



# THE EMPLOYMENT TRIBUNAL

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**SITTING AT:** LONDON SOUTH

**BEFORE:** EMPLOYMENT JUDGE HALL-SMITH

**BETWEEN:**

**Mrs E Nakachwa**

**Claimant**

AND

**South London and Maudsley NHS Foundation Trust Respondent**

**ON:** 24, 25 May 2017

**APPEARANCES:**

**For the Claimant:** In person

**For the Respondent:** Ms L Chudleigh, Counsel

## **JUDGMENT**

THE JUDGMENT OF THE TRIBUNAL is that:-

1. The Claimant was fairly dismissed by the Respondent and accordingly the Claimant's complaint of unfair dismissal is dismissed.
2. The Claimant was wrongfully dismissed by the Respondent.
3. Unless the Claimant informs the Tribunal in writing no later than **29 June 2017** that the parties have failed to agree damages for breach of contract, the Claimant's claim for damages for breach of contract will be dismissed.

## REASONS

1. For the Reasons I delivered to the parties in the Tribunal, I dismissed the Claimant's complaint of unfair dismissal. I found that the Claimant's complaint of wrongful dismissal was well founded.
2. The Claimant was summarily dismissed by the Respondent in breach of her notice pay entitlement of 12 weeks' notice.
3. I heard evidence from the Claimant relating to the issue of damages. The Claimant was dismissed from her employment with the Respondent on 17 December 2015 after 15 years' employment.
4. During her employment with the Respondent, the Claimant also had a cleaning job in a shop after closing time at 10:00 pm. Ms Chudleigh submitted that the Claimant should have mitigated her loss by obtaining further cleaning jobs after her dismissal by the Respondent.
5. The Claimant was dismissed shortly before the Christmas and the New Year holidays. She was clearly very upset by the loss of her job after 15 years. I have taken into account the problems faced by any employee in the labour market particularly by one in the care industry who has been dismissed for gross misconduct.
6. I consider it unrealistic to have expected the Claimant to have found alternative employment in a care home within her notice period, particularly in circumstances of her dismissal for gross misconduct.
7. I did not consider that the Claimant had made, on her evidence reasonable attempts, since her dismissal to find alternative employment. Had I been considering the compensatory element of the award in an unfair dismissal claim, I would, in all likelihood, have limited period of the loss of earnings claim.
8. In the present case the notice period was 12 weeks. The burden of proof is on the employer to show that the employee concerned has failed to mitigate their loss.
9. In the absence of any evidence before me in relation to the availability of cleaning jobs within a reasonable distance from the Claimant's home, I consider that it is too speculative for me to take a view about the likelihood of the Claimant obtaining some form of alternative employment within her notice period, particularly at the time of the year when the Claimant was dismissed.
10. In circumstances where the period of damage is 12 weeks from the

Claimant's dismissal I have concluded that such a period is too limited to provide me with any basis for concluding that the Claimant should have found alternative employment within such period and for assessing the amount of remuneration she should have received.

11. Accordingly, in my judgment the basis for an award of damages is an amount equal to the Claimant's net pay over a 12 week period. The Claimant must give credit for the total amount of Jobseeker's Allowance she received during the 12 week period.

Employment Judge Hall-Smith

Date: 26 May 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.