



EMPLOYMENT TRIBUNALS

Claimant Mrs S Fish

Respondent Mr A West t/a Seaside Stores

Heard at: Exeter

On: 6 August 2019 (in chambers)

Employment Judge Goraj

RESERVED JUDGMENT

The JUDGMENT of the Tribunal is that: -

1. The Claimant is awarded and the Respondent is ordered to pay to her the sum of £1,413.18 in respect of her compensatory award for unfair dismissal which is calculated as set out below.
2. The Claimant is also awarded and the Respondent is ordered to pay to her 2 weeks' gross salary in the sum of £508 (2 x £254 gross per week) pursuant to Section 38 of the Employment Act 2002 in respect of the failure of the Respondent to issue the Claimant with terms and conditions of employment as required pursuant to section 1 of the Employment Rights Act 1996.
3. The Claimant is therefore awarded and the Respondent is ordered to pay to the Claimant the total sum of £1,921.18.
4. The Employment Protection (Recoupment of Benefits) Regulations 1996 do not apply in this case.

REASONS

1. This is a Judgment dealing with remedy in respect of the liability Hearing on 4 July 2019. At that Hearing the Tribunal gave an oral Judgment (“the Judgment”) in summary as follows: -
 - (1) That the principal reason for the Claimant’s dismissal was redundancy for the purposes of sections 98 (1)/(2) of the Employment Rights Act 1996 (“the Act”).
 - (2) The Claimant was however, unfairly dismissed by the Respondent contrary to section 98 (4) of the Act.
 - (3) Any compensatory award awarded to the Claimant should (a) include two weeks’ pay in respect of the period which it would have taken to have completed a proper period of redundancy consultation (b) be reduced for the period thereafter to reflect that there was a 15% chance that the Claimant would have been fairly dismissed at that time and further, that the Claimant’s hours would, in any event, have been reduced to 20 hours per week.
2. Although the Tribunal heard evidence at the liability Hearing concerning the Claimant’s claim for compensation there was insufficient time at that Hearing for the Tribunal to determine remedy as the Hearing had been reduced to one day due to lack of judicial resources.
3. As full oral reasons on liability were given at the Hearing on 4 July 2019 the following reasons/ findings are limited to remedy. When reaching its conclusions, the Tribunal has regard, in particular, to the oral evidence/ submissions of the parties, to the documentary evidence available to the Tribunal and to the findings at the liability Hearing.

Findings of fact on remedy

4. The Claimant was employed by the Respondent as a cashier from 1 June 2015 until her dismissal by reason of redundancy on 13 December 2018. The latter date is the effective date of termination for the purposes of the Act. The Claimant subsequently received from the Respondent her statutory redundancy entitlement and associated accrued monies. The Claimant is therefore not entitled to any basic award.
5. The Claimant was not issued by the Respondent with a statement of terms and conditions of employment as required by section 1 of the Act.

6. It was agreed by the parties that the Claimant was employed for 29.75 hours per week on a gross weekly salary of £254 and a net weekly salary of £240 per week.
7. The Claimant joined the Respondent's auto enrolment pension scheme on 14 June 2018. The Claimant's final payslip (dated 13 December 2018) states that the total pension contributions from the Claimant and the Respondent during her employment were £64.51 and £53.72 respectively.
8. The Claimant was on certified sick leave at the time of her dismissal (and had been on sick leave since 17 November 2018). The Claimant remained unfit for work until 27 December 2018. If the claimant had remained in the employment of the Respondent during this period she would have been entitled to receive a weekly payment of statutory sick pay in the sum of £92.05 (relevant weekly rate from April 2018) The claimant was fit for work from 27 December 2018 until 16 January 2019.
9. The Claimant had an operation on 17 January 2019 and was unfit for work until 21 March 2019. The Claimant received contributory Employment Support Allowance ("ESA") for the period between 27 December 2018 and 21 March 2019 at the rate of £73.10 per week.
10. The Claimant searched for alternative work within her seaside village/ local holiday parks. The Claimant secured alternative employment at a café within in her village on 18 April 2019. This work is seasonal. The Claimant's initial working hours were initially significantly less (around 16/17 hours per week) than with the Respondent. The Claimant confirmed however, that she anticipated that she would be able to able to work for more than her previously contracted hours with the Respondent during the summer holiday period. The Claimant's payslips from her new employer show a total net income of £1,290.22 for the period between 18 April 2019 and 27 June 2019.
11. The Claimant lives within travelling distance of Ilfracombe and, slightly further, Barnstaple. The Claimant has a contact at local supermarket who may be able to assist the Claimant to secure employment in the future. The Claimant has confined her search for employment to date to her village because of limited access to a motor vehicle and associated personal issues.

THE LAW

12. The Tribunal has had regard in particular to (a) sections 1, 118, 122 (4) and 123 of the Act and (b) section 38 of the Employment Act 2002.

THE CONCLUSIONS OF THE TRIBUNAL

13. The Claimant has received her statutory redundancy entitlement and is therefore not entitled to a basic award (section 122 (4) of the Act).

Compensatory award

14. The Tribunal is satisfied that it is appropriate, in all the circumstances of this case, having regard to the provisions of section 123 of the Act, to award the Claimant a compensatory award as explained below.

Losses from the date of the Claimant's dismissal until 18 April 2019

13 December 2018 to 27 December 2018

15. As held in the Judgment the Tribunal is satisfied that if the Claimant had not been unfairly dismissed there would have been a two-week period of consultation from 13 December 2018 until 27 December 2018. The Tribunal appreciates that the Claimant was on certified sick leave during such period but is satisfied that the Respondent would still have been able to have spoken to her/corresponded with her during such period. If the Claimant had remained in the Respondent's employment during this period she would have been entitled to SSP of £92.05 per week x 2 = **£184.10**.

27 December 2018 to 16 January 2019

16. The Tribunal is satisfied, in the light of the above findings, that the Claimant would have been fit to work during the period between 27 December 2018 and 16 January 2019. If the Claimant had remained in the Respondent's employment during such period the Tribunal is satisfied, in the light of the findings in the Judgment, that her hours would have reduced to 20 hours per week following the above-mentioned consultation and that she would therefore have received thereafter a reduced salary of £161.40 net per week (20 hours x £8.07 net per hour) = £322.80. During this period however, the Claimant received £73.10 per week in ESA for which she is required to give credit (£146.20). The Claimant's net losses during the period between 27 December 2018 and 16 January 2019 are therefore **£176.60**.

16 January 2019 and 21 March 2019

17. The Claimant was unable to work due to illness between 16 January 2019 and 21 March 2019 and was in receipt of ESA. She is therefore not entitled to receive any compensation from the Respondent in respect of this period.

22 March 2019 to 18 April 2019

18. The Tribunal is satisfied that the Claimant took reasonable steps to mitigate her losses during such period (including seeking work in the village and applications for work with local holiday parks) and that the Claimant is therefore entitled to be compensated for her net losses during such period. If the Claimant had remained in the employment of the Respondent during such period at 20 hours per week she would have earned **£645.60 net** (£161.40 x 4 weeks).

18 April 2019 to 27 June 2019

19. The Tribunal is also satisfied that the Claimant took reasonable steps to mitigate her losses by taking up employment in the cafe in the village from 18 April 2019 including having regard to the Claimant's difficulties with access to a motor vehicle and associated issues at that time. If the Claimant had remained in the employment of the Respondent during such period at 20 hours per week she would have earned £1,614 net (£161.40 x 10). The Claimant's payslips from the cafe for that period show that the Claimant earned £1,290.22 net during such period. The net loss for such period is therefore **£323.78**.

The period after 27 June 2019

20. The Tribunal is satisfied however, that it is not appropriate to award the Claimant any further compensation beyond 27 June 2019 for the following reasons: - (a) the Claimant accepted, as recorded above, that she would be able to work increased hours at the café during the holiday season (b) although the Tribunal accepts that her current employment is seasonal in nature it is incumbent upon the Claimant to continue to take reasonable steps to mitigate her losses (c) to that end, the Tribunal is satisfied that by the end of September 2019, it would be reasonable to expect the Claimant to cast her search for work to the local towns and (d) that given her experience with the Respondent and in the local cafe together with her contacts she is likely to be able to find suitable alternative employment in such area by that time.

Loss of pension rights

21. The Tribunal is satisfied that it is appropriate to award the Claimant £50 for loss of pension contributions (having regard to the contributions which were made during 2018) for the period between 13 December 2018 and 27 June 2019.

Loss of statutory rights

22. The Tribunal is satisfied that it is appropriate to award the Claimant a sum of £250 in respect of her loss of statutory rights given that she will be required to work for a new employer for two years in order to regain her rights of unfair dismissal.

The total compensatory award

23. The compensatory award (apart for the two weeks awarded in respect of the period between 13 December 2018 and 27 December 2018) has to be reduced by 15% pursuant to section 123 (1) of the Act in accordance with the Judgment.

24. The compensatory award awarded to the Claimant is therefore:-

(1) £184 .10 (for the period between 13 December 2018 and 27 December 2018).

(2) £176.60 + £645.60 + £323.78 + £250 + £50 (for the remaining elements of the claimant's compensatory award) = £1,445.98 - £216.90 = £1,229.08.

(3) The total compensatory award (as adjusted) is therefore £184.10 + £1,229.08 = **£1,413.18**.

The award pursuant to section 38 of the Employment Act 2002

25. Finally, the Claimant is awarded a further sum of £508 (2 x £254 gross per week) pursuant to section 38 of the Employment Act 2002 in respect of the failure of the Respondent to issue the Claimant with a statement of terms and conditions of employment as required pursuant to section 1 of the Act. The Tribunal is satisfied, having regard to all the circumstances of the case, including that the Respondent is a small employer with limited resources, that it is appropriate to limit such award to 2 weeks' gross pay.

26. The Employment Protection (Recoupment of Benefits) Regulations 1996 do not apply in this case.

Employment Judge Goraj
Date: 6 August 2019

JUDGMENT SENT TO THE PARTIES ON

FOR THE OFFICE OF THE TRIBUNALS

As reasons for the Judgment were announced orally at the Hearing written reasons shall not be provided unless they are requested by a party within 14 days of the sending of this Judgment to the parties.

Online publication of judgments and reasons

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The ET has no power to refuse to place a judgment or reasons on the online register, or to remove a judgment or reasons from the register once they have been placed there. If you consider that these documents should be anonymised in anyway prior to publication, you will need to apply to the ET for an order to that effect under Rule 50 of the ET's Rules of Procedure. Such an application would need to be copied to all other parties for comment and it would be carefully scrutinised by a judge (where appropriate, with panel members) before deciding whether (and to what extent) anonymity should be granted to a party or a witness