



EMPLOYMENT TRIBUNALS

Claimant: Lisa Anderson

Respondent: Just Technologies AS

Heard at: London Central (CVP)

On: 21 November 2024

Before: Tribunal Judge Peer acting as an Employment Judge

Representation:

Claimant: Mr J. Lewis-Bale of Counsel instructed by Keystone Law

Respondent: No appearance

JUDGMENT having been sent to the parties on 4 December 2024 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunal Procedure Rules 2024, and corrected judgment approved 13 January 2025, the following written reasons are provided:

REASONS

1. Liability in this case was determined by way of judgment dated 11 November 2024. The response was struck out by separate judgment dated 11 November 2024.
2. The claimant succeeded in her complaints of unfair dismissal and unlawful deductions from wages, breach of regulation 14 of the Working Time Regulations 1998 and breach of contract in relation to non-payment of holiday pay.
3. A hearing was listed to consider and determine remedy on 21 November 2024. At that hearing, the Tribunal gave remedy judgment and reasons orally. The Judgment sent to the parties on 4 December 2024 recorded the compensation awarded together with detail of the calculations done.
4. In preparing these written reasons errors were noted in the original judgment sent to the parties on 4 December 2024 and a certificate of correction and corrected judgment has therefore been prepared in accordance with rule 67 of the Employment Tribunal Procedure Rules 2024. The written record of the decision given orally on 21 November 2024

contained clerical error in that it erroneously referred at paragraph 3A to £2,109.32 rather than £2,019.23 and recorded at paragraph 3C(a) and original paragraph 3C(e) '50.4' rather than '50.6'. In addition, the amount of £500 for loss of statutory rights was, due to accidental slip, set out as original paragraph 3D rather than included as per the corrected judgment as paragraph 3C(d) with the consequent re-ordering of original paragraphs 3C(d) to (g) as paragraphs 3C(e) to (h) in the corrected judgment. There are consequent revisions to the amount of the uplift as set out at corrected paragraph 3C(g) and the total amount awarded as set out at paragraph 4. This accords with the decision and reasons given at the hearing.

5. At the remedy hearing, I had a bundle of 1187 pages available to me which included tribunal documents related to the proceedings, claimant's contract of employment and documents related to the termination of employment together with the claimant's mitigation evidence and schedule of loss. I also had a written statement dated 12 November 2024 from the claimant. I heard evidence from the claimant. I also heard submissions on behalf of the claimant from Mr J. Lewis-Bale.

Holiday pay

6. The claimant was successful in her holiday pay claim for 76 days accrued untaken leave when her employment terminated on 30 November 2023.
7. Regulation 16(1) of the Working Time Regulations 1998 provides that a worker is entitled to be paid "*at the rate of a week's pay in respect of each week of leave*" and Regulation 16(2) provides that a week's pay is to be calculated in accordance with sections 221 to 224 of the Employment Rights Act 1996 ("the 1996 Act") subject to modifications including relevantly a divisor of 52 weeks. Section 221 of the 1996 Act sets out that for persons with 'normal working hours' such as the claimant, "*the amount of a week's pay is the amount which is payable by the employer under the contract of employment*".
8. The claimant's gross annual salary was £105,000.00. A week's gross pay was therefore calculated as £2,019.23 being £105,000.00/52. The claimant claims for 15.2 weeks being 76 days/5. The award was therefore calculated using the amount of a week's gross pay of £2,019.23 and a multiplier of 15.2 and amounted to £30,692.30.

Unfair dismissal

9. The claimant was successful in her claim for unfair dismissal. The claimant claims compensation as set out in her schedule of loss (HB 1182 to 1187).

No order/s for reinstatement /re-engagement

10. Section 112 (The remedies: orders and compensation) of the 1996 Act applies where a complaint of unfair dismissal is held to be well-founded by the Tribunal. Section 113 (The orders) of the 1996 Act provides that the orders may be for reinstatement in accordance with section 114 or re-engagement in accordance with section 115. Section 116 (Choice of order and its terms) sets out the approach to choice of order and what must be taken into account. Accordingly, I took account of the fact that the claimant does not wish for either reinstatement or re-engagement. The claimant requests compensation only. Further that the respondent employer has not engaged with these proceedings and it would therefore appear that it is not

likely practicable for the employer to comply with any order for either reinstatement or re-engagement.

11. I decided not to make any order for reinstatement or re-engagement.

Compensation award

12. Section 112(4) provides that where no order is made under section 113, *“the tribunal shall make an award of compensation for unfair dismissal calculated in accordance with sections 118 to 126 to be paid by the employer to the employee.”*
13. Section 118 (General) of the 1996 Act provides that *“where a tribunal makes an award of compensation for unfair dismissal under section 112(4)...the award shall consist of – (a) a basic award..., and (b) a compensatory award”*.

Basic award

14. Section 119 (Basic award) of the 1996 Act sets out how the amount of the basic award must be calculated.

(1) Subject to the provisions of this section, sections 120 to 122 and section 126, the amount of the basic award shall be calculated by—

(a) determining the period, ending with the effective date of termination, during which the employee has been continuously employed,

(b) reckoning backwards from the end of that period the number of years of employment falling within that period, and

(c) allowing the appropriate amount for each of those years of employment.

(2) In subsection (1)(c) “the appropriate amount” means—

(a) one and a half weeks’ pay for a year of employment in which the employee was not below the age of forty-one,

(b) one week’s pay for a year of employment (not within paragraph (a)) in which he was not below the age of twenty-two, and

(c) half a week’s pay for a year of employment not within paragraph (a) or (b).

15. The claimant commenced employment on 3 August 2020 and her employment terminated after a period of notice on 30 November 2023. The claimant was therefore continuously employed for 3 years within the period of employment. The claimant was aged not below forty-one during her employment. The appropriate amount is therefore calculated by multiplying one and a half weeks’ pay by three. A week’s pay for this purpose is subject to a statutory cap which was £643 at the relevant time. The appropriate amount and accordingly the basic award is therefore calculated by multiplying £643 by 4.5 totalling £2,893.50 and thus that amount was awarded as the basic award.

Compensatory award

16. Section 123 (Compensatory award) of the 1996 Act sets out that, *“the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the*

loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.” Further that, “the loss shall be taken to include ...any expenses reasonably incurred by the complainant in consequence of the dismissal, and ...loss of any benefit which he might reasonably be expected to have had but for the dismissal.” Section 123(4) provides that the duty to mitigate loss applies.

Past loss of earnings

17. The claimant applied for her past loss of earnings from the date of termination to the date of the hearing and for 50.6 weeks' worth of lost earnings. The calculation in taking account of the loss suffered is based on net take home pay (after deduction of tax and national insurance). I had sight of claimant's payslip. The claimant's net weekly basic pay is £1403.95 which produces a total loss of earnings of £71,039.87 when weekly net pay is multiplied by 50.6.

Mitigation and deduction of earnings received

18. The respondent has the burden of showing that a person has acted unreasonably to the balance of probabilities standard and the claimant is not required to prove that they have mitigated their loss. I was mindful of this when assessing the evidence available to me overall and determining what compensation was just and equitable having regard to the loss sustained. The respondent did not attend the hearing and the response has been struck out. I heard evidence from the claimant at the hearing. I found the claimant to be a forthright and credible witness. The claimant freely gave additional explanation to the Tribunal as requested in relation to how she had approached in particular the calculation of the value of the loss of share options and her evidence about job-seeking was supported by documentary evidence.
19. The claimant had made numerous job applications since the loss of her employment which had resulted in several meetings. The evidence demonstrates that the claimant made at least 400 applications and attended 80 meetings related to 39 roles where there were active discussions with the claimant. There was an example of communication where the claimant was indicated to be 'overqualified'. The claimant produced persuasive objective evidence which showed that the job market in her area had been tight with less vacancies being advertised during the relevant period particularly for jobs at her level of seniority with more junior hires being made. The indication was that hires were less than the previous 18-24 month period and that there were fewer open roles than the period 18-36 months previous. I found the claimant had been proactive in seeking new employment. A person is not required to lower their sights immediately and accept roles at lesser pay or seniority or status.
20. I was satisfied that the claimant had acted reasonably and as a reasonable person would do with regard to the duty to mitigate loss and in the steps taken to seek and obtain new employment.
21. The claimant secured a new role which started on 1 October 2024 at a salary of £90,000 per annum which was lower than that she received from the respondent.
22. The amount calculated as representing loss of earnings as a result of the

dismissal being the income the claimant would have received from the respondent if she had not been unfairly dismissed is therefore reduced by the amount of £7,289.52 earned during the relevant period.

Loss of pension

23. The claimant claimed for loss of pension benefit based on the loss of the amounts of pension contributions during the relevant period in the amount of £9,509.45. The calculation provided was coherent. I decided that it was just and equitable to award this amount as a component of the loss suffered by the claimant due to the loss of employment.

Loss of benefits

24. The claimant claimed amounts for loss of benefits including £1,300 for loss of conferences and training, £446.78 for loss of broadband and £53,786 for loss of vested, unexpired share options. I decided that it was not just and equitable to compensate the claimant for the cost of use of broadband during the period as she retained the value of that utility for her own use during the period and even though a pro-rated amount was claimed for it was not clear this could be severed and quantified as directly attributable to the loss of employment.
25. I decided that it was appropriate to compensate the claimant for the loss of professional career development arising from being out of the workplace and being deprived of relevant training and conferences. I awarded the reasonable amount requested of £1,300 having regard to the claimant's seniority and type of expected training she would have received had she not been dismissed and consider the amount also reflects deprivation of professional career development during this period.
26. In relation to the loss of value of share options, I required a full explanation from the claimant as to how this amount was calculated and was satisfied it was appropriate to compensate the claimant for this loss of benefit. The claimant had estimated the difference between her buy in price and the sell value based on the most recent publicly available valuation of the company. The claimant had used recognisable conversion calculator to convert from kroner to sterling to provide the amount of £53,786.00 claimed. This approach was reasonable and coherent. I accepted that if the claimant had remained in employment with the company, she could have realised the sell value of her share options and was reasonably likely to have done so during the relevant period but her rights were linked to her employment and thus the loss of this benefit was attributable to the loss of employment. I concluded it was just and equitable in all the circumstances to award this amount.
27. I therefore awarded the claimant a total of £55,086.00 for loss of benefits.

Loss of statutory rights

28. The claimant also claimed an amount of £500 for loss of statutory rights. This type of compensation reflects the fact that the claimant will take a period of time of two years to build up employment rights such as the right to claim unfair dismissal. Case law indicates two weeks' gross pay could be awarded but amounts awarded are typically between £300 to £500. I was content to award the amount claimed as reasonable and in line with amounts usually awarded.

Expenses

29. The claimant claimed for the loss of £59.50 being expenses incurred for tube travel for in-person interviews. This amount is entirely reasonable with regard to travel expenses in light of the evidence as to meetings attended during the 10 month period and restrained with regard to the types of expense that might be incurred and thus claimed by a person job-seeking. I decided it was just and equitable to award the amount claimed.

Interest on amount claimed for past losses

30. The claimant claimed interest at a rate of 8% on the amount for past losses in the amount of £2,625.77 for loss of interest before judgment. I declined to provide any adjustment to reflect decelerated receipt or to make any award of interest on past loss as a component of the compensatory award. The tribunal is not able to award interest on past loss within a compensatory award for unfair dismissal by comparison with its ability to, for example, award interest as a component of compensation in relation to awards for discrimination.
31. I observed at the hearing that interest accrues from day to day at the rate of 8% on compensation awarded from the date of judgment although no interest will be payable if the award is paid within 14 days of judgment.

Future loss of earnings

32. Having determined the amount to award for losses suffered to the date of the hearing, I considered whether to award any compensation for future loss that may be suffered due to the termination of employment. The claimant claims for future loss of earnings (difference between salary received from respondent and salary in new employment), pension and other benefits for a period of 6 months and claims the total amount of £40,884.96.
33. The tribunal has to consider the period for which any loss attributable to the loss of employment may continue and take account of a range of relevant factors such as whether pay may rise during that period, the personal characteristics of the claimant such as her age and health and other variables such as how long the claimant might have remained in the original employment including the chance that the claimant might have been fairly dismissed within a particular period.
34. I considered that it was not unreasonable to expect the claimant to have taken a lower paid role after the period of a year. I also considered that the period of a year was a period in which the claimant might well have been fairly dismissed although matters might have ameliorated if she had remained in employment and/or she may have voluntarily moved on to a new role. I noted that the contractual notice period was three months. I took account of these factors and considered matters overall and decided to make no award for any ongoing or future loss beyond the date of the hearing which was approximately a year after the claimant's employment.
35. In reaching the conclusion that I would not award any amount as compensation for 'losses' beyond the date of the hearing, I considered all relevant circumstances and what I considered was just and equitable as compensation for the loss suffered attributable to the loss of employment.

ACAS uplift

36. The claimant applied for an uplift of 25% to the compensatory award due failure of the respondent to comply with the ACAS Code of Practice on Disciplinary Procedures ("the Code") issued under section 199 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act"). The claimant's schedule of loss claims an amount of £36,736.36 by way of uplift based on 25% uplift to the total compensation claimed by the claimant.
37. Section 207A of the 1992 Act applies to unfair dismissal proceedings and sets out that *"If...it appears to the employment tribunal that- (a) the claim...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) that 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%"*.
38. The Code sets out principles for handling disciplinary and grievance situations in the workplace. The Code states that disciplinary situations include misconduct and/or poor performance. In line with the statutory provision, the tribunal takes the Code into account when considering relevant cases and where an employer has unreasonably failed to follow the guidance set out in the Code any compensatory award can be increased by up to 25%. Any such award is applied immediately before any reductions to the compensatory award and does not apply to the basic award, section 123(6) and section 124A of the 1996 Act.
39. I had sight of the claimant's termination letter at the hearing (HB 176). The claimant was told on 15 August 2023 that with immediate effect she was not required to attend work and her employment would terminate at the end of a three month period of notice. The termination letter dated 15 August 2023 refers to the claimant's conduct, her working and management style, a threat of employee exodus, and refers to and dismisses the option of a performance improvement review. On its face the situation as set out by the respondent in its termination letter falls within a disciplinary situation as envisaged by the Code. The termination letter was issued the same day as a meeting held at which the claimant was notified her employment would be terminated. The termination letter does not indicate in particular that the claimant was afforded any right of appeal against the termination decision. These circumstances do not equate with full adherence to the Code.
40. An award of a percentage uplift for unreasonable failure to comply with any provision of the Code has both compensatory and punitive elements, *Slade v Biggs [2021] EA-2019-00687-VP*; *Secretary of State for Justice v Plaistow [2021] UKEAT/0016/20*. The tribunal has a broad discretion as to whether there should be an uplift and as to the amount of any uplift. The top of the range applies to the most serious cases but these do not have to be exceptional. There must be consideration of the value of the award in monetary rather than simply percentage terms and disproportionate sums scaled down but discretion is to be exercised as to what is 'just and equitable'.
41. Judgment that the claimant was unfairly dismissed was given in accordance with Rule 21 of the Employment Tribunals Rules of Procedure 2023 being the Rules in place at the relevant time. As such there are no specific relevant

findings to draw upon as to the procedure, if any, used by the respondent or explanation as to whether the respondent's conduct was reasonable or unreasonable in not taking any steps envisaged by the Code. I noted the failure to comply with the Code and in particular the unreasonable failure to provide any right of appeal, the absolute value of the uplift and that this was proportionate overall in reflecting the unreasonable failure to comply with the Code. I decided that in all the circumstances it was just and equitable to provide for the compensatory award to be uplifted and that this would be by 10%.

42. As the total compensation awarded was £128,905.30 (£71,039.87 + £9,509.45 + £55,086.00 + £500 + £59.50 – £7,289.52), the absolute value of the uplift was therefore £12,890.53. The total compensatory award was therefore £141,795.83.
43. A statutory cap of the lower of 52 weeks' gross pay or £115,115.00 applies to any compensatory award, section 124 of the 1996 Act. The claimant's gross pay was £105,000.00 which is lower than the statutory amount and thus the application of the cap results in a total compensatory award of £105,000.00.
44. The respondent was held liable for unfairly dismissing the claimant and failing to pay her holiday pay to which she was entitled in the liability judgment dated 11 November 2024. I decided for the reasons set out above in accordance with the applicable legal framework that by way of remedy the respondent is to pay the claimant the amounts of £30,692.30 (holiday pay), £2,893.50 (basic award) and £105,000.00 (compensatory award).

Tribunal Judge Peer acting as an Employment Judge

Date 13 January 2025

REASONS SENT TO THE PARTIES ON

20 January 2025

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FOR THE TRIBUNAL OFFICE