



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs Sandra Cawley  
**Respondent:** Easy Cuisine Limited  
**Heard at:** Nottingham  
**On:** Tuesday, 5 June 2018  
**Before:** Employment Judge Brewer (sitting alone)

## Representatives

**Claimant:** In Person  
**Respondent:** In Person

## JUDGMENT

1. The Claimant was unfairly dismissed and the claim succeeds.

## REMEDY

1. Following discussion with the Parties the following has emerged.
2. The Claimant was unemployed until 26 February 2018 when she started work with the Local Authority as a School Dinner Lady. In that job she is paid £215.48 per week gross and £159 per week net.
3. Up until that point she was unemployed and in receipt of Job Seekers Allowance in the sum of £147 every fortnight.
4. I find as a fact that it is very unlikely that the shortfall between what the Claimant currently earns and what she earned before her unfair dismissal, £107.87 is never going to be achieved in her current employment. This employment enables the Claimant to look after her daughter as she is a term-time worker and obviously works in school hours. Therefore, as she put it, as she would not be looking for other work until her daughter had left school. Her daughter is currently in year 8 so that is some years away. I find that the Claimant has taken reasonable steps to mitigate her losses.
5. That being the case I award her a basic award in the sum of £3,375 made up of 6 x 1½ week's pay, a week's pay being £375 gross.

## Loss of Statutory Rights

6. £350.

## Compensatory Award

7. Loss from the 29 July 2017 to the date the Claimant started new employment being 26 February 2018 is 26 weeks at £323.35 nett which is £8,477.10. Loss from 27 February 2018 to today's date is £1,510.18 being the difference between her former pay and her current pay, that difference being £107.87.
8. We then considered future loss. Given all that I have said before I have assessed her future loss at 104 weeks which is a total of £11,218.48.
9. The total compensatory award is in excess of the Claimant's former annual salary and therefore her loss is capped at £16,814.20.
10. The total loss, compensatory award plus basic award is £20,189.20.

# REASONS

## Introduction

1. The circumstances of this case are a little difficult in that the owner of the business Mr Cawley is married to the Claimant, but the couple are estranged and in the midst of a divorce. Whilst there has been some cooperation on preparation of the case that was not complete and there was some issue as to documentation and the fact that Mr Cawley had not provided a witness statement. However, having considered the issues in the case and the documents that we do have I am satisfied that disclosure was properly undertaken albeit slightly late, and given the limited issues that we could deal with the case fairly notwithstanding the absence of a witness statement from Mr Cawley. I therefore heard evidence from Mrs Cawley and Mr Cawley. I also invited them to make and have considered their submissions.

## Issues

2. There has been a Closed Preliminary Hearing in this matter in which the issues were summarised by Employment Judge Faulkner. Essentially, I have to consider:
  - (a) what was the reason for dismissal; and
  - (b) whether that was a potentially fair reason within the meaning of Section 98 (1) of the Employment Rights Act 1996; and
  - (c) if so:
    1. Was the procedure which was followed reasonable in all the circumstances or to put it another way within the band of reasonable responses;
    2. Was the dismissal within the band of reasonable responses
3. Although neither Party raised the issues of a reduction in any compensation under Polkey or Section 123 (6) of The Employment Rights Act 1996, I have nevertheless considered those. I have also considered the application of the uplift or a reduction under the ACAS Code of Practice.

**Law**

- 4.1 .... **[EJ will Add this section afterwards – if use 4.1, 4.2, 4.3 numbering – it will not affect the numbering in rest of this text]**

**Facts**

5. The Respondent is a company providing a membership club and catering facilities for certain Rolls Royce employees. Some of the facilities include providing snooker and bowls as well as a bridge evening.
6. The business is owned and run by Mr Cawley and until her dismissal Mrs Cawley was the only employee. She worked for the Respondent for eight years from 2009 but for the first two years she was not employed. Therefore, Mrs Cawley's continuous service is from 29 July 2011 to 16 August 2017, a full six years. Although the Parties had agreed in the pleadings that Mrs Cawley's employment terminated on 31 July 2017, as a matter of law this is not correct. The first time Mrs Cawley knew that she had been dismissed was when she received her P45 on 16 August 2017 that therefore is the effective date of termination.
7. The Respondent is obviously a very small employer with a turnover in the last full financial year of £148,000 gross.
8. The couple have a daughter born on 7 August 2005.
9. Mrs Cawley's job was in essence to run the business along with Mr Cawley and on her own when he was away. This included setting up in the morning, serving, closing down and cleaning. A full day could be anything from 7.30 am until 10.00 pm. In the first four years of working for the Respondent, Mrs Cawley worked from 7.30 am until 5.00 pm on five days a week, she also worked two or three evenings a week. Mr Cawley worked as and when required including himself working two or three evenings a week.
10. After the first four years the couple began sharing shifts, alternating working days with both of them working on a Wednesday.
11. On 4 October 2015 Mrs Cawley moved to Little Eaton along with her daughter in order to be in the catchment area for a particular school which they wished her to attend. As a result she reduced her working hours to 20 per week, generally working 10.00 am to 2.00 pm in order that she could do the school run. Until March 2017 Mrs Cawley was paid £1,000 per month gross. Counter intuitively when her hours reduced in March 2017 her pay in fact increased to £1,500 per month.
12. Notwithstanding the 20 hours per week, I find as a fact that on occasion Mrs Cawley would cover the business during normal working hours whilst for example Mr Cawley was away on holiday, which obviously meant that she worked much longer hours than the 20 for which she was paid.
13. In the event the marriage broke down in or around April 2017 and subsequently Mrs Cawley has filed for divorce.

14. Mrs Cawley worked in July 2017, the last full month of her employment. I find as a fact that she worked for some 4 or 5 days whilst Mr Cawley was on holiday in Paris, and she also worked a number of other shifts that month. I find as a fact that she worked more than 20 hours in July 2017, a finding bolstered by the fact that although she did not receive her pay on the normal pay date in this case 28 July, she was in fact paid in full by Mr Cawley on 16 August 2017. On that date Mr Cawley also sent to Mrs Cawley her P45 indicating that her employment had been terminated.

## **Discussion**

15. The first issue then is what was the reason for dismissal? Mr Cawley said that he needed someone to work more hours in the business than Mrs Cawley was working at the time of her dismissal. I accept his evidence on this point and given the need for what in effect amounts to a business reorganisation that seems to me to be a reason for falling within Section 98 (1) (b) of the 1996 Act being some other substantial reason such as could justify the Claimant's dismissal.
16. The subsidiary question is whether in fact that reason did justify Mrs Cawley's dismissal? That is to say whether it was reasonable. I have also considered the reasonableness of the process that was followed by Mr Cawley.
17. Whilst, as I have said, the Respondent is a very small employer and whilst it might be expected that a relatively informal process might be excused, what cannot be excused is the complete absence of any process whatsoever. Mr Cawley conceded in submissions that he was aware that, as he put it, the dismissal was not done correctly, and he is right about that. There was for example no consideration of any alternative such as employing another person part time to do the extra hours. There was no discussion with Mrs Cawley, there was no consultation, she was not given an opportunity to put her point of view, and she certainly was not afforded any right of appeal. In short there was no process.
18. Given all of the evidence I find that Mr Cawley has not provided sufficient to allow me to conclude that he acted reasonably in treating the need for more hours to be done as a fair reason for dismissal in this case. It follows also from my findings that the dismissal is procedurally unfair if nothing else. Such processes was followed, sending Mrs Cawley her P45 was clearly not within the band of reasonable responses, and for all of those reasons this dismissal is unfair.
19. There is no basis for making a reduction under Section 123 of the 1996 Act and no evidence was given about any contributory action on the part of Mrs Cawley leading to or contributing to her dismissal. I have considered whether there should be an uplift under the ACAS Code of Practice, but given the size of this employer I have decided that it is not reasonable to do so in this case.

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Employment Judge Brewer  
Date: 24/07/18

JUDGMENT SENT TO THE PARTIES ON

24/07/18

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FOR THE TRIBUNAL OFFICE