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# EMPLOYMENT TRIBUNALS

***Claimant***

***Respondents***

Ms X Gyftaki

**AND**

Upton-Hansen Architects Limited

14 November 2019

**Before:** Employment Judge Segal (Sitting alone)

**Representation**

**For the Claimant:** Mr Robson, counsel

**For the Respondent:** Mr Howson, consultant

## JUDGMENT

The Claimant's is awarded the following sums:-

- (1) In respect of the wrongful dismissal claim £3,127 (net);
- (2) In respect of the unfair dismissal claim:-
  - (a) A basic award in the sum of £1,956;
  - (b) A compensatory award of £41,750.
- (3) Interest on part of the above sums in the sum of £3,705.
- (4) Costs in the sum of £10,000 plus VAT

## REASONS

1. This was a remitted hearing in relation to elements of the compensatory award, following a partially successful appeal against the original judgment.
2. By the time of the hearing much had been agreed and I only deal here with the matters which remained in dispute. In particular, most helpfully, the parties had agreed the appropriate period of loss to be until 1 May 2019 – the one specific issue in relation to which the appeal had succeeded.
3. Despite a formal challenge and brief cross-examination of the Claimant, all the material facts are in essence agreed, including: the Claimant's past liability for tax in respect of her earnings in mitigation; her future liability for tax on any awards made by this tribunal to be received by her hereafter; her out of pocket expenditure in setting up/running her business by way of mitigation.
4. The issue between the parties was how the admitted cost of living/wages differential between London and Mykonos (there was a very broad and simplistic quantification of that differential made at the hearing, with the Claimant's assistance, as being about 35%) should be taken into account in determining the overall just and equitable compensatory award to make. This was a factor taken into account in the original Judgment (see Reasons para 46); there was no cross-appeal in relation thereto; and was implicitly approved both by the Claimant and the EAT (see Judgment paras 89-90, 93).
5. The issue arises because the Claimant's loss of earnings have been calculated by reference to her actual earnings working in London for the Respondent, but her mitigation to her earnings as a consultant working in Mykonos, where both wages and the cost of living are markedly lower than in London.
6. The Respondent did not argue for a percentage reduction to be made to what would otherwise have been the total of the compensatory award (which would have been less favourable to the Claimant than the approach for which it did contend), but rather argued that I should adopt the more broad-brush

approach of simply ignoring the Claimant's out of pocket expenses and any future tax liability.

7. The Claimant, though not forcefully, argued for no account to be taken of the cost of living/wages differential, alternatively for it to be reflected only by way of a 35% reduction in the allowances made for out of pocket expenditure and future tax liability. The Claimant accepted that this too would not be a scientific approach to the question.
8. I have no hesitation in preferring the Respondent's submission on this issue, which I consider to be not ungenerous to the Claimant and to achieve a just and equitable result. The figures, on that basis, were all agreed.
9. The parties agree that interest is payable pursuant to the Employment Tribunals (Interest) Order 1990 (as amended); the rate and period of interest were also agreed. The Respondent argued for its liability in this regard to be restricted to the sums ordered to be payable in the original tribunal judgment; the Claimant submitted that interest should run retrospectively on the entirety of the awards made following this hearing.
10. The Respondent is undoubtedly correct on this point, as a matter of common sense and by reference to the wording of Art 3 which refers to interest running on such sum of money as is unpaid out of "*a sum of money payable by virtue of a relevant decision of a tribunal*" (emphasis added). Art 6 simply confirms that the 'relevant decision day' remains that of the original judgment where the matter has been remitted following an appeal – it says nothing about retrospectively adjusting the amount payable.
11. The Claimant applied for a contribution to its costs on two bases:
  - (a) It had made a without prejudice save as to costs offer on 14 June 2019 of £29,000 in respect of the compensatory award plus interest to date and the Respondent had behaved unreasonably in not accepting that offer.
  - (b) The Respondent had behaved unreasonably by failing to comply with the directions of the tribunal made at a phone hearing on 10 September

2019, with the result that additional work had had to be undertaken by the Claimant's legal representatives, which could have been avoided.

12. I accept that both bases are well made out.

13. As to the first, once the Respondent and its representatives had applied their mind to the quantification of the award following the Claimant having served her updated Schedule of Loss on 14 June 2019, it quickly became clear that it would not be able to resist her claim for a higher amount than had been offered; and indeed it then quickly conceded the claim in a higher amount than had been offered. If that attention and work had been applied in June, as opposed to a few days before this hearing, the Respondent would of course have accepted the Claimant's offer. It acted unreasonably in not doing so.

14. As to the second, there was undoubted and significant non-compliance with the directions for this hearing. Mr Howson explained that this was because two people dealing with the case at Peninsula had been victims of unfortunate personal circumstances. That may be so, but does not excuse the non-compliance, given the size of Peninsula's organisation, let alone that the primary obligation is on the Respondent to comply, not on its representatives.

15. The Respondent accepted that the sum sought of £10,000 plus VAT was not unreasonable if the tribunal accepted (as it does) that it had been unreasonable not to accept the without prejudice save as to costs offer. The signed costs schedule for the relevant period is in a sum of just under £19,000 (exclusive of VAT).

Employment Judge Segal

Dated: 14 Nov 2019

Judgment and Reasons sent to the parties on:

15/11/2019

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For the Tribunal Office