



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs S Howard

**Respondent:** Mrs D M W Proudlove

**HELD by** CVP at Leeds

**ON:** 21 August 2024

**BEFORE:** Employment Judge Lancaster

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Mr L Fakunle, Solicitor

**JUDGMENT** having been sent to the parties on 30 August 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:

## REASONS

1. Both parties have proceeded only on the basis that I should look at the average of the last 12 months payslips to make calculations. That is necessarily a rough and ready means of assessment and in particular does not account for the fact that at the end of employment the hourly rate of pay did increase. However in the absence of any clearer evidence it is a sensible way to proceed.
2. On that basis it is agreed that for the purposes of calculating the basic award the gross weekly pay is £325.72. The parties are one penny apart on the calculations. I take the higher figure.

3. Because of her long length of service as I established in the earlier Judgment, the claimant will be entitled to be paid at that rate for a total of 28 weeks. That gives a basic award in this case of £9,120.16.
4. I then have to look at the loss of earnings. After her unfair constructive dismissal the claimant did obtain some other work. That was through an agency on a zero hours contract. The reason she went to that agency is that she had previous involvement with them many years ago and she knew the person who owned that business. I have heard the claimant give evidence. I accept that that was a reasonable attempt at mitigation of her losses in the circumstances. She had worked for a single employer for some 22 years. It is a sad situation where that relationship had for nearly all of that time been counted as a friendship as well as an employment relationship and I well understand the difficulties in Mrs Howard seeking to return to the job market after so long, particularly when she would have to explain the circumstances of her ceasing that employment and where, accepting her evidence, the respondent was unwilling to provide a satisfactory reference that would assist her. I consider it entirely far fetched to suggest, as Mr Faknule does, that the claimant in those circumstances where there had been a fundamental breach of contract destroying trust and confidence could have returned, either to work directly for Mrs Proudlove or through an agency providing care for her on reduced hours, even though Mrs Proudlove may have been prepared to have accepted that.
5. So I have therefore figures of the loss of earnings to date. Again those are calculated on the net pay over the preceding 12 months. That gives a figure of £284.64 per week net: I accept Mrs Howard's calculations on the monthly figure of £1233.46. Mr Fakunle's figures differ, as I identified in the course of the hearing, because he incorrectly relies upon an amended version of one pay slip which now purports to show no net income in that month because it is off set against an advance of salary. Set against her actual earnings from the zero hours contract with Hearts and Mind, which was substantially less than she would have earned over that period, she has suffered an actual financial loss to the end of last month of £13872.99.
6. She has also suffered the loss of employer's pension contributions and I adopt a simple calculation. Over the 12 months the total paid in by the respondent was £320.91. That gives a monthly average of £26.74 and therefore over the 14 months from the end of employment to date that is a further loss of £374.36. I also award as I said I would for loss of statutory rights the sum of £450.00.
7. That gives a running total on the loss of earnings, the compensatory award of £14697.35.
8. I must also therefore look to seek to assess the future loss. The claimant's position is, that the client she was caring for through Hearts and Minds sadly died recently. Therefore she has had no immediate income but she hopes to be able to resume work for that agency. Alternatively if her mental well-being is now sufficiently improved after the lapse of time and she has had counselling to assist, she would hope to be in a position where she is confident enough to go back into a more secure job market, go through an interview and obtain employment.
9. I consider in the circumstances it is reasonable that I award a further three months of continuing loss. I assess that at the average net loss over the past 14 months

of £990.93 a month plus the ongoing loss of pension contributions of £26.74 a month, a total of £1017.67 a month which over three months is £3053.01.

10. When I add that to the sub total that gives a figure of £17750.36.
11. However that has now exceeded the statutory cap. That figure is 52 weeks' pay, which again on the gross figures over the preceding 12 months' payslips, is £16937.20 together with the annual employer's pension contributions of £320.91. So the statutory cap is £17258.11. Therefore I reduce the figure I have awarded to that level.
12. So that means that the compensatory award subject to the statutory cap is £17258.11. There is also the basic award of £9120.16. The total monetary award owing in this case is £26648.27.
13. I should say for completeness I do not accept the argument that this employment would fairly and under contract have terminated in any event because the respondent was apparently unwilling to continue the previous contractual agreement to pay for additional hours for travelling. If the contract had been varied in that way, as I have said in the earlier Judgment that would have been a clear breach of contract. I do not therefore limit the compensatory award to the end of a hypothetical period when the Claimant might alternatively have resigned because of a reduction in her contractually entitled hours.
14. I award the claimant the total compensatory award to the maximum together with a basic award to reflect her long service.

Employment Judge Lancaster

Date 5<sup>th</sup> September 2024

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