



EMPLOYMENT TRIBUNALS

Claimant

Ms Nicola Hinds

v

Respondent

Mitie Limited

Heard at: Cambridge

In Chambers: 1 August 2024

Before: Employment Judge Tynan

Members: Mr M Brewis and Mr D Hart

RESERVED REMEDY JUDGMENT

The Tribunal's final award to the Claimant is as follows:

Description of Award	Amount
Basic Award for unfair dismissal	£ 6,528.00
Compensation for past financial losses	£108,572.63
Interest on compensation for past financial losses, calculated in accordance with the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996	£ 19,346.75
Compensation for future financial losses	£ 39,816.28
Compensation for pension losses	£ 11,252.92
Compensation for injury to feelings	£ 20,000.00
Interest on compensation for injury to feelings, calculated in accordance with the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996	£ 7,123.29
TOTAL AWARD BEFORE GROSSING UP	£212,639.87
TOTAL AWARD AFTER GROSSING UP	£350,705.70

REASONS

1. On 24 April 2024 we gave judgment in respect of various issues relevant to remedy. However, we were unable to finally determine the amount of compensation to be awarded to the Claimant as we required additional information from the Respondent. The information we required was provided by the Respondent on 16 May and 5 July 2024.
2. When she resigned her employment with the Respondent, the Claimant was earning £48,960 per annum, received an annual car allowance of £7,200 and was eligible for a bonus. The Respondent also contributed 6% of her basic salary to a pension on her behalf.
3. The Respondent has confirmed that employees at the Claimant's level received pay increases of 2%, 7% and 6% respectively in 2022, 2023 and 2024. Salary reviews take effect from 1 April each year. We therefore calculate that the Claimant's salary would have increased with effect from 1 April 2022 to £49,939.20, from 1 April 2023 to £53,434.94 and from 1 April 2024 to £56,641.04.
4. We have previously determined that the Claimant should be compensated in respect of her financial losses up to 5 April 2025. All other things being equal, the Respondent's staff can expect to receive a pay increase with effect from 1 April next year. It is too early in the year to come to any reliable view as to what percentage increase might be offered to staff at the Claimant's level. Whilst the UK inflation rate is currently around 2%, we are mindful that we have not proposed discounting (nor indeed been invited by the Respondent to discount) the award of compensation for future financial losses to reflect accelerated receipt by the Claimant. We conclude that we should use the same salary figure for the year ending 31 March 2025 when calculating the Claimant's financial losses for the period from 1 April to 5 April 2025.
5. Managers at the Claimant's level are eligible to a bonus, calculated as a fixed percentage of their basic salary. The percentage award is the same for all managers. In other words, bonuses are determined by reference to company rather than individual performance. Bonuses are awarded in respect of the period 1 April to 31 March, though are payable in or around June following the bonus year end.
6. In 2022 and 2023, employees at the Claimant's level were awarded bonuses of 16% and 16.8% respectively of basic salary. As at 16 May 2024, the bonus award for 2024 had yet to be determined. In the absence of any further information from the Respondent, including any suggestion by it that company performance in the year to 31 March 2024 was down on 2022 or 2023, we shall use an average figure of 16.4% to calculate the Claimant's loss of bonus for 2024 and 2025. As the 2025 awards will not be paid by the Respondent until in or around June 2025 and we do not yet know what income tax and employee national insurance contribution rates

will apply for the tax year ending 5 April 2025, we shall assume for calculation purposes that they will remain unchanged from 2024/25.

7. In our judgement, the 2021/22 bonus should be prorated to reflect that the Claimant was on maternity leave during the first 10 weeks of the bonus year and not entitled to her normal remuneration during that period.
8. At our direction, the Respondent has provided details of Ms Orton's remuneration since 2020. We understand that Ms Orton does not want this information to be made public by being included within this judgment. In any event, we have not thought it necessary to do so since the information provided in relation to her merely confirms what is said by the Respondent regarding the level of pay review and bonus awards to staff more generally.
9. We have no further information as to whether the car allowance rates paid to employees have changed since 2021. However, we are mindful that an element of the allowance would be to compensate the Claimant for wear and tear to her vehicle and any resulting depreciation in its value. Since 2021 the Claimant has not been using her vehicle for work, or certainly not to the level that she did when employed by the Respondent. We have therefore left the amount of the car allowance for each year covered by our award unchanged at £7,200 per annum.
10. In its Counter-Schedule of Loss the Respondent has calculated the Claimant's net salary using www.listentotaxman.com. As the Claimant has not suggested an alternative online resource, we too have used it to calculate the Claimant's net losses.
11. We have previously determined that there was a 50% chance of the Claimant developing postnatal depression that would have resulted in her being absent from work in the period 6 September to 19 November 2021. During the first six weeks of that period the Claimant would have continued to be paid her full salary in the event of sickness absence as she was entitled to full pay for 16 weeks' sickness absence in total and thereafter a further 16 weeks at half pay. As at 6 September 2021, the Claimant had been paid for 10 weeks' sickness absence in total. Regardless of her chances of experiencing postnatal depression, the Claimant's financial losses in the period 6 September 2021 to 17 October 2021 are therefore to be assessed at 100% of her normal remuneration. Given, as a minimum, that the Claimant would have been paid 50% of her salary for any further sickness absence between 18 October and 19 November 2021 (a further period of five weeks), we shall award the Claimant 75% of her salary and car allowance for that period to reflect the 50% chance that she would have been absent from work. Having not been told otherwise by the Respondent and given that bonuses reflect company rather than individual performance, we proceed on the basis that any bonus for 2021/22 would not have been prorated to reflect any sickness absence.

12. In the tax year ending 5 April 2022 the Claimant's earnings at the Respondent were £23,055.23. PAYE of £2,869.20 was deducted from those earnings (see page 224 of the Remedy Hearing Bundle).
13. Subject to grossing up, we calculate the Claimant's financial losses to be as follows:

A. Tax Year ending 5 April 2022

Type	Dates	Calculation	Amount
Actual Remuneration	Total earnings from 6 April 2021 to 5 September 2021		£ 23,055.23
Salary	6 September 2021 to 15 October 2021	30 working days @ £48,960 per annum	£ 5,649.23
Car Allowance	As above	30 working days @ £7,200 per annum	£ 830.77
Salary	16 October 2021 to 19 November 2021	25 working days @ £48,960 per annum x 75%	£ 3,530.76
Car Allowance	As above	25 working days @ £7,200 per annum x 75%	£ 519.23
Salary	20 November 2021 to 31 March 2022	94 working days @ £48,960 per annum	£ 17,700.92
Car Allowance	As above	94 working days @ £7,200 per annum	£ 2,603.08
Salary	1 – 5 April 2022	3 working days @ £49,939.20 per annum	£ 576.22
Car Allowance	As above	3 working days @ £7,200 per annum	£ 83.08
Total Salary and Car Allowance	6 September 2021 to 5 April 2022		£ 31,493.29
Total Taxable Remuneration	6 April 2021 to 5 April 2022	£23,055.23 + £31,493.29	£ 54,548.52
Net of Tax	As above		£ 40,330.90
Employer Pension Contribution	6 September 2021 to 5 April 2022	£ 5,649.23 + £ 3,530.76 + £17,700.02 + <u>£ 576.22</u> + £ 27,456.23 @ 6%	£ 1,647.37

Had the Claimant continued in the Respondent's employment, the total deductions from her earnings for PAYE in the year ending 5 April 2022 would have been £14,217.62 (£54,548.52 - £40,330.90). As we have noted already, the actual total deductions from her earnings at the Respondent that year were £2,869.20. Accordingly, the additional liability to income tax and employee national insurance contributions on her remuneration for the remainder of the year would have been £11,348.42, meaning that her total net financial losses for the year ending 5 April 2022

are £21,792.24: namely, salary and car allowance of £31,493.29 plus employer pension contribution of £1,647.37 minus PAYE of £11,348.42.

B. Tax Year ending 5 April 2023

Type	Dates	Calculation	Amount
Salary	6 April 2022 to 31 March 2023	257 days @ £49,939.20 per annum	£ 49,362.98
Salary	1 – 5 April 2023	3 working days @ £53,434.94	£ 616.56
Total Salary	6 April 2022 to 5 April 2023		£ 49,979.54
Car Allowance	As above		£ 7,200.00
Pro-rata Bonus for 2021/22		£48,960 @ 16% = £7,833.60 x 42/52	£ 6,025.85
Total Taxable Remuneration			£ 63,205.37
Net of Tax			£ 45,436.90
Employer Pension Contribution		£49,979.54 @ 6%	£ 2,998.77

C. Tax Year ending 5 April 2024

Type	Dates	Calculation	Amount
Salary	6 April 2023 to 31 March 2024	257 days @ £53,434.94	£ 52,818.38
Salary	1 – 5 April 2024	3 working days @ £56,641.04	£ 653.55
Total Salary	6 April 2023 to 5 April 2024		£ 53,471.93
Car Allowance	As above		£ 7,200.00
Bonus for 2022/23		£53,434.94 @ 16.8%	£ 8,977.07
Total Taxable Remuneration			£ 69,649.00
Net of Tax			£ 49,637.92
Employer Pension Contribution		£53,471.93 @ 6%	£ 3,208.32

D. Tax Year ending 5 April 2025

Type	Dates	Calculation	Amount
Salary			£ 56,641.04
Car Allowance			£ 7,200.00
Bonus for 2023/24		£53,434.94 @ 16.4%	£ 8,763.33
Total Taxable Remuneration			£ 72,604.37
Net of Tax			£ 51,352.03

Employer Pension Contribution		£56,641.04 @ 6%	£ 3,398.46
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E. Tax Year ending 5 April 2026

Type	Dates	Calculation	Amount
Assumed Basic Salary			£ 56,641.04
Assumed Car Allowance			£ 7,200.00
Bonus for 2024/25		£56,641.04 @ 16.4%	£ 9,289.13
Total Taxable Remuneration (Excluding Bonus)			£ 73,130.17 (£63,841.04)
Net of Tax (Excluding Bonus)			£ 51,657.00 (£46,269.30)
Net Bonus		£51,657.00 - £46,269.30	£ 5,387.70

Summary

14. In summary, the Claimant's total financial losses are as follows:-

Type	Dates		Amount
Net Remuneration	Year End 5 April 2022		£ 20,144.87
Employer Pension Contribution	Year End 5 April 2022		£ 1,647.37
Net Remuneration	Year End 5 April 2023		£ 45,436.90
Employer Pension Contribution	Year End 5 April 2023		£ 2,998.77
Net Remuneration	Year End 5 April 2024		£ 49,637.92
Employer Pension Contribution	Year End 5 April 2024		£ 3,208.32
Net Remuneration	Year End 5 April 2025		£ 51,352.03
Employer Pension Contribution	Year End 5 April 2025		£ 3,398.46

Net Remuneration	Year End 5 April 2026		£ 5,387.70
Total Loss of Remuneration			£ 171,959.42
Total Loss of Employer Pension Contribution			£ 11,252.92

Financial losses, including interest, to 28 March 2024

15. We have previously determined that interest should be awarded in respect of the Claimant's losses up to and including 28 March 2024, excluding pension losses. Interest is to be calculated at the rate of 8% per annum for a period of 813 days, namely from the mid-point between 16 October 2019 and 28 March 2024.
16. The Claimant's net loss of remuneration for the tax year ended 5 April 2024 is £49,637.92. Prorated to 28 March 2024, her net loss is £48,549.97. Subject to mitigation, her total net loss of remuneration from 6 September 2021 to 28 March 2024 is £114,131.74 (£20,144.87 + £45,436.90 + £48,549.97). Excluding mitigation of £20,125.00 (gross) for the later period 20 May 2024 to 4 April 2025, £9,705.14 is to be deducted in respect of mitigation up to 28 March 2024 (£29,830.14 - £20,125.00). In our Remedy Judgment of 24 April 2024 we awarded the Claimant additional sums totalling £4,146.03 (see paragraph 3.3 and paragraphs 30 to 34 of our Reasons). That takes the Claimant's overall financial losses for the period 6 September 2021 to 28 March 2024 to £108,572.63 (£114,131.74 - £9,705.14 + £4,146.03).
17. Interest at 8% per annum on the sum of £108,572.63 for 813 days is £19,346.75.

Future loss

18. The Claimant's total net loss of remuneration from 29 March 2024 to 5 April 2025 is £57,827.68, comprising: pro-rata net remuneration of £1,087.95 for the period 29 March 2024 to 5 April 2025; net remuneration of £51,352.03 for the tax year ending 5 April 2025; and net loss of bonus for 2024/25 of £5,387.70. The sum of £20,125.00 (gross) is to be deducted in respect of future mitigation. Again, according to www.listentotaxman.com, that equates to £18,011.40 net of income tax and employee national insurance contributions. After mitigation, therefore, the Claimant's total future loss of remuneration is £39,816.28 (£57,827.68 - £18,011.40).

Grossing up

19. The total award before grossing up is £212,639.87. The award will be taxed in the current tax year ending 5 April 2025. The first £30,000 will be

tax free. The balance of the award, namely £182,639.92 will be subject to income tax at the Claimant's marginal rate. It will not be subject to employee national insurance contributions. We have previously determined that the Claimant is capable of earning £20,125.00 in the current tax year. We calculate that the Claimant will be liable to tax on the award as follows:

On the first £30,000 = tax free

On the next £30,145 @ 20% = £6,029.00

On the next £49,730 @ 40% = £19,892

On the next £25,140 @ 60% (being the effective rate of tax due to the loss of the personal allowance on income between £100,000 and £125,140) = £15,084

On the final £77,624.87 @45% = £34,931.19

20. The total liability for tax on an award of £212,639.92 is therefore £75,936.19. Net of tax, the Claimant would receive £136,703.69. In order for the Claimant to receive £212,639.87 net of tax, she must be paid an additional sum of £138,065.78, or £75,936.18 net of income tax @ 45%. Accordingly, the total grossed up award to the Claimant shall be £350,705.70.

Employment Judge Tynan

Date: 19 August 2024

Sent to the parties on:
6 September 2024

For the Tribunal Office.

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