



EMPLOYMENT TRIBUNALS

Claimant: Mrs J Thirlaway

Respondent: Mrs Ann Muller trading as Ann's Pasties

Heard at: In Chambers **On: Monday 16 and Tuesday
17 November 2020**

Before: Employment Judge Matthews

Representation:

Claimant: In Person accompanied by Mrs J Thirlaway-Price

Respondent: In Person – accompanied by Mr F Muller

JUDGMENT

1. Mrs Thirlaway was unfairly dismissed.
2. No order for re-instatement or re-engagement is made.
3. Mrs Muller is ordered to pay to Mrs Thirlaway unfair dismissal compensation totalling £6,492.85, comprising a basic award of £3,105 and a compensatory award of £3,387.85. The latter sum includes an amount equal to 2 weeks' pay under section 38 of the Employment Act 2002 as a consequence of the failure by Mrs Muller to comply with section 1 of the Employment Rights Act 1996 prior to the commencement of these proceedings.
4. Credit is to be given to Mrs Muller for the ex gratia payment of £5,000 already made to Mrs Thirlaway, reducing the amount that Mrs Muller is ordered to pay to Mrs Thirlaway to £1,492.85.
5. The Recoupment Regulations do not apply.

Schedule of calculations

[Note: this has been corrected. £134.60 should have been deducted from Mrs Thirlaway's earnings for the 26 weeks' compensatory award calculation being tax Mrs Thirlaway paid. This has the effect of increasing the amount payable to Mrs Thirlaway by £134.60.]

1. Mrs Thirlaway is entitled to a basic award calculated as follows:

1½ weeks' gross pay for each year of employment in which she was not below the age of 41

1.5 x £230 (agreed gross weeks' pay) x 9 (complete years of service) = **£3,105**

2. Mrs Thirlaway is entitled to a compensatory award.
3. £300 is awarded for loss of statutory rights. Mrs Thirlaway is awarded 26 months loss of net earnings (inclusive of her statutory notice period of 9 weeks). The agreed amount of Mrs Thirlaway's earnings in a comparable past period (ie October to April) is £4,270.60. From this must be deducted the net amount of £1,642.75 that Mrs Thirlaway earned from other employment in the 26 weeks after she was dismissed leaving a balance of £2,627.85. The award so calculated totals **£2,927.85**.
4. Mrs Thirlaway is also entitled to an award under the provisions of section 38 of the Employment Act 2002 because of the business's failure to provide her with a written statement of the particulars of her employment. Two weeks' pay is awarded. There appears to have been no deliberate failure to act in this respect justifying a higher award. The calculation is:

2 x £230 = **£460**

5. The total award payable is **£6,492.85**. However, it is just and equitable to deduct from this the ex gratia payment of £5,000 already paid to Mrs Thirlaway leaving a balance payable of **£1,492.85**.

Employment Judge Matthews
Dated: 17 November 2020

Reasons having been given orally written reasons will not be provided unless they are asked for by written request presented by any party within 14 days of the sending of this written record of the decision.