be reasonable for the Claimant to have fully mitigated her losses by 1 July 2024. Damages were therefore calculated until that date.
42. Since this loss flows primarily from the dismissal, the First Respondent, Third Respondent and Fourth Respondent are found to be jointly and severally liable for this award.

Injury to Feelings

43. The Claimant's witness evidence, which the Tribunal accepted, referred to:
 - a. feeling insulted and degraded at being accused of an affair;
 - b. feeling devalued, degraded, disappointed, stressed and anxious when appointments and practical training ended;
 - c. feeling intimidated and brought tears when Mr Ellicock shouted at her;
 - d. feeling humiliated and offended by comments related to her singing;
 - e. feeling anxious regarding sexist language directed to others;
 - f. feeling degraded and offended by comments regarding training;
 - g. feeling shocked and distraught, as though her world had been torn apart when being dismissed for something she had not done;
 - h. feeling fear and distress at the report to action fraud and fearing potentially very serious consequences. The report to action fraud having a particularly significant effect on the Claimant given the potential criminal consequences.

44. Distress regarding reporting of the case was not considered to be something which could be attributed to the Respondents. This arose because of the publishing of the judgment and reasons online, the reasons had been requested by the Claimant and not by the Respondents.
45. The full extract of the Claimant's GP records was not included in the Remedy Hearing Bundle. A letter from the Claimant's GP dated 16 June 2023 (page 319), post dating the claim being presented, referred to low mood, stress and anxiety. The only causal factor referred to was postnatal depression. Stress at work and the discriminatory acts of the Respondents are not referred to. The Tribunal considered that this letter was likely refer to stress at work and/or the discriminatory acts if these were a significant factor which had been discussed by the Claimant with her GP.
46. This was consistent with the Claimant's witness evidence that she initially went into a period of coping and throwing herself into work whilst there being underlying effects on her, which later became more pronounced in their effect.
47. A letter dated 4 March 2024 from the Claimant's GP (page 642) referred to the Claimant having *"developed nightmares, flashbacks and extreme anxiety consistent with Post Traumatic Stress Disorder since the events that led up to the court case and the court case itself, resulting in being accepted for high intensity psychological therapy. Deborah is currently on a waiting list for this. Her stress has also been associated with worsening perimenopausal symptoms."*
48. The Claimant did not have a formal diagnosis of PTSD, however she stated that she considered that her symptoms were consistent with it. The Tribunal takes into account the nightmares, flashbacks and extreme anxiety reported by the Claimant. However the additional causal element of worsening perimenopausal symptoms referred to by the Claimant's GP was also taken into account in that regard. This along with the Claimant's own evidence being the only source of evidence regarding causation in the absence of any expert evidence as to causation.
49. The Tribunal considers that the appropriate award is broadly in the middle band of Vento. We award £20,000 for injury to feelings in total. This was divided as follows. Taking into account the number of acts found to have been done by the First Respondent and Fourth Respondent only, and one of the more serious ones being the report to Action Fraud, the Tribunal considers that £15,000 of this award is made against the First Respondent and Fourth Respondent (jointly and severally). £5,000 of this award is made against the First Respondent, Third Respondent and Fourth Respondent (jointly and severally).

Aggravated Damages

50. The Tribunal considered that the report to Action Fraud by the Fourth Respondent was aggravating. The manner, in the form of a report with potential criminal consequences, was considered oppressive. The motive was malicious, as is evident from the fact that this was upheld as an act of victimisation. However the Tribunal considered that this had already been

taken into account in its award and did not make a separate award in relation to this element.

Personal Injury

51. The Claimant did not bring a substantive claim for general damages for personal injury, although referred to PTSD and appendicitis in her witness statement. She confirmed in cross examination that her claim was all brought under injury to feelings. Therefore no award for personal injury was considered.

ACAS Uplift

52. The Tribunal considered that the ACAS Code of Practice on Disciplinary and Grievance Procedures (the "ACAS Code") applied to the Claimant's dismissal, as this involved performance, and on the Respondents' defence case, alleged misconduct – "mortgage fraud" was stated to be the main reason for the Claimant's dismissal (page 31) in the First Respondent's Grounds of Resistance. Holmes v QinetiQ Ltd 2016 ICR 1016, EAT made clear that the ACAS Code applied both in relation to performance and misconduct dismissals.

53. The Claimant was not given any warning of the dismissal meeting, but a meeting was held with her. However there was an unreasonable failure by the Respondents to establish the facts of the case, inform the Claimant of the problem, permit the Claimant to be accompanied, communicate the decision to the Claimant in writing, and give the Claimant an opportunity to appeal. The Tribunal considers that it is just and equitable to increase the award by 20% by way of ACAS uplift.

Interest

54. Interest is awarded at 8%.

Unauthorised deduction from wages

55. In relation to the unauthorised deduction from wages complaint, this was upheld. The Claimant's unlawful deduction from wages claim is upheld in relation to the car allowance during her notice period for the months of November 2021 and December 2021.

56. The Claimant's car allowance is set out clearly in her payslips at page 290 as being £380 per month, although this element of the pay set out in the payslip was not received by the Claimant, only the "basic pay" element. Therefore the Claimant is awarded two months of car allowance at £380 per month.

Wrongful dismissal

57. The Tribunal found that damages for wrongful dismissal in relation to the failure to pay the BUPA membership were recoverable during her notice period between 21 November 2021 (the date of cancellation) and 31 December 2021. The value of the BUPA membership is different in the Claimants and Respondents' schedules of loss. The only document referred

to is that at page 291, which refers to a cost of £125.37 per month. As such, the Tribunal have based the award on this figure.

Failure to give statement of employment particulars

58. In relation to the failure to give employment particulars, the Tribunal found no exceptional reason to decrease the award from the standard award of two weeks' pay. The First Respondent was a small business and the Claimant was involved in the running of it. She had never asked for a written contract. The Tribunal found it was not just and equitable to increase the award to four weeks' pay, there was nothing upon which to base such an increase.

Grossing Up

59. The amount over £30,000, which may be paid tax free to the Claimant, was grossed up at a rate of 40% as the Claimant is a higher rate tax payer.

Employment Judge Volkmer

15 May 2024

as corrected on 13 June 2024

ORIGINAL JUDGMENT SENT TO THE PARTIES ON
~~05 May 2024~~ **05 June 2024**

Amended Judgment send to parties on
13 June 2024 By Mr J McCormick

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

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

CALCULATION TABLE

1. Details

Date started employment	10/04/ 2022 <u>2021</u>
Effective Date of Termination	11/11/2022 <u>31/12/2021</u>
Period of continuous service (years)	0
Remedy hearing date	01/05/2024
Date by which employer should no longer be liable	01/07/2024
Contractual notice period (weeks)	7
Statutory notice period (weeks)	0
Net weekly pay at EDT	274.34
Gross weekly pay at EDT	329.42
Weekly gross <u>net</u> dividend amount (£((3,500 x 12)/12) <u>less higher rate dividend tax at 33.75% = 27,825 per year. 27,825/52= 535.10</u>)	£807.69 <u>535.10</u>
Weekly amount re loss of medical insurance ((125.37*12)/52)	£28.93

2. Damages for wrongful dismissal

Medical insurance (5.73 x 28.93)	165.80
Plus failure by employer to follow statutory procedures @ 20%	33.16
Total damages	198.96

4. Compensatory award (immediate loss)

Loss of net earnings (1 January 2023 <u>2022</u> to 1 May 2024)	19,121.50 <u>33,387.18</u>
Number of weeks (69 <u>121.7</u>) x Net weekly pay (274.34)	
Plus loss of dividends (41 <u>1</u> November 2022 <u>2021</u> to 1 May 2024)	
Number of weeks (76.7 <u>130.4</u>) x <u>net</u> weekly dividend (807.69 <u>535.10</u>)	61,949.82 <u>69,777.04</u>
Plus Medical insurance (1 January 2023 <u>2022</u> to 1 May 2024)	
Number of weeks (69 <u>121.7</u>) x weekly cost (28.93)	2,016.42 <u>3,520.78</u>
Less sums obtained, or should have been obtained, through mitigation	-77,747.43
Earnings	77,747.43
Countrywide (01/04/ 2023 <u>2022</u> to 01/05/2024)	76,859.75
Consultancy (01/01/ 2023 <u>2022</u> to 28/02/2023)	887.68
Total compensation (immediate loss)	5,340.31<u>28,937.57</u>

5. Compensatory award (future loss)

Loss of future earnings	2,386.76
Number of weeks (8.7) x Net Weekly pay (274.34)	
Plus Medical insurance (8.7 x 28.93)	251.69
Plus Dividends (8.7 x 807.69 <u>535.10</u>)	7,026.90 <u>4,655.37</u>
Total compensation (future loss)	9,665.35<u>7,293.82</u>

6. Compensatory award (other statutory rights)

Unlawful deductions (2 x £380)	760.00
Total compensation (other statutory rights)	760.00

7. Adjustments to total compensatory award

Plus failure by employer to follow statutory procedures @ 20%	3,153.13 <u>7,398.28</u>
Plus interest (compensation award) @ 8% for 451 days	638.81 <u>3,444.55</u>
Compensatory award before adjustments	15,765.66<u>36,991.3</u>
Total adjustments to the compensatory award	3,791.94<u>10,842.83</u>
Compensatory award after adjustments	19,557.60<u>47,834.2</u>

8. Failure to provide written particulars

Number of weeks (2) x Gross weekly pay (329.42)	658.84
Total	658.84

9. Non financial losses

Injury to feelings	20,000.00
Plus failure by employer to follow statutory procedures @ 20%	4,000
Plus interest @ 8% for 902 days	4,744.77
Total non-financial award	28,744.77

10. Summary totals

Wrongful dismissal	198.96
Compensation award including statutory rights	20,216.44
Non-financial loss	28,744.77
Total	49,160.17

11. Grossing up

Tax free allowance (£30,000 - any redundancy pay)	30,000.00
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Basic + additional awards	0.00
Balance of tax free allowance	30,000.00
Compensatory award + injury to feelings + wrongful dismissal	49,160.17 <u>77,436.79</u>
Figure to be grossed up @ 40% tax rate	19,160.17 <u>47,436.79</u>

GROSSED UP TOTAL	61,933.62 <u>109,061.32</u>
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GRAND TOTAL	£61,933.62 £109,061.32
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