



EMPLOYMENT TRIBUNALS

Claimant: Ms. J. Whynn

Respondent: Saints Personnel Limited (1)
Saints Staffing Solutions Limited (2)
Mr. F. Higgs (3)

Heard at: London South, Croydon **On:** 8-10 March 2017

Before: Employment Judge Sage
Members: Mr. M. Walton
Ms. C. Bonner

Representation

Claimant: Mr. Allen of Counsel
Respondent: Mr. Walsh Solicitor

JUDGMENT

1. The proper Respondent is the First Respondent.
2. The Claimant's claim for direct associative discrimination is well founded.
3. The Claimant's claim under Section 103A is well founded.
4. The Claimant is entitled to two months' notice under the contract of employment.
5. The Respondent(s) conceded that the Claimant had accrued holiday pay that was untaken at the date of termination and that they owed her commission and bonuses.
6. The First Respondent is ordered to pay an interim sum towards the Claimant's damages for breach of contract (notice pay) of **£16,666**. The final sum to be paid for this head of claim is to be ascertained after seeing further evidence at the remedy hearing (see below).
7. The First Respondent is ordered to pay to the Claimant commission earned in 2015, to be paid in January 2016 of **£1,000**. The tribunal has yet to determine the commission due in 2016, this is again to be determined after hearing further evidence to be produced at the remedy hearing.
8. The Third Respondent is ordered to pay to the Claimant injury to feeling plus interest of **£16,325**.
9. The First Respondent is to pay to the Claimant the issue fee of £250.

ORDERS AND DIRECTIONS

10. The Tribunal on delivering the decision was unable to dispose of the remedy hearing due to the Respondents' failure to give disclosure of the relevant documents to deal with the remedy hearing. The Tribunal was able to deliver a judgment dealing with some of the heads of claim (see above) but it is made clear above where the award was only relating to a part of the total award to be made (see above at paragraphs 6 and 7).
11. This case is now listed for a remedy hearing on the **9 June 2017** for **1 day**. For the avoidance of doubt the hearing will be listed to consider the following:
 - a. The total sum to be awarded to the Claimant for notice pay;
 - b. The total sum to be awarded to the Claimant in respect of her claim for holiday pay. It has been agreed that the method of calculating holiday pay is on the basis of accruing holiday on a 1/260 basis. The parties have not agreed on the number of days accrued.
 - c. The total sum to be awarded to the Claimant in respect for her claim for commission and/or bonuses for her notice pay and in respect of past and future losses.
 - d. No figure has yet to be agreed to compensate the Claimant for the loss of the Company car and healthcare scheme during her notice period and in the calculation for future losses.
 - e. Whether Aggravated damages should be awarded and if so how much?
 - f. The Claimant's costs application;
 - g. Whether the award should be subject to the ACAS uplift is by what %?
 - h. The Tribunal may also have to consider the issue to recoupment.
12. The Respondent confirmed that they were not taking any points in respect of mitigation.
13. The Tribunal made the following orders and directions:
 - a. That the Respondent disclose to the Claimant on or before the **24 March 2017 the following documents**:
 - i. Gross Profit figures for all subsidiaries placing healthcare staff through Saints Personnel Limited from the 1 January 2016 to date;
 - ii. Figures for all healthcare subsidiaries from the 1 April 2016 showing net profit;
 - iii. Earnings and dividends paid to shareholders of Your Venture Group Limited and Your Venture Healthcare Limited from the 1 December 2016 to date;
 - iv. Valuation of the shares of Your Venture Group Limited.
 - b. The Claimant is to produce an updated schedule of loss to the Respondent by the **7 April 2017** and the Respondent is to provide to the Claimant a counter schedule by the **21 April 2017**.
 - c. **The parties are then ordered to agree a schedule of issues for the Tribunal.**
 - d. The Respondent is given leave to serve a witness statement to accompany the counter schedule also by the **21 April 2017**.
 - e. The Claimant is granted leave to serve a response and if it is to be

by way of a statement it is to be served on the Respondent, with a copy to the Tribunal by the **28 April 2017**.

- f. The Claimant is to provide to the Respondent their schedule of costs by the **21 April 2017** together with a costs schedule.
 - g. The Respondent is ordered to produce a bundle for the remedy hearing and to bring sufficient copies to the Tribunal.
14. The parties are encouraged to see if the matter can be resolved without the need for a further hearing.

Employment Judge Sage

Date: 13 March 2017

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.