Case No:- 3320852/2021
3302624/2022

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mrs Bianca Shevlin	**v**	Cambridge Kitchens Limited

Heard at: Bury St Edmunds **On:** 12 August 2024

Before: Employment Judge K J Palmer

Members: Mrs Susan Laurence-Doig and Mr Rob Allan

Appearances
For the Claimants: Miss R Morgan (counsel)
For the Respondent: Mr Munroe (solicitor)

JUDGMENT having been given extemporarily on 12 August and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunal Rules of Procedure 2013, the following reasons are provided:

REASONS

1. This matter came before us today listed as a remedy hearing pursuant to a Full Merits Hearing that took place before the same tribunal on 8, 9, 10, 11 and 12 April 2024.

2. This matter has something of a history of being before this tribunal and in fact there was something of a false start at the beginning of the Full Merits Hearing on 8 April and there had been an earlier postponement. The matter has a history of the parties appearing before this tribunal, not fully prepared, and today is no exception.

3. The Tribunal had before it a bundle that was delivered to the Tribunal at 9.40, 20 minutes before the hearing was due to start this morning, and pursuant to a period of time when the parties were discussing settlement, which ultimately proved fruitless, we were ready to start at 11.30 but were then informed that the Claimant had produced a witness statement but it was not before the Tribunal. It had, apparently, been sent to the Watford Administration only this morning. Naturally there was no prospect of that having made its way before this Tribunal in time for the hearing to start. Accordingly, counsel for the Claimant forwarded this to us and we have it before us and we were able to read it.

4. We then heard evidence from the Claimant and also without a witness

statement because it seemed relevant at the time and upon the application of the Respondents from Mr Wade Gledhill, who gave evidence in respect of issues for us to determine in this tribunal including the issue of the duty to mitigate loss.

5. Essentially, the position is that the Claimant was constructively dismissed pursuant to a finding which we made in the Full Merits Hearing in April of this matter, on 30 November 2021.

6. Thereafter, or until that time between April 2021 and November 2021, the Claimant had been off sick and hadn't been working. It falls to us to determine the nature of compensation payable to the Claimant pursuant to our finding unfair dismissal and that naturally brings into play the basic award and the compensatory award under section 123 of the Employment Rights Act 1996.

7. In hearing evidence from the Claimant and in reading her witness statement, it is clear that the Claimant had, prior to the termination of her employment, been somewhat involved as a letting agent in letting out both her own property and other properties and this is clearly something that she has continued to develop since the termination of her employment with the Respondents and, in fact, on her own evidence, by or around the middle of 2022, the Claimant had got up and running a business which specialized in lettings and it is on that basis that she had been earning monies from that period forward.

8. We had no documentary evidence before us in the bundle as to any attempts that the Claimant had made to mitigate her loss, post-termination of employment. All employees have a duty to mitigate their loss and cannot simply sit back and expect those losses to mount and to be paid by the Respondent pursuant to an award after a finding of unfair dismissal. They have a duty to try and find other work which is similarly remunerated to the work that they previously had with the Respondent. There was nothing in the bundle to suggest to us that this had happened. We would usually expect to see examples of letters written, applications for jobs made and rejections or interviews that had been attended. The only evidence before us was oral evidence from the Claimant that she had made some attempts through contacts and through the use of the social media network LinkedIn to find similar work to that which she did at the Respondents which was that of a kitchen designer and sales person and nobody doubts that the Claimant was extremely good at her job when she was employed by the Respondent, a fact that was admitted throughout the Full Merits Hearing by the Respondents. Her attempts at mitigating her loss, therefore, pursuant to the termination of her employment, consisted of contacting individuals that she knew and assessing and accessing the social media platform LinkedIn. We had no screen shots from Linkedin and no documents to verify this.

9. The Claimant, by her own admission, by the middle of 2022, had fully set up and was running her property management business and subsequently had sought to branch out into other areas. The Respondents argue that the Claimant has failed in her duty to mitigate and has simply not tried

hard enough to find work since the termination of her employment on 30 November 2021. She was, at that time, signed off sick at the Respondents but, in her own evidence, admitted that shortly thereafter in December 2021 she was fit and well to pursue her career.

10. The law and general principles on the duty to mitigate is that every employee who has been dismissed, does have a duty to mitigate in accordance with section 123, sub-section 4 of the Employment Rights Act.

11. Principles are set out in the authority of Gardner Hill v Roland Burger Technics Ltd [1982] IRLR498 in which case the EAT said that where there is a substantial issue as to whether there has been a failure to mitigate, an employment tribunal must ask itself the following questions:

    10.1 What steps were reasonable for the Claimant to have taken in order to mitigate his/her loss?

    10.2 Whether the Claimant did take reasonable steps to mitigate loss, and

    10.3 To what extent, if any, the Claimant would have actually mitigated his/her loss of he/she had taken those steps?

    Whilst these three questions are logically distinct, they are linked and evidence that bears upon them does overlap. The steps identified in that case have been endorsed in a subsequent and more recent decisions, Savage v Saxena, Window Machinery Sales Ltd T/A Promac Group v Luckey and the correct approach to making any deductions once a failure to mitigate has been found, is set out in the case of Archbold Freightage Ltd v Wilson [1974] IRLR 10 INRC.

12. Having heard evidence from the Claimant and also from Mr Wade Gledhill, we were also asked to consider whether, at the time that the Claimant was dismissed by the Respondents, that is the beginning of December 2021, the climate was either buoyant in the kitchen and bathroom business or was depressed due to the restrictions that had been placed on all businesses during the covid pandemic.

13. We had no written evidence before us to support either proposition but anecdotally, certainly restrictions were being lifted and businesses were trading. The only evidence we had as to this was from Mr Wade Gledhill who told us that business was reasonably thriving and that the main difficulty that businesses were finding at that point was finding and managing to employ appropriate staff. We accept that proposition in the absence of any physical evidence being put forward by the Claimants.

14. We also, having carefully considered and sifted the Claimant's evidence, do not consider that she did do all that she reasonably could have done to mitigate her loss. It seems clear from the evidence to us that the Claimant was ready to, continue with her letting business and preparing for the start of a new business, which of course is what she is now doing and so applying the tests in Garner Hill, we think it would have been reasonable for the Claimant to have taken far greater steps than simply talking to one

or two people that she knew in the business, potentially visiting Wren, although she then said that due to Wren's reputation she was not interested in pursuing a possible job with them, and she should have done more than simply visiting the social media platform LinkedIn. We would have expected her to have been writing to various kitchen manufacturers and asking them whether they had work. She had a good track record, she was very experienced and she would, in the Tribunal's view, have had a reasonable chance of securing work relatively quickly had she done that but she didn't do that. That evidence has not been before us and therefore we take the view that the Respondents have discharged the burden of proof upon them to show that there was a failure to mitigate. She did not take reasonable steps to do so.

15. We also then have to consider to what extent, if any, the Claimant would have actually mitigated her loss had she taken those steps so had she written off to the 20 or 30 kitchen or bathroom companies in the area or even on a wider basis or even sought other work in another field during that period of time by applying for jobs, writing off, making applications and attending interviews, we take the view that it probably would have taken her six months to find suitable work and it is therefore for that reason that we apply a six month period to her losses for calculation purposes in the compensatory award.

16. The basic award is agreed and there is no dispute as to those figures and the basic award was calculated at £5,440.00 based on the figures that were submitted in the Schedule of Loss. We have to say that it was disappointing we didn't have an up to date schedule of loss before us and it was a new experience for us to be addressed by counsel who simply quoted the figures at us that counsel considered appropriate awards to make. In all the circumstances we would usually expect to see some written schedule of loss to support those arguments in those figures. Nevertheless, the basic award is not in dispute and we make that award in the sum of £5,440.00, using the calculations that are before us in the schedule of loss that is provided in the bundle which is the schedule of loss that was prepared back in December 2022 and we calculate that six months' loss of net earnings is £17,777.84, six months loss of pension contributions amounts of £675.48. We award the Claimant a sum for the loss of statutory protection of £500, that constitutes a total sum by way of compensatory award of £18,253.32.

17. From this we must deduct the sum of £4,000.00 which is six months earnings that, on her own evidence, the Claimant earned during the six months period. That leaves a total, including the basic award of £19,693.32. This is payable immediately.

Employment Judge K J Palmer

Date: 9 September 2024

Judgment sent to the parties on
9 October 2024

For the Tribunal office

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