EMPLOYMENT TRIBUNALS (SCOTLAND)

Case Nos: 4113297/2019 and 4113298/2019 (V)

Held remotely on 25 May 2021

Employment Judge W A Meiklejohn

Ms Lauren Ritchie	**First claimant** **Represented by:** **Mr F Lefevre – Solicitor**
Ms Laura Meldrum	**Second claimant** **Represented by:** **Mr F Lefevre – Solicitor**
Caledonia Homecare Ltd	**Respondent** **No appearance and no representation**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is as follows –

(a) The first claimant's complaint of unfair dismissal succeeds and the respondent is ordered to pay to the first claimant –

(i) A basic award of **ONE THOUSAND SIX HUNDRED AND THIRTY POUNDS AND THIRTY PENCE (£1630.30)**; and

(ii) A monetary award of **FIFTEEN THOUSAND FOUR HUNDRED AND TWELVE POUNDS AND FIFTY PENCE (£15412.50)**; the prescribed element is **FIFTEEN THOUSAND ONE HUNDRED AND TWELVE POUNDS AND FIFTY PENCE (£15112.50)** and relates to the period from 31 August 2019 to 31 May 2021; the monetary award exceeds the prescribed element by **THREE HUNDRED POUNDS (£300.00)**; and

(b) The first claimant's complaint of breach of contract (in respect of notice pay) succeeds and the respondent is ordered to pay to the first claimant the sum of **FOUR HUNDRED AND SEVENTY POUNDS AND THIRTY ONE PENCE (£470.31)**.

(c) The second claimant's complaint of unfair dismissal succeeds and the respondent is ordered to pay to the second claimant –

(i) A basic award of **ONE THOUSAND AND EIGHTEEN POUNDS AND TWENTY PENCE (£1018.20)**; and

(ii) A monetary award of **THIRTEEN THOUSAND TWO HUNDRED AND THIRTY SIX POUNDS AND SIXTY PENCE (£13236.60)**; the prescribed element is **TWELVE THOUSAND NINE HUNDRED AND EIGHTY SIX POUNDS AND SIXTY PENCE (£12986.60)** and relates to the period from 31 August 2019 to 31 May 2021; the monetary award exceeds the prescribed element by **TWO HUNDRED AND FIFTY POUNDS (£250.00)**.

REASONS

1. These cases came before me for a final hearing, conducted by means of the Cloud Video Platform ("CVP"), to determine both liability and remedy. Both claimants were represented by Mr Lefevre. The respondent did not participate.

Claims

2. The first claimant brought complaints of unfair dismissal and breach of contract. The breach of contract claim related to notice pay – the first claimant contended that she had been paid for 4 weeks' notice when, based on her length of service, her notice entitlement was 5 weeks. The second claimant brought a complaint of unfair dismissal.

Procedural history

3. Both claimants presented their ET1 claim forms on 20 November 2019. The respondent submitted ET3 response forms on 20 November 2019. By a case management order dated 21 February 2020 Employment Judge Hosie ordered that the cases be considered together.

4. By a further case management order, made under Rule 29 of the Employment Tribunal Rules of Procedure 2013, dated 24 February 2020 EJ Hosie ordered the claimants to provide schedules of loss. The order also directed the respondent to confirm whether it was to argue that the claimants had failed to mitigate their loss and, if so, what further steps it said the claimants should have taken in this regard.

5. The claimants complied with this order on 6 March 2020, supported by payslips. The respondent did not provide the confirmation directed by the Tribunal's order.

6. A preliminary hearing, conducted by telephone conference call, for the purpose of case management took place (before EJ Hosie) on 26 October 2020. The Note issued following this hearing recorded that the respondent's representative (Mr A Imrie) had intimated that he was unable to participate. The Note also recorded that "*The basis for the defence to the claims is not as clear as it requires to be".* The respondent was directed to provide further and better particulars of its defences to the claims. The date for compliance was 20 November 2020.

7. When the respondent failed to comply by the stated date, the timescale for compliance was extended by EJ Hosie, latterly to 8 January 2021. Mr Imrie

sent an email to the Tribunal dated 6 January 2021 (35) which referred to the requirement of the Care Inspectorate (and the Scottish Social Services Council) that "*each service must have a manager who is in full time day to day charge of the service".* Mr Imrie's email also stated that the claimants "*were both given one months notice as their roles became immediately non entities at the concerns of our care inspector Claire Lumsden".*

8. On 27 January 2021 the claimants' representative emailed the Tribunal with a series of questions because the claimants required clarification *"in order to properly address the "defence" that has been lodged by the Respondent".* On 29 January 2021 the Tribunal emailed the parties to advise that EJ Hosie was directing the respondent to provide comments within 7 days and had noted that the respondent had not replied to the Tribunal's date listing letter.

9. On 3 February 2021 the respondent submitted replies to the questions from the claimants' representative (39) which covered the following main points –

- The respondent confirmed that the first claimant had not been dismissed due to taking time off for sickness and maternity leave.

- The respondent alleged that neither claimant was "*fit for purpose"* in terms of the requirement to conduct manual handling.

- The respondent stated that it expected the first claimant to confirm that she insisted on signing a one month rolling contract.

- In response to a request for copies of the claimants' personnel files, the respondent stated that its archiving was held in Oban and that "*As a diabetic our Managing Director is not allowed to leave his home in Aberdeen due to the Covid-19 restrictions".* There was a similar response to a request for payslips.

- In response to a question as to whether the claimants were dismissed because they were unable to work full-time, the respondent stated

"*Lauren Ritchie was under a written warning for not attending her work and staying at home without authority from the directors of the service….Both parties were not dismissed under any bad circumstances. They were given adequate notice….*"

10. The notice of hearing was sent to the parties on 23 February 2021, advising them that the final hearing would take place by CVP on 25, 26 and 27 May 2021. The parties were also sent a copy of the Practical Guidance on Remote Hearings in the Employment Tribunals (Scotland) (Version 12 June 2020).

11. On 23 February 2021, EJ Hosie issued a case management order under Rule 29 dealing with the exchange of documents and preparation of a joint file of documents (or individual files) for use at the final hearing. The claimants' representative provided the Tribunal with the claimants' documents. The respondent did not provide any documents.

12. EJ Hosie's order also required the parties to take part in a test of their equipment to ensure that they were able to access the CVP hearing. The claimants complied. The respondent did not. The Tribunal clerk attempted to make contact with Mr Imrie to arrange this test but without success.

13. On 11 May 2021 EJ Hosie issued an order under Rule 31 requiring the respondent to provide documents (*"A copy of the claimants' personnel files to include contracts of employment, training certificates and appraisals")* to the claimants' representative by 18 May 2021. The respondent did not comply.

14. When the CVP hearing commenced at 10.00 on 25 May 2021, the claimants and Mr Lefevre were present but noone from the respondent joined the video call. I delayed the start of the hearing until 10.30 and directed the Tribunal clerk to contact Mr Imrie to ascertain if he intended to participate. The clerk attempted to do so but without success.

Evidence

15. I heard evidence from both claimants. I had the claimants' bundle of documents extending to 66 pages to which I refer above and below by page number.

Findings in fact

Respondent

16. The respondent is a private limited company (SC466743) incorporated on 7 January 2014. Its directors are Mr Imrie (appointed on incorporation) and Mrs L Imrie (appointed 1 June 2014). It provides a care at home service. It is registered with the Care Inspectorate ("CI").

First claimant

17. The first claimant commenced employment with the respondent on 4 June 2014. She stated that she was initially employed as Care Co-ordinator, becoming Care Manager after 3/4 months. However, in her ET1 claim form, she described her job as Recruitment & Compliance Manager. Whatever the correct job title, she was the respondent's most senior employee below the directors, Mr and Mrs Imrie. She had a period of sickness absence for around four months in 2014. She was on maternity leave from March 2018 until January 2019. On her return from maternity leave, the first claimant worked 16 hours per week (over 4 days).

18. The first claimant was provided with a contract of employment. Unfortunately, her copy of this was lost in a fire at the offices of her representatives in December 2019. The respondent contended in their answers to questions from the claimants' representative (39) that the first claimant was employed on a one month rolling contract, but the first claimant disputed this. This point might have been resolved if the respondent had complied with the Tribunal's document order of 11 May 2021 but they had not done so. I found no reason to disbelieve the first claimant's evidence about this.

19. With effect from July 2019, the first claimant was paid at the rate of £20.00 per hour. This was confirmed by a message from Mr Imrie to the first claimant

dated 30 June 2019 (41). The copy payslips produced by the first claimant for the months of July, August and September 2019 (53-55) confirmed the gross and net weekly pay figures detailed in her Quantification of Loss (51-52). These were £326.06 (including the employer's pension contribution, at the rate of £26.25 per month) and £302.45 respectively.

Second claimant

20. The second claimant commenced employment with the respondent on 1 February 2015. She was initially employed as a Support Worker (per her ET1). At some point she became a Supervisor (per her oral evidence). She became Support Manager in or around June 2019, following a period of sickness absence of some four months. She returned from her sickness absence on a part time basis working 16 hours per week. Her copy of her contract of employment had suffered the same fate as that of the first claimant.

21. The second claimant was paid at the rate of £1080.00 per month. This equated to £254.55 gross per week (including the employer's pension contribution, at the rate of £22.74 per month). Her net weekly pay was £243.23. These figures were confirmed by the copy payslips for the months of July, August and September 2019 (58-60) attached to her Quantification of Loss (56-57).

Dismissals

22. At 21.50 on 27 August 2019 Mr Imrie emailed the first claimant, copied to the second claimant (42), in these terms –

"*Im sorry Lauren but you last day including laura will be 31st of August*

Lynn and i have discussed this in detail and of course included our continued lack of growth as an ongoing issue.

Both of you will be provided with a p45 and reference as required.

We both wish you well for the future."

23. The first claimant received a further email from Mr Imrie on 29 August 2019 (43) seeking to schedule a call. The email also advised that Mrs Imrie had undergone an operation. There was contact between the first claimant and Mr Imrie on 2 September 2019. By this time Mr Imrie had deleted his email of 27 August 2019 but both claimants had read it.

24. Mr Imrie sent a letter dated 31 August 2019 to the first claimant (44). Although bearing that date, the letter did not reach the first claimant until around 14/15 September 2019. This was supported by the evidence of the second claimant (who was sent a copy of the letter) that the letter arrived after her birthday on 12 September 2019. This letter purported to give the first claimant *"one months notice"* and stated that *"Your last day will be the 31st of September".*

25. Mr Imrie's letter referred to *"the stated requirements of the Care Inspectorate and the local Authority"* for *"a full time registered manager to run the service".* The letter bore to attach a copy of "*the agreement of your Job Description on 20th May whereby you created your role based on your condition of the job description running as a one month rolling contract".* I accepted the first claimant's evidence that there had been no such attachment. I also accepted her evidence that she had not, prior to receiving the letter, heard of any requirement of the CI to have a full time manager.

26. Mr Imrie's letter also referred to it being agreed that the first claimant would not be returning to work *"between the date of this letter and the 31st of September".* It was not apparent from the evidence when, or indeed whether, any such agreement had been made.

27. The first claimant emailed Mr and Mrs Imrie on 2 September 2019 (45-46) appealing against her dismissal. She referred to her entitlement to five weeks' notice. She also asked *"to know the reasons in detail"* for her dismissal. Mr Imrie replied on the same date (47) stating that "*a letter registered post has been sent out which will provide the answers to your questions in your email below".* Mr Imrie also stated that Mrs Imrie had *"stepped back in to support the service".*

28. There was a further exchange of emails between the first claimant and Mr Imrie on 5 September 2019 (48-49) relating to suspension of the first claimant's email account, a handover to Mrs Imrie and return of a laptop and charger.

29. For the sake of completeness I should add that the first claimant denied that she *"was under a written warning for not attending her work and staying at home without authority"* (see paragraph 9 above, final bullet point). If the respondent had complied with the Tribunal's document order of 11 May 2021 they could have provided evidence of such a warning, if it existed. Absent such compliance, I found no reason to disbelieve the first claimant.

Mitigation

30. The first claimant was a single mother. She said that at the time of her dismissal her son was too young to qualify for free childcare and she could not afford private provision. She was not in a position to seek employment. She applied for and received Universal Credit. She enrolled in a full time course with North East Scotland College with effect from 17 September 2020 and was due to be starting a degree course at Robert Gordons University in September 2021. I considered that the period for calculation of loss of earnings for the first claimant should not extend beyond 17 September 2020 because, even if she had been in a position to seek employment, she had from that time chosen not to do so in favour of full time education.

31. The second claimant was also a single mother. She referred to her son, born in 2016, as having behavioural problems which made it difficult for her to find childcare. She applied for and received Universal Credit. She had been working two nights per week in a restaurant (and I understood that she continued to do so). She did not feel she could impose a greater burden of childcare on her other son who was aged 17. She did not believe that she would be in a position to seek daytime work until her son entered full time education, which I understood to be August 2021 (and I noted from an internet

search that the school term in Aberdeen starts on 17 August 2021). Her Quantification of Loss disclosed earnings of £4293.68 up to 10 May 2021.

32. The respondent had not, as directed by EJ Hosie in his case management order of 24 February 2020, confirmed whether it was to argue that the claimants had failed to mitigate their loss. In the circumstances, I was satisfied that both of the claimants had not, due to their childcare responsibilities, been in a position to seek fresh employment. I considered that neither of the claimants had failed to mitigate their loss.

Comments on evidence

33. It is not the function of the Tribunal to record every piece of evidence presented to it and I have not attempted to do so. I have focussed on those parts of the evidence which had the closest bearing upon the issues I had to decide.

34. Both of the claimants gave their evidence in a straightforward manner. I found both to be credible witnesses.

Applicable law

35. The right not to be unfairly dismissed is found in section 94(1) of the Employment Rights Act 1996 ("ERA") which provides –

"*An employee has the right not to be unfairly dismissed by his employer."*

36. Section 95 ERA deals with the circumstances in which an employee is dismissed. So far as relevant, it provides –

"*(1) ….an employee is dismissed by his employer if….-*

(a) the contract under which he is employed is terminated by the employer (whether with or without notice)…."

37. The reason for dismissal and the fairness of the dismissal are dealt with in section 98 ERA which, so far as relevant, provides as follows –

"*(1) In determining….whether the dismissal of an employee is fair or unfair, it is for the employer to show –*

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it –

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

(b) relates to the conduct of the employee,

(c) is that the employee was redundant, or

(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment…."

38. Section 98(4) deals with determination of the question whether the dismissal is fair or unfair. For reasons explained below, it is not necessary to refer to this.

39. The right of an employee to minimum notice from the employer to terminate the contract of employment is dealt with in section 86 ERA which, so far as relevant, provides as follows –

"*(1) The notice required to be given by the employer to terminate the contract of employment of a person who has been continuously employed for one month or more –*

(a) is not less than one week's notice if his period of continuous employment is less than two years,

(b) is not less than one week's notice for each year of continuous employment if his period of continuous employment is two years or more but less than twelve years…."

Discussion

Liability

40. I deal firstly with the unfair dismissal claims. For these to succeed, I had to be satisfied that the claimants had been dismissed by the respondent. There had to be a dismissal falling within the terms of section 95 ERA. I found that Mr Imrie's email to the first claimant on 27 August 2019 (42), copied to the second claimant, amounted to the dismissal of both claimants with notice, such notice expiring on 31 August 2019.

41. I pause to observe that the respondent appeared to be making a point of the fact that the claimants were unable to produce their copies of the contracts. In the respondent's further and better particulars dated 6 January 2021 (35), Mr Imrie stated –

"*L Ritchie and L Meldrum we are unable to source any contracts of employment and offer letters in relation to their positions. They also have to be signed and dated by the appropriate representative with Caledonia Homecare Ltd."*

42. This raises a number of points –

(a) The absence of contract of employment documents does not mean that the claimants were not employees of the respondent. There was ample evidence that they were employees. This included the payslips produced by the claimants and the reference in Mr Imrie's email of 27 August 2019 to the claimants both being provided with a P45.

(b) The employer's obligation under section 1(1) ERA is to "*give to the worker a written statement of particulars of employment".* There is no requirement for that statement to be signed and/or dated.

(c) In any event, I was satisfied that both claimants had entered into a written contract of employment with the respondent and that their copies of these contracts had been lost in the fire at the offices of their representatives in December 2019.

(d) The respondent had been ordered on 11 May 2021 to provide the claimants' contracts of employment and had not done so.

(e) If there was any change in the particulars required to be contained in the statement, the obligation was on the respondent as employer to "*give to the worker a written statement containing particulars of the change"* in terms of section 4(1) ERA. Again, there is no requirement for the statement to be signed and/or dated.

(f) As the respondent's most senior employee below the directors, the first claimant arguably had authority to determine the terms and conditions of those members of staff who reported to her, including the second claimant.

43. In terms of section 98(1) ERA "*it is for the employer to show the reason…. (or, if more than one, the principal reason) for the dismissal".* The consequence of the respondent not participating in the hearing was that I had no evidence from them to show what the reason for the claimants' dismissals had been. This meant that the respondent had not shown a reason for the claimants' dismissals and accordingly was unable to show that there had been a potentially fair reason for dismissal in terms of section 98(1)(b) ERA.

44. I therefore found that the claimants' dismissals by the respondent on 27 August 2019 were unfair.

45. Moving on to the first claimant's breach of contract claim, jurisdiction is conferred on the Tribunal by virtue of section 3 of the Employment Tribunals Act 1996 and the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994. As at the date of her dismissal, the first claimant had completed 5 years' continuous employment with the respondent. Her notice entitlement under section 86(1)(b) ERA was 5 weeks.

46. The first claimant was dismissed in terms of Mr Imrie's email of 27 August 2019. That email gave notice of dismissal effective as at 31 August 2019. By virtue of section 97(1)(a) ERA (**Effective date of termination**), the first claimant's effective date of termination was 31 August 2019.

47. If the respondent had given the first claimant the 5 weeks' notice to which she was entitled, her effective date of termination would have been 1 October 2019. As she had not been given the correct amount of notice, the first claimant's complaint of breach of contract succeeded.

48. I should add that I did not consider that the correspondence between the respondent and the first claimant referred to at paragraphs 23-28 above altered the first claimant's effective date of termination. By the time the first claimant received Mr Imrie's letter purporting to give her *"one months notice"* (44), she had already been dismissed as at 31 August 2019. The so-called notice was ineffective as the first claimant's employment had already come to an end.

Remedy – first claimant

49. At the date of her dismissal on 31 August 2019, the first claimant had 5 years' service. She was 36 years of age as at that date and all of her service was between the ages of 22 and 41. She was entitled to a basic award under section 119 ERA. The amount of the basic award was 5 (years' service) x 1 (the relevant multiplier under section 119(2)(b) ERA) x £326.06 (her weekly gross pay including employer's pension contribution) which totals £1630.30. I include employer's pension contributions following the decision of the

Employment Appeal Tribunal in ***University of Sunderland v Drossou UKEAT/0341/16***.

50. The first claimant was also entitled to a compensatory award under section 123 EqA. Section 123(1) ERA provides as follows –

"*Subject to the provisions of this section and sections 124, 124A and 126, the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer."*

51. I found that the first claimant's loss of earnings from and after 1 October 2019 was attributable to her unfair dismissal by the respondent. I refer to this date as it was the date upon which the first claimant's entitlement to pay in lieu of notice expired. The period for which the first claimant was entitled to be compensated was 1 October 2019 until 17 September 2020 (being the date upon which her College course commenced). This was a period of 50 weeks. Based on the first claimant's net weekly pay of £302.45, her loss of earnings in this period was £15112.50.

52. The first claimant was also entitled to be compensated for the loss of her statutory employment protection rights. The figure contained in her Quantification of Loss was £300.00 and I saw no reason to disagree with that. The total of the compensatory award was therefore £15412.50.

53. The first claimant sought an uplift in compensation by reason of the respondent's failure to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures (2015) (the "Code"). The statutory authority for this is found in section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 which, so far as relevant, provides –

"*(1) This section applies to proceedings before an employment tribunal relating to a claim by an employee under any of the jurisdictions listed in Schedule A2.*

(2) If, in the case of proceedings to which this section applies, it appears to the employment tribunal that –

(a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies,

(b) the employer has failed to comply with that Code in relation to that matter, and

(c) that failure was unreasonable,

the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 25%."

54. Paragraph 1 of the Code provides as follows –

"*This Code is designed to help employers, employees and their representatives deal with disciplinary and grievance situations in the workplace.*

- *Disciplinary situations include misconduct and/or poor performance. If employers have a separate capability procedure they may prefer to address performance issues under this procedure. if so, however, the basic principles of fairness set out in this Code should still be followed, albeit that they may need to be adapted.*

- *Grievances are concerns, problems or complaints that employees raise with their employers.*

The Code does not apply to redundancy dismissals or the non-renewal of fixed term contracts on their expiry."

55. For two reasons, I did not consider that the Code was engaged in this case. The first reason was that this was not a disciplinary situation. Within the replies to questions from the claimants' representative (39) the respondent stated that the claimants "*were not dismissed under any bad circumstances".*

56. The second reason was these might well have been redundancy dismissals. In his letter bearing to be dated 31 August 2019 (44) Mr Imrie referred to the CI's requirement for "*a full time registered manager to run the service".* Section 139 ERA (**Redundancy**) provides, so far as relevant, as follows –

"*(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to –*

….(b) the fact that the requirements of that business –

(i) for employees to carry out work of a particular kind, or

(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,

have ceased or diminished or are expected to cease or diminish."

57. Both of the claimants were part-time employees working 16 hours per week. If the respondent had, in August 2019, a need for a full time employee to run the service, then arguably the need for the claimants as part-time employees had ceased or diminished. In other words, they were redundant, and the Code does not apply to redundancy dismissals.

58. Turning to the first claimant's breach of contract claim, she had a notice entitlement of 5 weeks, ie 35 days in total or 20 working days (based on her working pattern of 4 days per week). She was given actual notice of 4 days (of which 2 were working days), leaving a balance of 31 days (of which 18 were working days) expiring on 1 October 2019. Her net pay for those 18 working days was £1360.98 (calculated at a daily rate of £75.61, being £302.45 divided by 4). She was actually paid £890.67 per her September 2019 payslip (55). The balance of notice pay owed by the respondent to the claimant is therefore £470.31.

Remedy- second claimant

59. At the date of her dismissal on 31 August 2019, the second claimant had 4 years' service. She was 36 years of age as at that date and all of her service was between the ages of 22 and 41. She was entitled to a basic award under section 119 ERA. The amount of the basic award was 4 (years' service) x 1 (the relevant multiplier under section 119(2)(b) ERA) x £254.55 (her weekly gross pay including employer's pension contribution) which totals £1018.20.

60. The second claimant was also entitled to a compensatory award under section 123 ERA. Notwithstanding her dismissal on 31 August 2019, the second claimant had been paid her normal remuneration for the month of September 2019. I therefore found that the second claimant's loss of earnings started on 1 October 2019. The loss of earnings continued until the date of the hearing on 25 May 2021, a period of 86 weeks. The loss of earnings would continue beyond the hearing until the second claimant's son entered full time education, a further period of 12 weeks.

61. The second claimant's payslips for her restaurant job (63-64) disclosed earnings of £262.72 per month which equated to £60.63 per week. She suffered no deductions for income tax and national insurance. This meant that her earnings in the period up to the date of the Tribunal were £4414.94 (ie an additional two weeks' earnings in addition to the figure of £4293.68 mentioned above). In the period between the date of the Tribunal and the start of the school term, the second claimant would earn a further £727.56 (£60.63 x 12).

62. The second claimant's loss of earnings in the period up to the date of the hearing were £20917.78 (£243.23 x 86) less £4414.94 equals £16502.84. Her future loss of earnings was (£243.23 - £60.63) x 12 equals £2091.20.

63. The second claimant's Quantification of Loss contained a figure of £250.00 for loss of statutory employment protection rights and I saw no reason to disagree with that figure. The total of the potential compensatory award was accordingly £16502.84 plus £2091.20 plus £250.00 which equals £18844.04. For the same reasons as set out above (in paragraphs 55-57) I did not consider that the Code was relevant.

64. In the second claimant's case, section 124 EqA comes into play. This provides that the amount of a compensatory award under section 123 ERA shall not exceed 52 multiplied by a week's pay of the person concerned. For the second claimant, this meant that her compensatory award was capped at £254.55 x 52 equals £13236.60.

Summary

65. My decision is that –

(a) The first claimant is awarded –

(i) A basic award of £1630.30.

(ii) A compensatory award of £15412.50.

(iii) Notice pay of £470.31.

(b) The second claimant is awarded –

(i) A basic award of £1018.20.

(ii) A compensatory award of £13236.60.

Recoupment

66. Both claimants were in receipt of benefits and the compensatory awards may therefore be subject to recoupment. The attention of parties is drawn to the attached schedule in terms of the Employment Protection (Recoupment of Benefits) Regulations 1996.

Employment Judge	**W A Meiklejohn**
Dated	**1st June 2021**
Date sent to parties	**1st June 2021**