



EMPLOYMENT TRIBUNALS

London South Employment Tribunal

11 December 2024 (video)

Claimant: Anastassia Maari
Respondent: J & A Pellings Limited
Before: Judge M Aspinall (sitting alone as an Employment Judge)
Appearances: Ms K Nicol, for the Claimant
Mr R Powell, Counsel for the Respondent

Judgment (Remedy)

Mrs Maari is awarded a total remedy of **£9,868.40**, comprised of the maximum basic award of £1,632, a compensatory award of £6,384.10 covering her net losses until a liability termination date of 17 July 2023 when she could reasonably have been expected to mitigate her ongoing losses, £1,452.30 for reduced holiday pay entitlements over that period, and £400 for loss of statutory rights.

The respondent is directed to pay this £9,868.40 total sum to Mrs Maari gross, without deductions.

Mrs Maari will be responsible for accounting to HMRC for any tax, national insurance or other statutory deductions properly due from the awarded sums once received.

Background

1. This remedy judgment concerns the appropriate compensation and awards to be made to the claimant, Mrs. Anastasia Maari, following my earlier liability judgment dated 3 March 2024. In that judgment, I upheld Mrs. Maari's claim of unfair dismissal against her former employer, J & A Pellings Limited ("the Respondent").
2. As set out in the liability judgment, Mrs. Maari was employed by the Respondent as a junior member of the architecture team from 3 December 2018 until her dismissal for gross misconduct on 17 January 2022.
3. While I found the disciplinary and appeal procedures followed were procedurally fair, I concluded that Mrs. Maari's dismissal for gross misconduct was substantively outside the reasonable range of responses, given her junior role, lack of autonomy, and limited culpability in the misconduct findings.
4. A remedy hearing listed for 11 December 2024 was required to determine the appropriate compensation and awards flowing from my findings that Mrs. Maari's dismissal was substantively unfair.
5. At the remedy hearing on 11 December 2024, the parties provided updated schedules of loss and evidence regarding Mrs. Maari's efforts to mitigate her losses through obtaining new employment following her dismissal.

6. The claimant, Mrs. Maari, gave oral evidence and was cross-examined at length by the Respondent's counsel regarding the circumstances of her dismissal, subsequent job search, and new employment obtained at GDM Architects.
7. The Respondent called Mr. Terry Hardy to give evidence. In his witness statement, he had maintained Mrs. Maari's conduct warranted dismissal. However, under cross-examination, he accepted the Tribunal's finding that dismissal was too harsh a sanction given Mrs. Maari's level of involvement.
8. This judgment sets out my reasoning and determinations regarding the compensation and awards to be made to Mrs. Maari as remedy for her substantive unfair dismissal by the Respondent.

The parties' positions on remedy

9. For the claimant, Ms Nichol maintains Mrs Maari would have remained employed with the respondent had she not been unfairly dismissed. She rejects arguments that Mrs Maari would have resigned shortly after her husband obtained new employment in early 2022 as speculative (paras 4-27). Ms Nichol denies the unproven allegation that Mrs Maari improperly accessed or disclosed any confidential company documents which could have resulted in separate dismissal for gross misconduct (paras 28-31).
10. On mitigation, Ms Nichol contends Mrs Maari acted promptly to mitigate her losses by taking the lower-paid role at GDM Architects within weeks of dismissal. While she suffered an immediate loss of earnings, Ms Nichol argues Mrs Maari continued reasonable mitigation efforts culminating in her leaving GDM in August 2024 due to its limited progression prospects compared to her previous seniority and salary level with the respondent (paras 33-41).
11. The claimant seeks the maximum basic award given Mrs Maari's age and lengthy service. On the compensatory award, Ms Nichol submits Mrs Maari's losses are the difference between her former respondent salary and earnings at GDM until starting her third job at HMY on 1st September 2024. Alternatively, compensation should cover projected respondent earnings to an appropriate future date based on established principles. Ms Nichol maintains Mrs Maari is entitled to loss of statutory rights, having regained then lost them through no fault after the GDM redundancy (para 51).
12. Ms Nichol argues no Polkey deduction is warranted, as this was a substantive not procedural unfair dismissal case (para 32). Further, she contends Mrs Maari's culpable misconduct did not cause the unfair dismissal, providing no just basis to reduce compensation under contributory fault principles (paras 44-47). The claimant reserves rights to claim future losses from leaving GDM and argues the 25% uplift under s.207A TULRA should apply for the respondent's breach of the ACAS code in failing to address her grievance (para 52).
13. For the respondent, Mr Powell argues the claimant would have left employment voluntarily in early 2022 even without dismissal. This was either because her husband secured a higher-paying job offer from late December 2021 which he accepted starting 31 January 2022, so Mrs Maari would have resigned shortly after to follow him (paras 10-51). Alternatively, Mr Powell contends Mrs Maari would have faced dismissal by January 2023 for the separate matter of her retaining and disclosing confidential company documents amounting to gross misconduct (paras 52-54).
14. On mitigation, Mr Powell submits Mrs Maari failed to mitigate by leaving secure employment at GDM after less than 2 years without providing sufficient evidence her role was genuinely made redundant as claimed (paras 89-99). As such, the respondent should not compensate losses flowing from Mrs Maari's voluntary decision to change jobs again.

15. Regarding losses, Mr Powell disputes the claimant's projected respondent salary increases, arguing she likely would not have received substantial raises after the misconduct issues (paras 57-68). Any ongoing losses compensated should only cover a period to December 2022. By then, the likely outcome would have been enforcement of Mrs Maari's contractual clawback provisions to recover monies lost through the over-inflated invoicing she culpably participated in, realistically leading to termination of employment at that stage (paras 109-122).
16. On contributory fault, the respondent maintains Mrs Maari's actions amounted to blameworthy gross misconduct which she failed to take responsibility for. As her misconduct was the effective cause of dismissal, Mr Powell argues a 76-100% deduction to all awards should apply under the principle of contributory fault in s.123(6) ERA 1996. Any compensation awarded without a major deduction would represent an undeserved windfall (paras 109-122).
17. Finally, Mr Powell argues against applying the 25% uplift under s.207A TULRA for failure to follow the ACAS code, stating no material breach occurred simply because the grievance was not re-investigated during the live disciplinary process (paras 123-135).

Evidence at the Remedy Hearing

18. At the remedy hearing, I heard oral testimony from the claimant, Mrs Anastasia Maari, and the respondent's witness, Mr Terry Hardy. Documentary evidence was also admitted from both parties.
19. Mrs Maari gave evidence about the circumstances surrounding her dismissal by the respondent on 17th January 2022 for gross misconduct relating to over-inflated invoices. She maintained she had limited involvement, acting under instruction from senior colleagues. Her dismissal for gross misconduct was, she stated, unduly harsh given her relatively junior position and lack of autonomy on the project.
20. In cross-examination by the respondent's counsel, Mrs Maari rejected suggestions she would have resigned shortly after her husband secured alternative employment from late January 2022. She insisted her intention was to remain with the respondent long-term. Mrs Maari denied ever improperly accessing or retaining confidential company documents which could have led to separate dismissal.
21. On mitigation, Mrs Maari's evidence was that she promptly sought alternative architecture roles following dismissal. Within 3 weeks, she commenced employment at GDM Architects on 7th February 2022 to mitigate her losses, albeit at a lower salary. Mrs Maari stated she remained at GDM for almost 2 years until being made redundant in August 2024 due to lack of workflow, subsequently taking her third job at HMY.
22. The respondent called Mr Terry Hardy, former Head of Projects. In his witness statement, Mr Hardy maintained Mrs Maari's conduct amounted to gross misconduct warranting summary dismissal. However, under cross-examination, he accepted the tribunal's previous finding that dismissal fell outside the reasonable range of responses given her junior role and limited culpability.
23. For the respondent, payroll records and contract documentation were admitted showing Mrs Maari's salary and benefits package at the point of dismissal. Written particulars for her subsequent roles at GDM and HMY architects were also before me, along with updated schedule of loss calculations from both parties.
24. Of note, the respondent sought to rely on a written grievance submitted by Mrs Maari in October 2021 alleging she had concerns about the company's invoicing practices. They contended this grievance implied her awareness of wrongdoing. For the claimant, it was

argued this grievance demonstrated Mrs Maari raising legitimate concerns which were disregarded by management prior to her dismissal.

25. The bundle was 453 pages, and I considered the pages and evidence to which I was referred to in it.
26. Here is a section in British English setting out each head of remedy sought by the claimant and the basis for claiming it, without paragraph numbers:

Heads of Remedy Sought and Parties' Positions

Basic Award

27. The claimant, through Ms Nichol, contends Mrs Maari is entitled to receive the maximum possible basic award given her age of 39 years and lengthy service of over 3 years with the respondent. The respondent does not appear to make any specific submissions opposing the maximum basic award amount.

Compensatory Award

28. On the compensatory award, Ms Nichol submits Mrs Maari's losses are the difference between her former respondent salary/benefits and lower earnings/inferior benefits at GDM Architects from dismissal until starting at HMY on 1st September 2024. Alternatively, she argues compensation should cover projected respondent earnings to an appropriate future date.
29. However, Mr Powell for the respondent disputes that ongoing losses should extend beyond December 2022. He argues the likely outcome from then would have been enforcement of contractual clawback provisions against Mrs Maari over the invoice issues, realistically leading to lawful termination. Mr Powell also disagrees with the claimant's projected respondent salary increases for Mrs Maari after her misconduct came to light.

Future Losses

30. The claimant reserves the right to claim future losses from Mrs Maari leaving GDM Architects in August 2024. Ms Nichol argues this was reasonable mitigation given GDM's constraints on Mrs Maari's earnings and progression compared to her previous respondent role.
31. Contrastingly, Mr Powell submits Mrs Maari failed to mitigate adequately by leaving secure GDM employment without sufficient redundancy evidence. As such, he maintains the respondent should not compensate any losses from her voluntary job change.

Loss of Statutory Rights

32. Ms Nichol maintains Mrs Maari is entitled to an award for loss of statutory rights, having regained then lost them again through no fault due to the GDM redundancy. The respondent's submissions do not directly address this head of claim.

25% Uplift

33. The claimant contends the 25% uplift under s.207A TULRA should apply for the respondent's breach of the ACAS code in failing to properly consider Mrs Maari's grievance about invoicing practices linked to her dismissal.
34. However, Mr Powell argues firmly against any uplift, stating there was no material ACAS code breach simply because the grievance was not re-investigated during the live disciplinary process.

Contributory Fault

35. The respondent maintains Mrs Maari's own blameworthy gross misconduct which she failed to take responsibility for effectively caused her unfair dismissal. Mr Powell argues for a 76-100% deduction to all awards under contributory fault principles in s.123(6) ERA 1996, asserting any undeducted compensation would represent an undeserved windfall.

36. The claimant, through Ms Nichol, contends Mrs Maari's culpable misconduct did not actually cause the unfair dismissal, providing no just basis for deductions under contributory fault.

Findings and reasoning

Date for Termination of Liability

37. I have determined that the date by which the respondent should no longer be liable for Mrs Maari's ongoing losses is 17th July 2023, which is 18 months from her effective dismissal date of 17th January 2022.
38. While Mrs Maari remained employed at GDM Architects until August 2024, I find this 18-month period to 17th July 2023 reasonable in all the circumstances for the respondent to bear responsibility for her reduced earnings flowing from the unfair dismissal.
39. This timeframe strikes a balance, acknowledging that the world moves on and circumstances change over time. Importantly, the 18-month period captures that to Mrs Maari's credit, she acted promptly and reasonably to mitigate her losses. This was achieved through obtaining employment with GDM Architects within just 3 weeks of dismissal on 7th February 2022, albeit initially at a lower salary.
40. Crucially, the fact Mrs Maari was then able to secure the higher-paying role at HMY after leaving GDM in August 2024 indicates to me that she likely could have fully mitigated her ongoing losses within an 18-month window from dismissal, had she turned her mind to doing so. While she did not actually mitigate until over 2 years later, Mrs Maari has demonstrated her ability to obtain suitable re-employment within a reasonable 18-month period.
41. For those reasons, I find it appropriate to limit the respondent's liability for Mrs Maari's losses to that 18-month period up to 17th July 2023. This allows ample time from dismissal for her to have reasonably mitigated her losses through re-employment at GDM or elsewhere, factoring in the inevitable delays and frictional periods between roles.

Basic Award

42. The maximum basic award of £1,632 is awarded to Mrs Maari. Given her age of 39 years and length of service over 3 years with the respondent at the effective date of termination on 17th January 2022, she meets the criteria for the highest possible basic award calculation. The respondent did not oppose awarding the maximum amount.

Compensatory Award

43. For the compensatory award period from dismissal until the liability termination date of 17th July 2023, Mrs Maari's losses are £66,959.88. This represents her former £858.46 net weekly pay with the respondent for the 78-week period.
44. From this amount, I have deducted her GDM earnings of £63,418.90 across that same 78-week period, as she mitigated those losses through her employment with GDM. This leaves a compensatory award balance of £3,540.98, being the difference between her former respondent net weekly pay and the lower £739.46 net weekly pay she received at GDM for those 78 weeks up to 17th July 2023.
45. Added to this £3,540.98 compensatory award balance are £1,460 for increased parking costs, £1,306.92 for lost enhanced maternity pay entitlements, and £76.20 for loss of occupational pension contributions - all relating to the 78-week GDM employment period.
46. This brings the total compensatory award for losses from dismissal until the 17th July 2023 liability termination date to £6,384.10.
47. In calculating these losses, I have rejected the respondent's arguments that Mrs Maari's compensation should be limited to only the period to December 2022. This was based on

the suggestion that by that point; Mrs Maari's employment would likely have been lawfully terminated anyway due to potential enforcement of contractual "clawback" provisions against her regarding the over-inflated invoicing issues.

48. However, as I found Mrs Maari's dismissal in January 2022 to be substantively unfair, it follows that she would have remained employed by the respondent absent that unreasonable act on their part. To restrict her ongoing compensation based on a hypothetical scenario that she may have been lawfully dismissed over a year later is entirely speculative. Mrs Maari's unfair dismissal was the effective cause of her ongoing losses which the compensatory award is intended to remedy.
49. I have also rejected the respondent's contentions that Mrs Maari would not have received projected salary increases from them after the misconduct issues came to light. While it is possible her pay rises may have been impacted, the respondent presented no concrete evidence this would be the case. More importantly, the claimant did not provide sufficient evidence to demonstrate her likely future earnings and projected pay scales with the respondent, had she not been unfairly dismissed. In the absence of clear evidence either way, I have made no adjustments for projected pay increases in my compensatory award calculations.

Loss of Statutory Rights

50. I award the maximum £400 permitted for Mrs Maari's loss of statutory rights upon her dismissal. These were regained through over 2 years' service at GDM following her unfair dismissal.

25% Uplift

51. No uplift is applied under s.207A Trade Union and Labour Relations (Consolidation) Act 1992. While Mrs Maari raised a grievance in October 2021 linked to the invoicing issues which ultimately led to her dismissal, I am satisfied the respondent adequately considered her grievance during the subsequent disciplinary process against her.
52. My findings at the liability stage were that the disciplinary and appeal procedures followed were procedurally fair. The respondent's failure was in reaching an unreasonable sanction outcome which fell outside the band of reasonable responses. However, the process itself in dealing with Mrs Maari's grievance and the misconduct allegations was procedurally sound, if ultimately flawed in the sanction imposed. Therefore, no breach of the ACAS code occurred warranting a 25% uplift.

Contributory Fault

53. A key issue was whether any deductions should apply to Mrs Maari's awards under the contributory fault provisions in s.123(6) Employment Rights Act 1996. The respondent forcefully argued that Mrs Maari's own blameworthy misconduct, which she failed to take responsibility for, effectively caused her unfair dismissal. On that basis, the respondent contended deductions of 76-100% to all awards were merited.
54. However, I have rejected this argument in its entirety. As I definitively found at the liability stage, Mrs Maari's dismissal was substantively unfair given her relatively junior role and limited culpability in the misconduct findings relating to the over-inflated invoices. The respondent's sanction of dismissal fell outside the reasonable range of responses.
55. It would be fundamentally contradictory of me to now find that Mrs Maari caused or contributed to her own unfair dismissal through alleged misconduct. Her actions and involvement were not deemed sufficient to warrant dismissal, otherwise her claim would have been dismissed at the liability stage.
56. The effective cause of Mrs Maari's dismissal was the respondent's unreasonable application

of too severe a sanction based on my findings. Applying deductions for contributory fault would be entirely inconsistent with the substantive liability findings. This is because I have already determined the respondent was solely culpable for the unfair dismissal through its unreasonable application of too-harsh-a sanction of Mrs Maari's conduct.

57. Mrs Maari may have committed some misconduct, but I found it did not merit her dismissal. She cannot logically have "caused" or contributed to her own unfair dismissal, when it was the respondent's own unreasonable sanction which rendered the dismissal unfair in the first place. For those reasons, the respondent's contributory fault arguments have been rejected in full.

Holiday Pay

58. In addition to the £6,384.10 compensatory award for Mrs Maari's net losses from dismissal up to 17th July 2023, I also award £1,452.30 to account for the difference between her holiday entitlement and pay with the respondent versus what she received during her employment with GDM over that same period.
59. While employed by the respondent, Mrs Maari was contractually entitled to more generous holiday benefits than she later received at GDM Architects after her dismissal. The £1,452.30 represents the shortfall in holiday pay she incurred by having to take the lower-paid GDM role to mitigate her losses.
60. This covers the 78-week period from her dismissal on 17th January 2022 to the prospective termination date of 17th July 2023 that I determined was reasonable for the respondent's ongoing liability. As Mrs Maari was forced to accept inferior terms at GDM due to the respondent's unfair dismissal, she is entitled to be compensated for this consequential loss relating to reduced holiday pay over that 18-month period.
61. The £1,452.30 holiday pay award therefore forms part of the total £8,236.40 compensation awarded to Mrs Maari for her losses flowing from the substantively unfair dismissal by the respondent.

Conclusion

62. In summary, having found Mrs Anastasia Maari was substantively and unfairly dismissed by the respondent J & A Pellings Limited, I make the following awards:
- a. Basic Award: £1,632
 - b. Compensatory Award for net losses to 17th July 2023: £6,384.10
 - c. Holiday Pay Award: £1,452.30
 - d. Loss of Statutory Rights: £400
63. This totals an overall award of £9,868.40 to be paid by the respondent to Mrs Maari.
64. In reaching this decision, I determined the respondent's liability for Mrs Maari's losses should reasonably extend for an 18-month period until 17th July 2023, despite her subsequent job changes. This allowed sufficient time from dismissal for Mrs Maari to mitigate her ongoing losses through re-employment.
65. Crucially, I rejected the respondent's arguments that Mrs Maari caused or contributed to her own unfair dismissal through alleged misconduct. Having found her dismissal substantively unreasonable at the liability stage given her junior role and limited culpability, it would be contradictory to then reduce her compensation on grounds she was blameworthy for that same unreasonable act.

66. While Mrs Maari may have committed some misconduct, I concluded it did not actually warrant her dismissal by the respondent. As such, no deductions for contributory fault apply to the compensation awarded.
67. The total £9,868.40 remedy aims to put Mrs Maari back in the position she would have been, had she not been unfairly dismissed on 17th January 2022. It covers her actual financial losses flowing from that unreasonable act by the respondent over a reasonable forward-looking period of 18 months.

Employment Judge M Aspinall
28 December 2024

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