



EMPLOYMENT TRIBUNALS

Claimant: Miss R Robshaw

Respondent: Philip Williams Estates Limited

RECORD OF A PRELIMINARY HEARING

Date: 12 January 2024

Before: Employment Judge James

At: Sheffield (in person)

Appearances

For the claimant: In person, assisted by Mr M Fletcher, partner

For the respondent: Mr P Williams, lay representative, Company Director

JUDGMENT

- (1) The respondent is ordered to pay to the claimant the following amounts for financial loss:
 - a. **£1500** in respect of underpaid extra-statutory maternity pay;
 - b. **£800** for unpaid commission;
 - c. **£406.84** in respect of money clawed back from the claimant's final wage;
 - d. **£1,334.99** in respect of underpaid pension contributions during her employment.
- (2) The respondent is ordered to pay to the claimant **£20,00** for injury to feelings.
- (3) The respondent is ordered to pay to the claimant **£2,404.18** for interest.
- (4) The total award payable by the respondent to the claimant including interest is therefore **£26,446.01**. That figure must be paid free of any deductions. The claimant may have to account to HMRC for tax on the amounts awarded for financial loss.

REASONS

The issues

1. The issues which the tribunal had to determine are set out in the sub-headings in the conclusions section below.

The proceedings

2. Acas Early Conciliation took place between 11 November and 23 December 2022. The claim form was issued on 22 January 2023.
3. A preliminary hearing for case management purposes took place on 7 July 2023. By that stage, the respondent had still not provided a response to the claim, and the respondent did not attend and was not represented at that hearing. Having heard representations from the claimant, I issued judgement for the claimant, and listed a remedy hearing. The first remedy hearing could not proceed. The second hearing on 12 December 2023 could not proceed because the tribunal had sent notice of hearing to the wrong address for the respondent. The remedy hearing was relisted for today's date.
4. The day before today's hearing, Mr Williams applied to adjourn it because he had contracted Covid. In the circumstances, I ordered that today's hearing be conducted by video link.
5. At the outset of today's hearing, Judge James checked with Mr Williams that he was able to proceed. He confirmed that he was feeling okay, and could participate. Two breaks were taken after proceedings had continued for about an hour each time. Neither party required more frequent breaks than that. Mr Williams was able to participate effectively during the hearing.

The hearing

6. The remedy hearing took one day to determine. There was a remedy hearing bundle from the claimant of 161 pages. The respondent was only entitled to take part in today's proceedings, to the extent allowed by the Judge. The process adopted for today's hearing has been to hear evidence on oath/on affirmation from the claimant, her partner Mr Fletcher, and her mother Mrs B Robshaw. Neither Mr Williams nor the Judge had any questions for the latter two witnesses. Mr Williams was allowed to ask questions of the claimant. Submissions were then heard from the claimant and Mr Fletcher and then from Mr Williams in relation to the issues, on the basis of the evidence that had been presented. The claimant did not object to the above approach.
7. In arriving at my decision, I have been careful to differentiate between statements made by those involved which were not subject to an oath/affirmation, and the actual witness evidence before me, which includes the claimant's answers to questions from the Judge and Mr Williams at this hearing. Further, although reference has been made during the hearing to some documents which not before the tribunal, those documents have not influenced my decision, since it has not been possible to read or consider them.

8. Following an adjournment, a verbal judgment was delivered. Mr Williams has asked for written reasons.

Relevant law

9. Under s124 Equality Act 2010, judgment having been entered for the claimant in July 2023, the claimant is entitled to compensation. This includes compensation for financial loss flowing from the discrimination, and an award for injury to feelings. An award of interest on any compensation found to be payable must be considered.
10. The relevant principles applicable to an injury to feelings award are referred to in the section below, dealing with that issue.

Findings of fact and conclusions

11. The conclusions in relation to the various heads of loss are as follows.

Issue 1: What financial loss has the discrimination caused the claimant?

During employment:

Underpayment of extra maternity pay

12. The judgment dated 7 July 2023 held that there had been an underpayment of the amount that Mr Willimas had agreed to pay to the claimant by way of additional maternity pay during her maternity leave. Further, the judgment held the failure to pay all of that amounted to unfavourable treatment because of pregnancy. It does not appear to be in dispute that the amount the claimant was underpaid amounts to £1500. I award the claimant that amount.
13. I was referred by Mr Williams to an alleged agreement between him and the claimant that she would accept the sum of £300 for a six-month period between May and November, rather than £500 per calendar month, I have not been provided with a copy of any such agreement. In any event, even though that might have affected the contractual position (I make no finding either way, it not being necessary to determine the contractual position for the purposes of this head of loss), it does not affect the claimant's statutory rights under the Equality Act 2010. Hence I am entirely satisfied that compensation of £1500 is appropriate.

Underpaid commission

14. The bonus structure was simple. The claimant was to receive a £100 bonus for each property which she was responsible for the sale of. The claimant claims that eight properties were sold, which she has not received the bonus for, a total of £800. That evidence has not been challenged. Hence I award that amount in respect of underpaid commission.

Clawing back money from the claimant's final wage

13. The figure put forward in relation to this head of loss is £406.84 in the schedule of loss and £993.77 in the claimant's witness statement at para 18. The claimant confirmed that the schedule of loss was prepared by her solicitors, but was not able to explain the difference between the two sums. In fairness to the respondent, I therefore award the claimant the lower sum of £406.84.

Not paying pension contributions to the claimant's pension scheme, or alternatively, [not] reimbursing her for that amount on the termination of her employment?

14. The amounts claimed by the claimant under this head are £894.06 up to 10 May 2022 and £440.93 for the period 11 May to 14 November 2022. Those figures are not challenged, save that Mr Williams has argued that the claimant had the opportunity to make contributions during her maternity leave but declined to do so. Again, the relevant emails confirming that were not before me. Further, the claimant's evidence, which I accept, was that because she was on maternity leave, on limited pay, she was not able to make the contributions at the relevant time. She does however seek reimbursement of those amounts, following the termination of her employment and she is entitled, under the judgment, to those amounts (the judgment having concluded that the underpayment of pension contributions was unfavourable treatment because of pregnancy). I therefore award the claimant the total sum of £1,334.99.
15. The claimant also claims for compensation in relation to pension contributions, for the period from the end of her employment to 22 September 2023. On the basis of oral evidence given by the claimant today however, I am satisfied that the overall package paid to the claimant in her new employment, is at least as favourable as the amounts she would have received, had she remained in the respondent's employment. For those reasons, I did not consider it just and equitable to award compensation in respect of loss of pension contributions following the claimant's employment with the respondent coming to an end.

Credit card and overdraft interest payments

16. The amount claimed by the claimant for credit card interest is £758.47, and £482.18 in relation to bank overdraft interest. The only documents in the bundle relate to interest and charges of about £200. Although I accept that the claimant is representing herself, it is for her to prove her losses. She confirmed that there was some credit card interest prior to her maternity leave. She said that overdraft interest had not been paid before. In the absence of relevant documentation however, I did not consider it appropriate to award any compensation under this head of loss.

Is any extra due for compensation post dismissal?

17. On the basis that the claimant was remunerated overall, at least to the same amount she was prior to her resignation, no award is made in respect of any future loss of earnings. As a result, issues two and three, see below, are not relevant.

Issue 2. If applicable, has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

18. Not relevant.

Issue 3. If not, for what period of loss should the claimant be compensated?

19. Again, not relevant.

Issue 4. What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

20. The claimant claims the sum of £25,00 under this head. I note that the claimant's claim was issued in 2022/23. The Presidential Guidance covering that year states:

2. In respect of claims presented on or after 6 April 2022, the Vento bands shall be as follows: a lower band of £990 to £9,900 (less serious cases); a middle band

of £9,900 to £29,600 (cases that do not merit an award in the upper band); and an upper band of £29,600 to £49,300 (the most serious cases), with the most exceptional cases capable of exceeding £49,300.

21. The claimant's figure is based on the figures applying from April 2023, which increased the upper limit of the middle band to £27,400. I have applied the 2022/2023 figures when considering the appropriate amount.
22. I note, in relation to injury to feelings awards, that such an award encompasses subjective feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress and depression. I also note that the purpose of such an award is to compensate the injured party, not to punish the perpetrator.
23. In deciding the appropriate amount to award, I make the following findings of fact, based on the documentation provided and the witness evidence before me. References in square brackets are to the claimant's witness statement. [WS8] for example, refers to paragraph 8 of the claimant's witness statement.
24. On 10 May 2022, the claimant received the sum of £665 into her account, rather than the £1,100 she had been expecting. She had to spend days chasing up her payslip. She was told by someone in accounts that Mr Williams had told accounts that only SMP was payable to the claimant from now on. Her witness statement at para 7 states: *When Phil finally came back to me he said he had been told that were I to leave, he wouldn't get any of it back and therefore had made the decision to stop my enhanced maternity pay.*
25. The claimant felt '*trapped, useless, a stressed out wreck*'. The claimant planned to use the 'top-up' money to her SMP to do extra activities with her new-born son. It amounted to about £17 per day. It would have allowed her to undertake activities such as going to "*playgroups, coffees with mums, going to parks, buying petrol, food, clothes and most importantly, time. Time and space to do things with [my son]*" [WS8].
26. The claimant went into '*a spiral of worry and anxiety*'. In May 2022, the claimant suffered an exacerbation of her IBS symptoms/ulcerative colitis. She was losing a lot of blood. She was virtually unable to leave the house for a period of a few weeks, due to a fear that she would not be able to find a toilet in time whilst she was away from home. She became weak and lost a lot of weight. The claimant had suffered with ulcerative colitis for eight years up to this date but had been in remission for over four years.
27. the claimant's hair started to fall out in clumps. The claimant also developed urticaria – an itchy rash all over her body. Her face swelled and her eyes puffed up. [WS11] The claimant was unable to take any anti-histamine medication since she was breast-feeding.
28. The claimant's breast milk supply dried up when her son was about four months old. The claimant tried to express milk in order to regain her milk supply, but this was not successful. The claimant had to resort to using formula milk, leading to more feelings of shame, as well as the extra financial burden (about £4 to £6 per week).
29. The claimant was self-conscious about how she looked. She felt anxious about her appearance and continued to experience feelings of failure, adversely affecting her

sleep, resulting in a cycle of tiredness and weakness. She noted jaw ache due to her grinding her teeth and underwent a series of Botox injections. Her partner Mr Fletcher confirms: *Life became a semi-constant spiral of negativity. Unable to escape the house to have positive experiences with [her son] and the subsequent guilt.*

30. In September 2022, Mr Williams proposed a change in the claimant's role on her return from maternity leave [WS17 and 18]. In the new role, the claimant would have less chance to earn commission. This felt, she says, like '*a real kick in the teeth*'.
31. The claimant then went through a grievance process, which took up weeks of her time [WS20]. She feels her grievance has been ignored by Mr Williams and that he seems to be hoping that if he just ignores her, '*she will go away*'.
32. The claimant had to spend time dealing with Acas, researching the law, dealing with solicitors and then dealing with this claim. The claimant suffered numerous stress and anxiety symptoms [WS21]. She says that she will never get those precious nine months back with her son. Since judgment was granted in the claimant's favour in July 2023, she has continued to be stressed by the ongoing legal proceedings, wanting them to be concluded as soon as possible. The claimant is however content in her new job role.
33. The failure by Mr Williams to engage with the process, to acknowledge what he has done or to respond to the claims has adversely affected the claimant. She has been through the Acas process, and sent out letters of negotiation to avoid having to continue with the legal claims. The continuing denials by Mr Williams that he has done nothing significantly wrong has been '*quite heart-wrenching*' and '*made her feel pretty useless*'.
34. In deciding the appropriate amount to award in compensation to the claimant for injury to feelings, I have been careful to distinguish between the physical health conditions, and the stress and hurt feelings she has suffered. I have however taken into account, for example, the effect on the claimant's mental well-being of the effect of those conditions on her, such as her feelings of shame about her breast milk drying up and her appearance; her stress and worry of not being able to leave the house for fear of not being able to get to a toilet in time; and the loss of sleep leading to a cycle of tiredness and weakness and the effect that had on her mental well-being.
35. I have also taken into account the continuing failure by Mr Williams to acknowledge the hurt caused to the claimant, including at this hearing, despite specifically being given an opportunity to do so. This despite judgment having been entered for the claimant in July 2023, which has not been appealed. The only matter which Mr Williams offered an apology for was the way the reduction in the statutory maternity pay was handled; but he still went on to try and justify that on the basis that he was a new business owner and the business was financially struggling. He went on to suggest that whenever the business did, the claimant always wanted more. Earlier on, Mr Williams also talked of the personal hurt and upset caused to him and his wife when the claimant left the business, without, he alleged, giving proper notice. In fact, it appears that the notice given by the claimant was the statutory notice she was obliged to give. In any event, the claimant left because she was offered a role with less responsibility and less chance to earn commission. Yet further, the discriminatory actions of the respondent towards her amounted to a repudiatory breach of contract, entitling her to resign without notice.

36. Bearing this in mind, the above findings of fact and the Vento Guidelines, I consider that this is a case where the appropriate sum to award in compensation to the claimant for injury to feelings is £20,000, around the middle of the middle Vento band.

5. Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?

37. It appears from the schedule of loss that nothing is claimed under this head. There is evidence in the file of urticaria, IBS symptoms and exacerbation of ulcerative colitis; and that the claimant's hair started to fall out in clumps. The claimant has also stated in evidence today that she is suffering from anxiety and depression, although no medical evidence has been presented in relation to that. In saying that, I am not doubting what the claimant is saying.

38. Again however, in fairness to the respondent, I consider that before I was able to award any extra in that regard, some medical evidence would be required about anxiety and depression, and the claimant should have made clear in the schedule of loss how much was claimed under this head of compensation. I therefore make no award for personal injury. Further, as noted above, I have been careful not to increase the injury to feelings award itself because of any impact of the discrimination on the claimant's physical wellbeing.

6. Should interest be awarded? How much?

39. The total award, including injury to feelings but excluding interest is £24,041.83.

40. I consider that it would be just to award interest in the circumstances of this case. Taking a broad brush approach, I have awarded interest from 12 October 2022, 15 months before this hearing and about a month before the claimant resigned. Fifteen months is 1.25 years, which multiplied by £24,041.83 x 8% = £2,404.18

41. The total award including interest is therefore £26,446.01.

Issue 7. Is any extra compensation due to the claimant for:

Issue 7.1 unauthorised deduction of wages; is this covered by the above?

Issue 7.2 unpaid commission; again, is this covered by the above?

Issue 7/3 underpaid maternity pay/additional maternity pay? Is this covered by the above?

Issue 8. Is any extra compensation due to the claimant in respect of the breach of contract claim relating to unpaid pension contributions?

42. In relation to issues 7 and 8, in order to avoid any double recovery, no further compensation is due to the claimant under these heads of claim.

Employment Judge James

Date: 23rd January 2024

Sent to the parties on:

Date: 28th February 2024

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For the Tribunal:
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