In The Industrial Tribunal of Gibraltar

Case Nº 14 of 2014

ELLEN MCCAULEY-CUMMINS

Complainant

and

WATERFALL VENTURES LIMITED

Respondent

Ms Ellen Mc-Cauley Cummins unrepresented
No appearance by or for the Respondent.

Judgement

Background

By originating application dated the 19th August 2014, filed by Hassans on behalf of the Complainant, the Complainant alleged that her dismissal on the grounds of redundancy was unfair since (i) a redundancy situation did not exist within the Respondent and (ii) if, which was not accepted, there was a redundancy situation, the Complainants dismissal was unfair since the proper procedure had not been followed with respect to such a dismissal.

By notice of appearance dated the 12th September 2014, filed by the Respondent, the Respondent confirmed that the Complainant had been made redundant, contested the date on which the Complainant claimed she had commenced work and stated that not only was there a true redundancy situation within the company but also that the proper procedure had been used to pick the Complainant as the person to be made redundant.

On the 16th December 2014, this case came before me for the first time. On this occasion both parties were represented, the Complainant by Hassans and the Respondent by Cruz & Co, and an order by consent made with regard to the future conduct of the case. The date of hearing was set for the 27th April 2015.

In the course of January 2015, the Complainant (three and a bit pages) and the Respondent (three and a half pages) filed lists of disclosure.

By e-mail dated the 14th January 2015, from the Complainant to the Secretary of this tribunal, the Complainant informed the tribunal that for financial reasons she was now representing herself.

On the 2nd February 2015, the Complainant (ten witnesses) and the Respondent (five witnesses) filed their respective lists of witnesses.

On the 25th February 2015, Janis Evans Solicitors filed a notice of change of legal representative on behalf of the Respondent and quickly followed this up with an application to have the case dismissed on the grounds that as the Complainant was 66 years of age as at the time of the complaint this tribunal did not have jurisdiction to hear the case by virtue of section 60 (1) (b) of the Employment Act. This application was therefore set down to be determined as a preliminary point.

By letter dated the 26th March 2015, Janis Evans Solicitors not only withdrew their application of the 25th February 2015, but also informed the tribunal that they were no longer representing the Respondent since "our instructions were limited to pursuing the Application which we filed on the 27th February 2015".

By e-mail dated the 4th May 2015, sent by a Mr John Freeman, a director of the Respondent company, to the Secretary of this Tribunal, the Tribunal was informed of the following:-

> *"I write in reference to the above captioned matter which has been listed for a final hearing in June.*
>
> *I confirm that the Respondent company ceased trading in March 2015 and all employees were dismissed by reason of redundancy. Whilst it would be preferable to wind up the company by way of voluntary members' liquidation, due to the contingent liability which arises from this case, as sole director, I am unable to make the necessary declaration of solvency as required.*
>
> *In the circumstances therefore, Waterfall Ventures Limited, will not be participating any further in defending the tribunal proceedings ....."*

I stop to point our that in fact the employees were not made redundant until after March 2015.

By letter dated the 21st April 2015, the Tribunal gave notice to the parties that the hearing of the case would take place as from the 6th May 2015; later changed to the 7th.

On the 7th May 2015, this case came before me for hearing. On this occasion the Complainant appeared before me unrepresented and no one at all appeared for or on behalf of the Respondent.

Notwithstanding that there was no appearance by or on behalf of the Respondent I decided to proceed with the hearing of the case.

In my opinion the provisions of Rule 13 (3) of the Industrial Tribunal Rules give me the necessary power to proceed with the hearing and determination of a case in the event of the non appearance of a Respondent and I was perfectly satisfied that the Respondent was well aware of the date and location of the hearing and chosen not to appear.

The Hearing

The hearing commenced on the 7th May and continued on the next day. In the course of the hearing the following witnesses appeared before me; Vanessa Wooley, Karen Lawson, Susan Taylor and the Complainant. Witness statement for the persons concerned were handed in and a total of twenty exhibits produced in the course of the hearing. I point out at this stage that for the purposes of arriving at a determination I have taken into account all documentation produced by the Respondent in the case. In this judgement I may quote from verbal evidence given before me as set out in my notes but this does not signify that I have not taken the contents of the witness statements tendered into account when deciding as to the facts of the case.

Chronology of Events

It is incumbent on me to establish to such an extent as is reasonably possible in the light of the evidence before me, the chronology of events in this case and the following are my findings on this issue based on what has come before me in written or verbal form.

The evidence of the Complainant is that in the course of January 2011 she was introduced to Mr. Richard Visick through a mutual friend. Following on from said meeting, and some further chats, in the course of February/March 2011 she began to work for him. The reason why the approximate date when the Complainant started to work for Mr. Visick is important is that in the Notice of Appearance filed the Respondent gives the 7th January 2013 as the date when the Complainant began to work for the Respondent. Support for the statement contained in the Notice of Appearance comes from an Employment and Training Board Notice of Terms of Engagement form which appears to be signed by Mr. Visick and the Complainant (Exhibit "EMC 2") on the 2nd December 2012 and which gives the "07-01-2013" as the date of commencement of employment with the Respondent.

The Complainant does not deny having signed this ETB form but explains the matter in the following manner.

> *" I had to go to London around March 2011. I was asked by Visick to go to Cruz & Co to sign a form, an employment contract. I explained I had to catch the plane and got him to get Cruz & Co to prepare the form and I would sign it. I trust people. I went to Cruz & Co and signed the form..... I signed it but did not fill it in. The form was blank. It was completely blank. I put my name on it and I then signed it."*
>
> *"In June 2012 I had learnt that I had no contract of employment with Visick ..... He asked what I wanted. I said a proper contract and £2,500 net monthly working 10 to 5 pm. He agreed. In my next pay check in July 2012 I got £2,500. I went to Cruz & Co and went in to sign*

a form they filled out. I said this is not what I had agreed. I walked away...."

"I then got another form which had to be crossed out, redone etc and then eventually in December 2012/January 2013 it was done. It was the same form as originally produced altered."

I must admit that if this were the extent of the evidence on this issue I would have probably concluded that the Complainant was only employed as from the 7th January 2013. But it is not.

The Complainant has produced by way of exhibit ("EMC 3") a stack a photocopied invoices and cheques.

The first invoice states as follows:-

"Waterfall Limited
1 Reclamation Road
Gibraltar

To services rendered
January - 30th June 2011 £1,492.50"

This invoice lends some small support to the Complainant's evidence that she commenced to work for the Respondent in January/February/ March 2011 but I note that the invoice is unsigned, produced on blank paper and the name of the company is wrongly quoted.

There is also an invoice for August 2011 with a cheque dated 14th September 2011 drawn on an account which according to the evidence of Vanessa Wooley was the account of the Respondent company at the Jyske Bank for an amount which corresponds with that stated on the invoice. There are other photocopied invoices, cheques and time sheets covering periods in 2011 and 2012.

There is also the evidence of Vanessa Wooley who worked for Mr. Visick/the Respondent company as from the 8th February 2011 and who stated in the course of her evidence that:-

"When I first started I was unaware of the Complainant. It was about a month later when the Complainant was calling at the office that I realised she was already handling projects for Richard. I did not meet the Complainant until the end of March 2011/April 2011"

This evidence also supports the Complainants contention that she began to work for the Respondent at the beginning of 2011.

There is also the evidence of Karen Lawson who began to work for Mr. Visick/the Respondent on the 27th January 2011 and who stated in her witness statement:-

> *"My first documented note about Ellie McCauley Cummins was 4th April 2011. Spoke to Ellie to convey your regards. She did ask about her employment status with you. I asked her to contact you directly as I had no direction from you regarding her future..... By 13th April 2011 I have file notes showing Ellie was speaking to Mr Visick about Rendezvous Club Business."*

This evidence also supports the contention that the Complainant began to work for Mr. Visick/the Respondent in the early half of 2011 and not in January 2013.

It is my determination that the Complainant began to work for the Respondent in February/March 2011.

It is the contention of the Complainant that whilst she was employed for the purposes of the Employment & Training Board by the Respondent Company she in fact worked for Mr. Visick and his group of companies since the Respondent company was no more than a shell and did not of itself conduct any business.

Support for such a contention is found in the evidence of Vanessa Wooley who stated in oral evidence:-

> *"We were paid by the Respondent company but our actual work covered all of the companies and bits and bobs of Mr. Visick. These were 8 companies in Gibraltar, several in the UK encompassing oil exploration projects in East Timor which was registered in Holland and Jersey."*

> *"Waterfall Ventures did very little of itself. It was the Company that paid us."*

As the person who handled Mr. Visicks bank accounts, arranged his business trips, dealt with stock brokers/bank managers, attended to his correspondence, Ms Wooley was in a good position to know what the Respondent company did. Similarly, her oral evidence to the effect that:-

> *"What I was led to believe Complainant was Mr. Visick's business adviser across all his business interests."*

further supports the Complainant's evidence on this point.

The Respondent in the Notice of Appearance filed does not touch on this issue.

Moreover, it is interesting to note that in Cruz & Co's letter of the 28th May 2014 to the Complainant said firm of solicitors state:-

> "it is worth noting that you are an employee of Waterfall Ventures ("WVL") and that you receive a salary of £30,000 per annum in relation to work done for WVL and its related parties. Our client does not recognise any other agreement for further remuneration outside your contract of employment with WVL".

The reference to "related parties" of the Complainant company would, according to the chart contained at exhibit EMC9 produced by the Complainant, appear to refer to three Gibraltar companies (Energy Services Limited, Zalophus Holdings Limited and Rendezvous Club Limited) and one Falkland Island company (Sea Lion Lodge Limited) which is in itself confirmation that the Complainant did more than simply attend to the affairs of the Respondent company.

I accept the evidence of the Complainant and Ms Wooley to the effect that the Respondent company was merely a vehicle for the payment of the salary of persons who in point of fact worked for Mr Visick and his various business affairs, as well as a vehicle for the holding of the other assets belonging to Mr. Visick.

It is the Complainants evidence that in July 2013 Mr Visick asked the Complainant to look into the affairs of one of his oil companies by the name of Minza Limited, a company incorporated in Jersey.

In oral evidence the Complainant stated as follows:-

> *"In summer of 2013 I got involved with his new oil company, Minza. It was July 2013. He was having problems with the CEO. I was given all the papers to look over including the licence with the East Timor government. The object was to get rid of the CEO with Richard Brecker and that I become the president of Minza. I told them that whatever I was going to do was to be done in the name of a company and that they had to pay for the cost of setting up the entity."*

That the Complainant was in some manner involved with Minza's affairs is clear since various e-mails have been produced in which the names of the Complainant and Mr Visick appear including an e-mail dated 13th January 2014 in which an organisation chart of the company is set out and in which the Complainant is shown as the "president".

According to the Complainants' evidence, the vehicle set up to deal with the Minza problem was a Gibraltar company by the name of Research Energy Limited, incorporated on the 19th November 2013. It is interesting to note that Cruz & Co in their afore-mentioned letter of the 28th May 2014 refer to Research Energy Limited as being "a company owned and or controlled by you"; i.e. the Complainant

According to the witness statement of Karen Lawson:-

> *"On 19th November 2013 Acquarius Trust set up Research Energy Limited. I was directed to ask them to do so with Ellie appointed Director."*

Acquarius Trust is the company management firm of Cruz & Co who were the solicitors for Mr Visick.

According to the Complainants own witness statement it is stated that:-

> *"Karen Lawson, Richard Visick's secretary was told to get this company set up, which she did , however she did tell me that Richard Visick wanted this company to come under his umbrella. I said no. I wanted control of my own company".*

On the basis of the evidence produced to me I accept not only that Mr Visick knew of the existence of Research Energy Limited but I also find that the Complainant was asked to do, in colloquial terms, the dirty on the CEO of Minza through said company.

As part of the arrangement agreed on, or so the Complainant states, a consultancy agreement was drawn up between Minza Limited and Research Energy Limited for the provision by the latter to the former of certain services. A draft of the document in question was produced. The Complainant admitted in oral evidence that the actual document was never executed but stated that she had discussed its contents with both Mr Visick, at a meeting on the 23rd January 2014, and Mr Brecker on an unknown date. In her witness statement the Complainant states about her meeting with Mr Visick at Ocean Village that:-

> *"During this meeting I produced the e-mail from Nick Brecker (his accountant) about my company charging £3,000 per month to Nautilus for my services as President of Minza Oil and seeking clarification as to what was happening. I was advised to go ahead and to do what Nick Brecker had suggested.*

On the 26th January 2014, Mr. Brecker sent an e-mail to the Complainant stating, amongst other things:-

> *Subject to your agreement, I have drafted a December 2013 invoice from REL to Minza Jersey for your December work for the company and will send it to Angela."*

The invoice drafted is in respect of "Recharge of project work carried out in December 2013" for Euros 3,614.

This invoice, together with the one for January 2014, would appear not to have been paid until after February 2014 since on the 12th February 2014 the Complainant sent an e-mail in which she refers to not having yet opened a bank account into which these invoices could be paid. As to when the sums in question were actually paid is not known but there is no doubt that they were paid since Cruz & Co refer to such a fact in their letter of the 28th May 2014, and the Complainant has not denied this to be the case.

According to the evidence of the Complainant in February 2014 she flew to the UK to attend to some of Mr. Visick's affairs with regard to a Care Home and in order to meet with personnel relating to Minza Limited; i.e. Mr. Brecker and a

representative of the company which was a director of Minza Limited. It is the Complainants evidence that:-

> *After this meeting Brecker and I had a general chat. I intimated that I was concerned about what Visick was doing and whether he should be trusted. I knew creditors were never going to be paid. Brecker said you don't know everything it will be ok keep your nose out of this."*

By this time Mr Visick was in East Timor, indeed it would appear he left for the Far East on the 24th January 2014 and returned on the 14th May 2014.

Just prior to or on the 26th May 2014, Cruz & Co wrote to the Complainant asking to have a meeting with her. The Complainant replied asking what the meeting was going to be about and whether she could bring a legal representative. I deduce from this that the Complainant had some inkling of bad news since otherwise why should she ask to have her lawyer present. On the 26th May 2014, Cruz & Co wrote to the Complainant stating amongst other things that:-

> *"It is the result of a meeting Christina and I had with Richard. Our instruction is to meet with you and discuss employment and related issues and try and resolve. There is no predetermined outcome but given the reduced workload and cessation of activity the possibility of termination of your employment on grounds of redundancy is clearly one matter."*

This meeting did not take place. As to why it did not take place the Complainant has not said but she intimated it was because she insisted Mr Visick be present. The outcome of all of this was that on the 27th May 2014, according to the evidence of Ms Wooley:-

> *"There was a conversation between Visick and Nick Brecker, accountant, on the telephone in my presence. Visick was saying that he knew nothing about Complainant charging £3,000 to Minza and that she was stealing money. The next day she was made redundant. Conversation I don't recall how long it lasted. There was no mention of redundancy during conversation. I said to Visick that Complainant was told to charge £3,000 a month to Minza. He said he knew nothing and I said but you told us to organise it because £3,000 was then to be repaid to Visick."*

This evidence as to the conversation held, which I accept, suggests that the decision made to make the Complainant redundant must have been made between the 27th /28th May 2014 since before that there was, according to Cruz & Co, no "predetermined outcome."

On the 28th May 2014 two events occurred:-

(a) by letter dated the 28th May 2014, hand delivered by Karen Lawson to the Complainant, the Complainant was informed that her employment was

being terminated by reason of redundancy since the Respondent company:-

> *"has reduced and intends to reduce further its activity and therefore the requirements of the company for which you were employed have ceased or diminished (namely as business advisor of the Company) and is expected to further diminish;" and*

(b) by letter dated the 28th May 2014, the Complainant was informed by Cruz & Co that:-

> *"our instructions are that two payments totalling £6,000 presumably in relation to December 2013 and January 2014 were in fact made, as a result of representations made by you to the directors of Minza."*
>
> And that in the circumstances "no further payments should be made" and that "Minza will take steps to recover the said payments of £6,000 and will certainly make no further payments."

It would appear from the evidence that shortly after this Mr Visick made one or more complaints to the police and as a result the Complainant was interviewed about various matters which have little to do with the case before the Tribunal. Suffice to say no charges were ever brought against the Complainant.

In evidence the Complainant confirmed that she did receive a redundancy cheque for £4,127.60 which she cashed.

The Complainant alleged in evidence that within a short period of time after the 28th May 2014, Mr Visick farmed out her work and responsibilities to a person by the name of Martin Woolaston. In support of this allegation she has presented the following.

When giving oral evidence Ms Wooley stated as follows:-

> *"When Complainant left someone took over her role. Within a week Visick wanted someone else to be director. Martin Woolaston explain to him that he was the brother of Jason Visick and to ask him if he was prepared to be a director of one of his companies and if the answer was yes then I was to arrange for a meeting. They met the next day, Woolaston took over most of the work Complainant did, two of them being negotiating to get out of the Rendevouz Club and taking over the Minza correspondence, business interest in the falklands ..... I think it was Waterfall Ventures who paid Woolaston. He was paid every now and again."*

This evidence supports the contentions of the Complainant. The second piece of evidence produced by the Complainant is an e-mail dated 25th July 2014, sent by Mr Visick who states:-

> *"Perhaps it would be best if Tom Swales got in contact with Martin Woolaston who now covers the role Ellie did for the Falklands."*

The third piece of evidence is also an e-mail but this one dated the 24th June 2014 from Mr Woolaston to Vanessa Wooley in which it is stated:-

> *"I've used Minza Limited and I think it will be ok."*

Both of these e-mails lend further support to the Complainants contentions which I accept.

The Law

As has been stated above, the Complainant was by letter dated the 28th May 2014 informed that her employment was with effect of the 31st May 2014 being terminated by reason of redundancy since the Respondent:-

> *"has reduced and intends to reduce further its activity and therefore the requirements of the company for which you were employed have ceased or diminished (namely as business advisor of the company) and is expected to further diminish".*

The first question that has to be decided where the concept of dismissal for redundancy arises is, "has the contract been terminated"? There cannot be a dismissal unless the contract is terminated. The formal onus of proving a dismissal lies on the employee. (Morris v London Iron & Steel Company 1987 2AER 496). A dismissal must therefore be proved affirmatively by the employee.

In this case there can be no doubt that the Complainant was dismissed with effect of the 31st May 2014. This is clear beyond doubt from the contents of the letter referred to above sent by the director and beneficial owner of the Respondent company dated the 28th May 2015, from the fact that a redundancy cheque for £4,127.60 was prepared for the Complainant and from the Complainants own evidence that she was dismissed.

This being the case, then pursuant to the provisions of section 65 of the Employment Act, the provisions of sections 59 and 70 of said Act come into play and it is for the Respondent to prove on a balance of probabilities that the principal reason for the dismissal of the Complainant was that she was redundant and that in all circumstances of the case it was fair to dismiss the Complainant from the position which the Complainant held.

In the Notice of Appearance filed by the Respondent it is stated that the reason for the Complainants dismissal was redundancy and that the Respondent acted reasonably and fairly in dismissing the Complainant as "a proper and fair" "last in first out" selection procedure was adopted by the Respondent. Although the Respondent failed to appear for the purposes of the hearing I have to give due consideration to these submissions.

On her part the Complainant avers that the principal reason for her dismissal was not redundancy but "false allegations made against her relating to two

invoices issued" by a third party company and that even if the principal reason was redundancy that her dismissal was unfair since:-

(i) there was no or no sufficient warning of the redundancy situation;

(ii) there was no consultation with her on the matter;

(iii) there was no proper or fair selection process adopted;

(iv) there was no opportunity given to the Complainant to discuss matters or to make representations or to vary her contract as an alternative to dismissal;

(v) there was a failure by the Respondent to invite voluntary redundancies from its workforce; and

(vi) there was no offer to the Complainant to re-deploy within the company.

I now turn to look at these matters.

I am not persuaded that there was any genuine redundancy situation. The Respondent company was merely a vehicle for the holding of assets and the Complainants' employment was as "the business advisor" of the Company. At the time of the dismissal the Respondent still held those assets and Mr Visick still required to be advised on them as the subsequent employment of Mr Woolaston in the similarly same role shows. It is true that Cruz & Co refers to a "reduced workload and cessation of activity" in their e-mail of the 26th May 2014, but there is no evidence before me to show this was in fact the case. Indeed in my view the principal reason for the dismissal on the evidence before me was Mr Visick's rightly or wrongly held view that the Complainant had helped herself to £6,000 with respect to Minza; monies to which she was not entitled. The evidence of Ms Wooley, the letter of the 28th May 2014 from Cruz & Co and the criminal complaints made to the police all support such a view. Indeed I note that the afore-mentioned Mr Freeman appears to have been appointed as a director of the Respondent at some stage after the 31st May 2014.

Assuming that I am wrong in my determination that the dismissal was not as a result of a genuine redundancy situation I now turn to consider whether in all the circumstances of the case the dismissal was unfair for any of all of the reasons alleged by the Complainant.

There is no doubt that the Complainant was never asked what other jobs she could or would do for the Respondent or consulted about doing other work or asked to take a pay cut or asked to work shorter hours or asked to voluntarily be made redundant. There was no attempt made by the Respondent company to seek mutually acceptable solutions through a genuine exchange of views and information. It is true that Cruz & Co in their e-mail of the 26th May 2014 refer to Mr Cruz and "Christina" wishing to meet with the Complainant to "discuss employment and related issues and try and resolve" but go on to refer to the "possibility of termination of your employment on grounds of redundancy."

Apart from the fact that these discussions were to be between the Respondent's lawyer and the Complainant, rather than Mr Visick and the Complainant, and that a very restrictive time frame was given to hold these discussions and obtain the Complainants feedback (by all accounts a couple of days at most), it would seem to me that the proposed discussions were to be held way after what could be called the formative stage of the suggestion to make employees redundant. On this basis alone there is an unfair selection of the Complainant for dismissal. The only criteria of selection which the Respondent company appears to have used when selecting the Complainant for dismissal was, according to the Notice of Appearance filed by the Respondent, the "last in first out" selection criteria. It seems clear that the Complainant was employed by the Respondent after Ms Lawson and Mrs Wooley and that therefore she was the "last in" so as to speak. Moreover, based on my findings as set out above, the Complainant was employed weeks if not a couple of months after the other two employees; the time difference is therefore not significant. The Last in First Out selection criteria ("LIFO") is a traditional selection method which has been found justifiable by Employment Tribunals but in my view it is encumbrant on the employer to show that the use of LIFO serves a real business need. No such evidence has been produced to me and consequently, bearing in mind Mr Woolaston's subsequent employment to do the same work, it seems to me that in this particular case LIFO was not a justifiable selection criteria to use.

In the circumstances of all of the above it is my determination that the Complainant was unfairly dismissed. Having determined that there was an unfair dismissal I now have to consider the award to be made.

The Award

The starting point with reference to the issue of compensation is section 71 (1) of the Employment Act (hereinafter referred to as "the Act) which provides as follows:-

> *"Where in any proceedings on a complaint brought under section 70, the tribunal makes an award of compensation to be paid to a party to the proceedings (in this section referred to as "the party in default") to another party (in this section referred to as "the aggrieved party") the amount of compensation shall be calculated in accordance with the provisions of section 72 and in relation to payments provided for in subsection (2) of that section shall be such amount as the tribunal considers just and equitable in all circumstances having regard to the loss sustained by the aggrieved party in consequence of the matters to which the complaint relates, insofar as that loss was attributable to action taken by or on behalf of the party in default".*

Section 72 of the Act provides as follows:-

> *"72(1) Where a tribunal has determined that compensation shall be awarded to a person who has presented a complaint under section 70, the tribunal shall award a basic payment of the prescribed amount.*

(2) Where in accordance with subsection (1) a tribunal has determined that compensation shall be award, the tribunal may award an amount in compensation of any loss suffered by the person and in determining that loss in accordance with the relevant provisions of section 71, no account shall be taken of any payment made by virtue of subsection (1) of this section.

(3) The maximum amount of compensation that may be awarded by virtue of subsection(2)shall not exceed the prescribed amount".

Pursuant to section 71 (1) and 72 (2) of the Act this Tribunal has to compensate the Complainant for losses she has sustained as a result of her dismissal bearing in mind that:-

(i) it has to be for an amount which this Tribunal considers just and equitable in all the circumstances of the case;

(ii) the Complainant is under a duty to mitigate her loss;

(iii) where a Complainant has caused or contributed to any extent to her dismissal the Tribunal is obliged to reduce that loss by such amount as it considers just and equitable; and

(iv) it has to be for an amount less than the maximum amount provided for in the Regulation.

The Basic Award

Regulation 2 of the Industrial Tribunal (Calculation of Compensation) Regulations 1992 provides that :-

> *"The amount of the basic award provided in section 72 (1) of the Act shall be £2,200 or such higher amount as the tribunal, at its discretion, shall determine."*

It is encumbrant on me to determine whether I should award the Complainant a basic award in excess of the minimum £2,200 provided by the legislation. In the Industrial Tribunal case of Peter Martinez and others v Calypso Tours Limited (Case Nº 24 of 2002 I determined that:-

> *"This being the case, the sum of £2,200 should only be awarded in those cases where the employer's conduct, although at fault (as it must be since there is an unfair dismissal situation), is nevertheless, on evidence presented to the tribunal, not worthy of greater sanction than that imposed by minimum award of £2,200 (e.g. where it can be said that there was a procedural defect or the employer honestly believed he was acting in compliance with the law)."*

Applying such a principal to this case, I find as follows. It seems to me that at no time the Respondent believed that there was a genuine redundancy situation in

this particular case and that consequently it follows that the employers conduct was such that it should be penalised by my awarding a basic fee greater than the minimum £2,200. Using an uplift of 30% of the minimum amount I hereby award the sum of £2,860 by way of the basic award.

Compensatory Award

Regulation 3 of the Industrial Tribunal (Calculation of Compensation) Regulations 1992 provides that:-

> *"The prescribed amount for the purposes of section 72 (3) of the Act, shall be the lesser of:-*
>
> *(a) the amount which in the case of the person who has presented a complaint under section 72 of the Act, represents 104 weeks pay; or*
>
> *(b) the amount calculated as follows:-*
> *104 x (2 x the weekly minimum wage).*

The idea of the compensatory award is to compensate the employee for the financial loss suffered as a result of being dismissed. The aim is to compensate the employee but not award him/her a bonus and not to penalise the employer. In making the award the Tribunal should not take into account the employer's financial circumstances and/or whether it has enough money to pay the award; a point pertinent to this case as the Respondent is in voluntary liquidation.

The Complainant was born on the 19th February 1948 and is thereby by my calculations currently 65 years of age. She therefore has restricted future employment possibilities.

In the course of her oral evidence the Complainant clearly stated that "money is not an issue with me as I am semi-retired." Her personal circumstances are therefore such that she is not in need of a monthly financial income.

At the time of her dismissal the Complainant received the sum of £4,127.60 by way of redundancy payment. Such sum will have to be deducted from any amount awarded to her.

In the originating application filed it is stated that she was earning an annual salary of £39,700 but in her oral evidence, supported by exhibits produced, the Complainant stated she was earning £2,500 per month; i.e. £30,000 per annum. It is my determination that the Complainant was earning £30,000. per annum.

There is no evidence that the Complainant was entitled to any fringe benefits and/or pension or has lost any statutory rights upon her dismissal.

Evidence was given in the course of the hearing that the Respondent company ceased to trade in May 2015, Ms Wooley and Ms Lawson being dismissed at that time.

As at this time the current minimum weekly wage stands at £ 239.85 which means that the maximum award I can make for the purposes of the formula set out in the above-mentioned Regulation 3(b) is £ 49,888.80.

The Complainant is claiming the total sum permitted to be awarded by this Tribunal under the provisions of this Act; she has not actually put a figure on her claim. Under the provisions of the afore-mentioned Regulation 3 I have to base my determination on the lesser maximum amount of compensation that can be awarded which in this case is £30,000.

So then what amount do I consider just and equitable in all the circumstances of the case having regard to the evidence of the Complainant which the Respondent has not deemed fit to contest by making an appearance either through its director or through Mr Visick, who in point of fact was present during one of the hearings before me.

There is no hard and fast rule as to how this Tribunal should exercise the discretion given to it by Parliament in determining the amount of compensation payable. Doing the best I can in all the circumstances of the case, and taking into account the facts of the case, I determine that the just and equitable amount to which the Complainant is entitled to by way of compensatory award is £15,000 less £4,127.60 = £10,872.40.

Thus the total amount of compensation payable to the Complainant is:-

Basic Award	-	£ 2,860.00
Compensatory Award	-	£ 10,872.40
		£13,732.40

I determine that the Complainant did not materially cause or contribute in any way to her dismissal (although she could have been more forthcoming when Mr Cruz suggested a meeting) and that she acted in accordance with her duty to mitigate her loss.

I therefore award the sum of £ 13,732.40 to the Complainant.

Dated the 31st day of August 2015

Joseph Nuñez
Chairman