



EMPLOYMENT TRIBUNALS

Claimant: Ms J Eyre
Respondent: Bampton Town Council
Heard at: On: 9 January 2017
Before: Employment Judge A Goraj
Members: Mrs M Corrick
Mr T Slater

Representation

Claimant: in person
Respondent: Mr S Wyeth, Counsel

JUDGMENT ON APPLICATION FOR RECONSIDERATION AND REMEDY

THE UNANIMOUS JUDGMENT OF THE TRIBUNAL IS THAT :-

1. The claimant's further application for the reconsideration of the tribunal's Judgment which was sent to the parties on 16 August 2016 is refused as:-
 - (1) The application was not presented to the tribunal within 14 days of the date upon which the Judgment was sent to the parties as required pursuant to Rule 71 of Schedule 1 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 ("the 2013 Regulations") and
 - (2) The application does not, in any event, have any reasonable prospect of success.

2. The claimant is awarded, and the respondent is ordered to pay to the claimant by way of compensation for unfair dismissal, a Basic Award of £405.88 and a Compensatory Award of £1,622.09 net giving a total award of £2,027.97.
3. The Employment Protection (Recoument of Benefits) Regulations 1996 (“the 1996 Regulations”) apply in this case. For the purposes of the 1996 Regulations the monetary award is £2,027.97, the amount of the prescribed element is £1,554.09, the dates to which the prescribed element is attributable are 25 March 2015 until 15 September 2015 and the amount by which the monetary award exceeds the prescribed element is £473.88.

REASONS

1. An oral judgment was delivered at the Hearing on 9 January 2017. These written reasons are provided by the Tribunal pursuant to a request which was made by the claimant at the conclusion of the Hearing on 9 January 2017.
2. This hearing was convened to deal with the question of remedy pursuant to an earlier finding of unfair dismissal pursuant to a Reserved Judgment which was sent to the parties on 16 August 2016 (“the Judgment dated 16 August 2016”). This Judgment is at pages 29- 63 of the bundle of documents (“the bundle”) which was provided for use at the Hearing. The tribunal heard oral evidence from the claimant. The bundle included a schedule and counter schedule of loss.

The claimant’s application for the reconsideration of the Judgment dated 16 August 2016

3. At the start of the remedy Hearing on 9 January 2017 the Tribunal was provided with a copy of the claimant’s witness statement dated 29 December 2016 which was, in essence, an application for a re-consideration of the Judgment dated 16 August 2016.
4. The Tribunal clarified with the claimant whether she wished it to be treated as an application for re-consideration and after further discussion the claimant confirmed that she did want it to be treated as such. The claimant indicated in particular that she believed that it was appropriate to raise her concerns regarding the Judgment dated 16 August 2016 at the remedy Hearing and that she wished the Tribunal to deal with it at the start of the Hearing.
5. The Tribunal asked for comments from Counsel on behalf of the respondent. The respondent’s Counsel took a practical view. The respondent’s Counsel indicated that he did not object to the application being determined and agreed that it was sensible for it to be considered at the start of the Remedy Hearing.

6. It was further agreed that since the Tribunal was a panel of three the application for reconsideration (as set out in the claimant's witness statement) would be dealt with by the full panel notwithstanding that the 2013 Regulations provide that the initial decision would normally be taken by the Employment Judge sitting alone.
7. The Tribunal has dealt with the reconsideration application in accordance with rules 70-72 of the 2013 Regulations. The first question that the Tribunal is required to determine is whether we should consider the application for reconsideration as Rule 71 of the Regulations require such an application to be presented within 14 days of the date upon which the original decision was communicated to the parties. The Tribunal is satisfied that the application (which was made at the start of the Hearing) was presented outside the relevant time limit because the Judgment (which is dated 10 August 2016) was sent to the parties on 16 August 2016 (page 62 of the bundle).
8. The Tribunal gave the claimant an opportunity to explain why time should be extended but she was not able to give us any good reason why an extension should be granted. The only reason that the claimant gave related to the fact that the matter was listed for a remedy Hearing. The claimant did not provide any reasons for the delay other than to rely on the time which it had taken her to prepare the document.
9. In the circumstances, the Tribunal is satisfied that the claimant's application for reconsideration should be refused because it has not been brought within the 14 day time limit specified in Rule 71 of the 2013 Regulations and further, there is no cogent explanation for such failure.
10. The Tribunal has gone on, in any event, to consider whether the Judgment dated 16 August 2016 should be varied or revoked pursuant to Rule 72(1) of the Regulations. The Tribunal has reminded itself that there is a preliminary decision to be made namely, whether the Employment Judge, or in this case the Tribunal, considers that the application has any reasonable prospect of success of being varied or revoked including whether or not this is a case where substantially the same application has already been made and refused.
11. The Tribunal is satisfied that it is not, in any event, appropriate to allow this application for reconsideration to proceed as there is no reasonable prospect of the original decision being varied or revoked having regard to (a) the matters raised in the claimant's statement/application and (b) an application for reconsideration has already been brought in broadly similar terms and refused by the Employment Judge.
12. When reaching this conclusion we have taken into account (a) the claimant's previous application for reconsideration which was received by the Tribunals on 30 August 2016 (pages 66- 73 of the bundle) and refused by a Judgment dated 27 September 2016 (pages 74- 77 of the bundle) and (b) that the Tribunal has to have regard to the interests of justice including that it is not appropriate to re-open the matter in respect of matters that

have already been determined or could, in any event, have been raised with the Tribunal at the original hearing. Further, we have reminded ourselves that any error of law falls more properly to be determined by the Employment Appeal Tribunal.

13. Having applied the above principles to the application before us, we are satisfied that (a) the matters that the claimant is now seeking to raise are matters that have been dealt with previously and/or could have been dealt with as part of the previous application (b) insofar as the claimant has identified any alleged factual errors in the Judgment dated 16 August 2016 that they are not relevant/ sufficiently material to require such matters to be re-opened in the interests of justice and (c) that in so far as any alleged errors of law are concerned they fall to be corrected by the Employment Appeal Tribunal.
14. In all the circumstances, the claimant's reconsideration application is dismissed.

The claimant's claim for compensation

15. The original purpose of this Hearing was to deal with the question of remedy pursuant to the Judgment dated 16 August 2016 in which the Tribunal held that (a) the claimant had been unfairly dismissed by the respondent (b) any Compensatory Award should be reduced by 75% pursuant to section 123 (1) of the Employment Rights Act ("the Act") following a period of two months during which a fair procedure would have taken place and (c) that any Basic and/or Compensatory Award, should be reduced/ be reduced further by 15% pursuant to section 122(2) and 123(6) of the Act in respect of the claimant's contributory conduct.
16. As stated above were provided with the bundle which included a helpful schedule of loss and counter schedule of loss which are at pages 80-81e of the bundle. We did not receive a remedy statement from the claimant but the claimant gave her evidence by reference to her schedule of loss.

The claimant's pay and associated matters

17. It was agreed between the parties that the claimant's gross monthly pay and net monthly pay were £689.75 and £682.74 respectively. It was also agreed that the claimant's gross weekly and net weekly pay were £159.17 and £157.55 respectively and we have used these figures for the purposes of our calculations. The claimant was claiming working tax credits whilst working with the claimant and this has been taken into account by the Tribunal. It was also agreed with the parties that the claimant's Basic Award (reflecting the 15% reduction for contributory fault) is a figure of £405.88. The claimant was employed by the respondent as its Town Clerk on a part time basis working for 56 hours per month.

The claimant

18. The claimant is a single parent who has a daughter of 16 who attends school in Exeter. Her daughter usually uses public transport from Tiverton but it is sometimes necessary for the claimant to take and collect her daughter from school. The claimant's daughter normally has to be at Tiverton by 07:25am and the claimant sometimes has to be available to collect her daughter from Exeter around 17:00pm.
19. The claimant has experience as a Town Clerk. The claimant also worked previously with charitable organisations such as the lottery, helping to assess bids for funds. The claimant also has experience of working with adults with learning disabilities, has a qualification in teaching English as foreign language and also has a qualification as a sign language interpreter.
20. The claimant's effective date of termination with the respondent was 24 March 2015 at which time the claimant received one month's pay in lieu of notice. Following her dismissal, the claimant signed on for Unemployment Benefit. The claimant also made applications for the jobs which are listed at page 135 of the bundle. The claimant applied for 5 jobs between May and June 2015. In July 2015 the claimant decided to apply for a Fine Arts Degree at Plymouth University albeit that the course is administered in Exeter. The claimant decided to undertake such a course as she believed that it was likely to help her to improve her standing/ contacts in the art world which would assist her securing an income working in such area.
21. The claimant stopped claiming Unemployment Benefit on 15 September 2015 (when she began her course) which is confirmed by the document at page 134 of the bundle. The claimant attended the course on a full-time basis. The claimant was required to attend in Exeter three days a week and had additional work to undertake at home. Although we have not been provided with any documentary evidence, we accept that the course was a Fine Art course with some history of art and some elements of curatorship. The claimant decided not to seek any employment during her course, the claimant received awards for tuition fees and maintenance fees and grants. There is no suggestion that she is currently being required to pay any of those monies back.
22. After the claimant completed the first year of the course she decided not to carry on with it as it was uneconomic. The claimant decided instead to become self-employed. Following the departure from her course, the claimant has been working for three individuals on work that is not art related (though the claimant is now seeking to undertake work that is art related).
23. The claimant is not claiming any compensation from the respondent after 1 July 2016.

The award of compensation

24. The Tribunal explained to the claimant at the beginning of the Hearing her options with regard to remedy and she elected to be considered for

compensation.

The Basic Award

25. The claimant is awarded and the respondent is ordered to pay to her the agreed Basic Award in the sum of £405.88.

The Law and the submissions of the parties regarding the claimant's Compensatory Award

26. The Tribunal has reminded itself in particular that it has to have regard in particular to the provisions of section 123(1) of the Act. Section 123 (1) of the Act states as follows:-

“.....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”.

27. The tribunal has also had regard to the authority of **Simrad Limited v Scott [1997] IRLR 147** relied upon by the respondent.

28. In summary, the claimant's position is that she has taken reasonable steps to mitigate her losses including in respect of her attendance on the University Course as this would assist her in obtaining work in the art world in the future and that she should be compensated for any financial losses incurred up until 1 July 2016.

29. In summary, the respondent's position is that the claimant's Compensatory Award should be limited to reflect (a) the fact that she failed to take reasonable steps to mitigate her losses following her dismissal (b) that the claimant's entitlement to compensation should, at the latest, cease when the claimant commenced her course at the University as any continuing financial loss was no longer attributable to the actions of the respondent and (c) that she further, in any event, failed to mitigate her losses by not seeking part time employment whilst she participated in the University course.

The Compensatory Award

30. We are satisfied that it is just and equitable to award the claimant compensation in this case.

Loss of statutory rights

31. We have considered first compensation for the loss of the claimant's statutory rights. The Tribunal considers that an appropriate figure in this case in the light in particular of the claimant's period of employment with the respondent is a figure of £320 which is the equivalent of approximately two weeks' pay. We have deducted 75% from the £320 (pursuant to section 123(1) of the Act which reduces it to £80 and deducted a further

15% which reduces the award for loss of statutory rights to £68.

The loss of earnings between 23 April 2015 and 22 May 2015.

32. We have considered first the claimant's loss of net earnings between 23 April 2015 and 22 May 2015 (as the claimant was paid one month's pay in lieu of notice). The tribunal has added to the claimant's net monthly pay of £682.74 the loss of the Working Tax Credit which is a figure of £268 which gives a loss of £950.74 for the month from which we have deducted 15% for contribution (pursuant to Section 123(6) of the Act (£142.61) which gives a figure of £808.13.

The loss of earnings between 23 May 2015 and 15 September 2015

33. We have considered next the period between 23 May 2015 and 15 September 2015. Having given the matter very careful consideration we are satisfied that it is just and equitable to award compensation for that period as the losses in that period are attributable to the action taken by the respondent.

34. We are satisfied, in all the circumstances of the case, that although the claimant only made five applications for employment during the period that she has taken reasonable steps to mitigate her losses. When reaching this conclusion and we have recognised that given the nature of this dispute it would have been very difficult for the claimant to have obtained alternative employment in the immediate environment of the respondent. We have also taken into account that the claimant applied for and received Unemployment Benefit during this period and that she therefore satisfied the requirements for such award.

35. In summary, we have awarded the claimant loss of net salary from 23 May 2015 until 15 September 2015 (16 weeks x £157.55) in the sum of £2,520.80 to which we have added loss of working credits for the period (16 weeks x £61.85) in the sum of £989.60 which gives a net loss of £3,510.40. We have deducted from this figure the sum of £2,632.80 pursuant to section 123 (1) of the Act and a further sum of £131.64 pursuant to section 123 (6) of the Act which gives a figure of £745.96

16 September 2015 until 1 July 2016

36. Finally, we have considered the period from 16 September 2015 until 1 July 2016 in respect of which the claimant is seeking her full salary for the period together with tuition fees, maintenance loan and grants totalling a further £13,429. We are not satisfied, having given the matter very careful consideration, that it is just and equitable to award the claimant any compensation for the period after 15 September 2015.

37. When reaching this conclusion we have taken into account in particular that the claimant elected to take up a full-time Fine Arts course. This is not a vocational course. The claimant had by this time taken limited steps to mitigate her losses. The claimant was no longer claiming Unemployment Benefit or seeking employment after 15 September 2015. We are

satisfied that the claimant took a conscious decision at this time to take a different direction in her career. We are satisfied that this is an intervening event which means that any losses are no longer attributable to the actions taken by the respondent. Further the claimant accepted that there was no suggestion of her being required to repay the associated loans and grants which had been awarded to her.

38. However, if we are wrong and this is not an intervening act we are, in any event, satisfied that the claimant did not take reasonable steps to mitigate her losses after 15 September 2015. We are satisfied that if she had taken reasonable steps to mitigate her loss, she should by this date have been able to have secured part-time work which she could have undertaken whilst on her course to replace the 56 hours per month which she worked with the respondent.
39. When reaching this conclusion we have had regard to the claimant's range of skills including teaching English as a foreign languages and working with adults with learning disabilities. Further she could have undertaken other less vocational positions in Exeter which would have fitted in with her responsibilities to her daughter. So in all the circumstances we are not prepared to award any compensation for that period.

Total award

40. The claimant is therefore awarded, and the respondent is ordered to pay to her (a) a Basic award of £405.88 and (b) a Compensatory Award of £1,622.09 (£1,554.09 plus £68) which gives a total award of £2,027. 97.
41. The Recoupment Regulations apply in this case. The prescribed element is £1,554.09 and the total award exceeds the prescribed element by £473.88.

Employment Judge A Goraj

Date 2 February 2017

JUDGMENT SENT TO THE PARTIES ON

9th February 2017

.....
FOR THE TRIBUNAL OFFICE

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Claimant **Ms J Eyre**
Respondent **Bampton Town Council**

**ANNEX TO THE JUDGMENT
(MONETARY AWARDS)**

Recoupment of Jobseeker's Allowance, income-related Employment and Support Allowance and Income Support

The following particulars are given pursuant to the Employment Protection (Recoupment of Jobseekers Allowance and Income Support) Regulations 1996, SI 1996 No 2349, Reg 4, SI 2010 No 2429 Reg 5.

The Tribunal has awarded compensation to the claimant, but not all of it should be paid immediately. This is because the Secretary of State has the right to recover (recoup) any Jobseeker's Allowance, income-related Employment Support Allowance or Income Support paid to the claimant after dismissal. This will be done by way of a Recoupment Notice, which will be sent to the respondent usually within 21 days after the Tribunal's judgment was sent to the parties.

The Tribunal's judgment states: (a) the total monetary award made to the claimant; (b) an amount called the prescribed element, if any; (c) the dates of the period to which the prescribed element is attributable; and (d) the amount, if any, by which the monetary award exceeds the prescribed element. Only the prescribed element is affected by the Recoupment Notice and that part of the Tribunal's award should not be paid until the Recoupment Notice has been received.

The difference between the monetary award and the prescribed element is payable by the respondent to the claimant immediately.

When the Secretary of State sends the Recoupment Notice, the respondent must pay the amount specified in the Recoupment Notice to the Secretary of State. This amount can never be more than the prescribed element of any monetary award. If the amount is less than the prescribed element, the respondent must pay the balance to the claimant. If the Secretary of State informs the respondent that it is not intended to issue a Recoupment Notice, the respondent must immediately pay the whole of the prescribed element to the claimant.

The claimant will receive a copy of the Recoupment Notice from the Secretary of State. If the claimant disputes the amount in the Recoupment Notice, the claimant must inform the Secretary of State in writing within 21 days. The Tribunal has no power to resolve such disputes, which must be resolved directly between the claimant and the Secretary of State.

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): 1401834/2015

Name of case(s): Ms J Eyre v Bampton Town Council

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: **9th February 2017**

"the calculation day" is: **10th February 2017**

"the stipulated rate of interest" is: 8%

MISS D HOARE
For the Employment Tribunal Office

INTEREST ON TRIBUNAL AWARDS

GUIDANCE NOTE

1. This guidance note should be read in conjunction with the booklet, 'The Judgment' which can be found on our website at www.justice.gov.uk/tribunals/employment/claims/booklets

If you do not have access to the internet, paper copies can be obtained by telephoning the tribunal office dealing with the claim.

2. The Employment Tribunals (Interest) Order 1990 provides for interest to be paid on employment tribunal awards (excluding sums representing costs or expenses) if they remain wholly or partly unpaid more than 14 days after the date on which the Tribunal's judgment is recorded as having been sent to the parties, which is known as "the relevant decision day".

3. The date from which interest starts to accrue is the day immediately following the relevant decision day and is called "the calculation day". The dates of both the relevant decision day and the calculation day that apply in your case are recorded on the Notice attached to the judgment. If you have received a judgment and subsequently request reasons (see 'The Judgment' booklet) the date of the relevant judgment day will remain unchanged.

4. "Interest" means simple interest accruing from day to day on such part of the sum of money awarded by the tribunal for the time being remaining unpaid. Interest does not accrue on deductions such as Tax and/or National Insurance Contributions that are to be paid to the appropriate authorities. Neither does interest accrue on any sums which the Secretary of State has claimed in a recoupment notice (see 'The Judgment' booklet).

5. Where the sum awarded is varied upon a review of the judgment by the Employment Tribunal or upon appeal to the Employment Appeal Tribunal or a higher appellate court, then interest will accrue in the same way (from "the calculation day"), but on the award as varied by the higher court and not on the sum originally awarded by the Tribunal.

6. 'The Judgment' booklet explains how employment tribunal awards are enforced. The interest element of an award is enforced in the same way.