



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms C Tyson  
**Respondent:** Prestige Radiators Ltd  
**Heard at:** Leeds                      **On:** 30 March 2017  
**Before:** Employment Judge Davies

## Representation

**Claimant:** Mr A Brook a lay representative  
**Respondent:** Ms Seager, managing partner

# JUDGMENT

1. The Claimant's claims of unfair dismissal, breach of contract (notice pay), pay in lieu of annual leave accrued but untaken at termination of employment and for unlawful deduction from wages succeed.
2. The Claimant's claim for a redundancy payment is not well founded and does not succeed.
3. The Respondent shall pay to the Claimant a basic award of £5,220.
4. The Respondent shall pay to the Claimant a compensatory award of £4,809.68.
5. The Respondent shall pay to the Claimant £3,054 net in respect of her claim for unlawful deduction from wages. The Respondent shall be responsible for the payment of any tax or national insurance.
6. The Respondent shall pay the Claimant £426.38 net in respect of annual leave accrued but untaken on termination of her employment. The Respondent shall be responsible for any tax or national insurance.
7. The Respondent shall pay the Claimant costs in the sum of £1,200 being the issue and hearing fees paid by her.

# REASONS

## Introduction

1. This was the hearing to determine the remedy payable to the Claimant in respect of claims for unfair dismissal, breach of contract, unlawful deduction from contract, a redundancy payment and pay in lieu of accrued annual leave. The Respondent's response had been struck out at an earlier stage in the proceedings. Ms Seager its managing partner attended today and I allowed her to participate in the hearing by cross-examining the Claimant and by making representations to me and she has done it seems to me all that could sensibly be done on the part of the Respondent. The Claimant had not prepared a witness statement but she had brought some documents with her. I had those copied for the Tribunal and for the Respondent and the Claimant gave evidence herself and was questioned by Ms Seager. The facts are as follows.

## The facts

2. The Claimant's date of birth is 21 November 1965. There was no dispute about the facts as set out in the claim form and those are the bases on which I have approached the matter. Crucially the Claimant had her keys removed from her on about 12 July 2016 and was escorted from the premises the following day 13 July 2016. She subsequently emailed the Respondent to ask what was going on. That led eventually to a meeting with Mr Walton one of the directors on 20 July 2016 to try and resolve the Claimant's employment situation. It is clear that a settlement was discussed on that occasion. Afterwards the Claimant sought written confirmation of that settlement and it appears that Mr Walton refused to provide it. Essentially he withdrew any offer of settlement and told the Claimant more than once in an email that she was now suspended on full pay pending an investigation. The Claimant made enquiries about what was happening with that investigation subsequently and didn't receive any response. The next thing she received was a P45 on 30 September 2016 and it seems to me in those circumstances that that was the date on which her employment ended. She was not formally dismissed on the 12 or 13 July. She clearly remained uncertain what her position was and the Respondent's position was confirmed in writing by email after 20 July more than once where she was told that she was suspended on full pay pending an investigation and that remained the position until she got her P45 on 30 September. She was paid her wages up to that date.
3. At this point I paused to note that there was no evidence in front of me that supported the suggestion that the Claimant was dismissed by reason of redundancy.
4. Going back a little bit the Claimant started work on 29 September 2006. She was an accounts co-ordinator. Her rate of pay at that stage was £9 per hour and her hours of work certainly at the time that we were concerned with were 30 hours per week. On 5 October 2015 Mr Walton promised the Claimant a pay rise of £3 per hour with immediate effect. She chased that up after the meeting and Mr Walton confirmed that it was to be paid and would be backdated to that date. The Claimant showed me emails that showed that she had chased that pay rise repeatedly but that it was never in fact paid to her. It was clear to me that it remained outstanding when her employment terminated. She had not agreed to any subsequent variation of the contract

and the position it seemed to me between the parties was that following the discussions on 5 October 2015 the Claimant's contractual entitlement was to £12 per hour by way of wages. That translates into a weekly wage of £360 gross.

5. At the time of her dismissal the Claimant was understandably very upset but she set about finding some kind of work to ensure that she met her financial liabilities. She obtained a temporary role at Marks and Spencer as a sales assistant starting on 24 October 2016. She is still working there. She has 32 hours a week basic hours at £7.35 per hour. Using the facts and figures tables for converting net and gross sums between one another I have calculated that that is equivalent to a gross salary of £12,230.40 or a net salary of £11,417.
6. The Claimant said that she did some overtime over Christmas. She thought she had done a couple of hours extra a week during December but she wasn't clear precisely what hours she had done. After Christmas she had been down to her basic hours again. Doing the best I can I have allowed for her doing an additional 10 hours overtime during December. It is clear that unlike her fixed hours in her former role the Claimant has undertaken work at evenings and weekends showing a degree of flexibility in her working hours.
7. She has for a while been seeking more suitable work for her at a rate closer to her rate at the Respondent. She told me that there are some accounts coordinator roles available. She has made about six applications and she has had two interviews. She hasn't yet been successful and certainly in at least one of the interviews she said that she fell to pieces somewhat because she was still upset and distressed about what had happened to her. She is hopeful that any future interviews will go much better.
8. Ms Seager undertook that the Respondent would provide a reference for the Claimant and I record that undertaking here. That it seems to me will undoubtedly help the Claimant in her search for a more suitable role because she will be applying as a candidate with 10 years experience, 10 years employment with one employer and a good reference. She is hopeful that she will be working in an equivalent role by September of this year. Ms Seager suggested that perhaps that might happen somewhat sooner and suggested the end of July as a date. With a good reference and her experience, the fact that a number of roles are available and that she clearly is willing to be flexible about the hours she works I think there is cause for optimism and I find that on the balance of probabilities the Claimant will by the end of July have found work equivalent to the work that she was doing at the Respondent.
9. Turning to the question of annual leave the Claimant's leave year ran from 1 January to 31 December. In the leave year in which she was dismissed she had taken 14 days leave including bank holidays. By the effective date of termination she had accrued 39 weeks worth of annual leave, that is to say 4.2 weeks leave or 21 days leave.

### **The law**

10. I am not going to set out the law on the tape. It is governed by the Employment Rights Act and the Working Time Regulations principally. As I explained to the parties the Claimant is entitled to a basic award and a compensatory award for unfair dismissal. The basic award is equivalent to a redundancy payment. The compensatory award covers loss of earnings to

date and also for a period into the future and can also include loss of statutory employment rights.

11. Turning to the application of the legal principles in this case. I start with the basic award. At the effective date of termination the Claimant was 50 years old and had 10 years service. Under the statutory provisions the relevant multiplier is therefore 14 and a half. That means she is entitled to 14 and a half times her gross weekly wage as a basic award and I have based the figure on the gross weekly wage she was entitled to and should have been paid. That is to say the figure based on £12 per hour £360 per week. That gives the basic award of £5,220. That brings me to the compensatory award. The Respondent didn't argue that the Claimant had unreasonably failed to mitigate her losses and in any event it is quite clear that she hadn't. She took immediate steps to try and find work. She found work at a lower rate of pay to begin with. That has clearly been making efforts to find work that makes up the difference since then.
12. As of the date of the hearing today her total loss of earnings from her former employment is in fact almost exactly 26 weeks loss. The compensatory award has to be dealt with as a net figure. I have calculated that the Claimant's net earnings at a rate of £12 per hour in her former employment again using the tables in the facts and figures book should have been £15,837 annual salary which translates to a net weekly pay of £304.56. The total amount she would have earned between the end of September of last year and today is 26 x £304.56 which is £7,918.50 net. From that I have to offset the sums that she has in fact earned to date and she has worked for 22 weeks earning net £219.56 per week. So her net earnings to date are £4,830.32. I have also added an additional 10 hours to reflect the overtime she thinks she worked. That is £73.50. Because it is such a small sum I haven't tried to work out the difference between the net and the gross so I have added that to the net figure she has earned and the difference between her net earnings to date and her net losses to date is £3,014.68. I also have to consider the future losses. That is the difference between what she is currently earning and what she would have been earning at the Respondent. The weekly net difference in the Claimant's pay is the difference between £304.56 and £219.56 which is a weekly net difference of £85. It seems to me that the appropriate period to award that over is the period until the end of July because it seems to me that that is when the Claimant will find equivalent work because of the availability of her reference, the fact that jobs are available, her experience and the fact that she will undoubtedly now perform better at her interviews particularly now that these proceedings are resolved.
13. Taking us from today until the end of July is a period of 17 weeks so the future loss is 17 weeks at £85 per week which is a figure of £1,445. Finally for the compensatory award it seems to me that the appropriate figure for loss of statutory rights for an employee on the Claimant's salary but with 10 years continuous service is £350 and adding together the past losses, the future losses and the loss of statutory rights compensation the total compensatory award is £4,809.68. As far as notice is concerned the notice period has been covered in the period covered by the compensatory award so I don't award an additional sum for notice. That brings me to the question of wages the £3 an hour point. It seems to me that there is no doubt that the wages properly payable to the Claimant from 5 October 2015 until the termination of her employment was £12 per hour and there was a series of deductions continuing until that date. Again working in net figures the Claimant should

have been earning £15,837 per annum net and she was in fact earning based on the ET1 claim form £12,708 net so the net annual difference is £3,129. Now in fact the period over which she should have had that pay and didn't was 51 weeks, not a full year and so it is necessary to deduct the difference that one week would have made. I have estimated that as being £75 net and that means that the shortfall in the Claimant's wages was £3,054 and that is the total of the unlawful deduction from her wages net.

14. The next matter is the question of annual leave. She had seven days annual day accrued but untaken when her employment ended. That is 1.4 weeks annual leave at a rate of £304.56 per week and that is where I have arrived at the figure of £426.38 net for annual leave. The last matter is the question of costs. The Claimant was obliged to bring these proceedings in order to recover the sums. She has succeeded in doing so and it seems to me entirely appropriate that she should recover the fees incurred which amount to £1,200.

Employment Judge Davies

Date: 6 April 2017