

Appeal No. UKEAT/0206/19/BA

EMPLOYMENT APPEAL TRIBUNAL
ROLLS BUILDING, 7 ROLL BUILDINGS, FETTER LANE, LONDON, EC4A 1NL

At the Tribunal
On 25 September 2019

Before

HER HONOUR JUDGE KATHERINE TUCKER

(SITTING ALONE)

MISS G NOREY

APPELLANT

JAZZ HAIR & BEAUTY

RESPONDENT

Transcript of Proceedings

JUDGMENT

APPEARANCES

For the Appellant

No appearance or representation by
or on behalf of the Appellant
(Written submissions)

For the Respondent

MRS JASPREET KAUR VIRDEE
(Respondent in Person)
and
MR RASVINDER VIRDEE
(Respondent's Husband)

SUMMARY

PRACTICE AND PROCEDURE – Striking-out/dismissal

A Tribunal erred in striking out the Claimant's claim for unlawful deductions and holiday pay on the grounds that she was not actively pursuing her claim when (a) there was detail in her ET1 about the amount of money she was claiming; (b) it appeared that she had sent further details to the Tribunal and (c) when the pre-strike out warning letter required her only to provide specific details regarding a claim of age discrimination. The Tribunal had legitimately struck out that claim but it was an error to strike out the monetary claims.

Claim remitted to same Employment Judge for reconsideration.

A **HER HONOUR JUDGE KATHERINE TUCKER**

B 1. This appeal was considered at the sift stage of the Employment Appeal Tribunal's procedure by Her Honour Judge Eady QC. She identified two grounds which she considered should proceed to a Full Hearing.

The facts

C 2. The background facts are as follows. In proceedings issued by the Claimant and subsequently accepted by the Tribunal on 19 December, the Claimant made a claim against the Respondent of discrimination on grounds of age; unlawful deduction from wages; and accrued but unpaid holiday pay.

D 3. An issue arose about whether the claim could be accepted under the ACAS early conciliation procedure. The Claimant named the Respondent as 'Jazz Hair and Beauty'. That is not a limited company and it is not an entity that has legal status; rather, it is a trading name for Jaspreet Kaur who runs a hair and beauty salon. It seems, on the information presented to me, as it did to Her Honour Judge Eady QC, that the correct name for the Respondent should be "Jaspreet Kaur, T/A Jazz Hair and Beauty". I will invite the Employment Judge ("EJ") to consider that on remission, and to consider any consequences which follow from that.

E 4. In addition to the issues regarding acceptance of the claim, the Respondent's response was lodged out of time. There is correspondence in the bundle addressing that issue.

F 5. On 4 January 2019, the Tribunal sent a letter to the Claimant asking her to provide particulars of her part of her claim, namely a claim of age discrimination including; dates, times

A and names of the individuals who were said to have discriminated against her on the grounds of
her age. The claimant was directed to provide those particulars by 11 January 2019. The Tribunal
did not receive the details of the claim requested, and did not receive any response to the letter of
B 4th January 2020. Subsequently, on 8 February 2019, the Tribunal sent a letter to the Claimant,
warning her that the Tribunal was considering striking out her claim because it was not being
actively pursued.

C 6. On 10 February 2019, the Claimant's lay representative, Ms Julie Beckett, emailed the
Tribunal and stated that she had not received any letter and asked for a copy of the same. On 11
February 2019 the Tribunal sent a further email to the Claimant's representative, along with the
D original letter dated 4 January 2019, requesting further particulars of the age discrimination claim.

E 7. On 15 February 2019, the Claimant's representative emailed the Tribunal to state that she
was on holiday until 16 February, that she had forwarded the paperwork and that she would email
a copy of the evidence on her return from holiday. The Judge who considered the claim noted
that nothing was subsequently received.

F 8. On 28 February 2019, the Tribunal struck out all of the Claimant's claims on the grounds
that they were not being actively pursued and because the Claimant had not made representations
in writing as to why the claims should not be struck out. That Judgment was dated 27 February
G 2019 and was sent to the parties on 28 February 2019.

H 9. In the meantime, other documents in the appeal bundle suggest that on 12 January 2019
and 25 January 2019, the Claimant had sent to the Tribunal two letters. In the first, she had
enclosed a schedule of the claim for outstanding wages. That provided,

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“Georgina worked some 2,250 hours for which she received £1,291.21 in gross pay and £36.96 in holiday pay for the full period from May 2017 to October 2018”.

The Claimant and her representative calculated that £3,280.42 were outstanding to her.

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10. Secondly, the letter of 25 January 2019 purported to enclose a schedule of the Claimant’s claim for wages (including wages due as a result of the National Minimum Wage Regulations) and holiday pay. It appears that that schedule may be the document in the appeal bundle at pages 114-121.

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11. A helpful note, subsequently prepared by the Employment Judge, records that the Tribunal did not receive those documents at the time they were said to have been sent.

The Grounds of Appeal

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12. As I set out above, the appeal that was permitted to proceed to a Full Hearing in respect of two matters.

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13. Both grounds of appeal suggest that the Tribunal erred in striking out the Claimant’s money claims and that it did so when; 1) sufficient particulars had been given in the ET1 for those claims to be pursued; and/or 2) the Tribunal’s direction regarding particularisation of the claim did not relate to those complaints.

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14. The ET1 stated as follows:-

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“After commencing employment in May 2017, Georgina was paid weekly then from October 2017 she was paid monthly. From May to August 2017 no payslips were received. In June 2018 Georgina asked me”, [whom I assume is the lay representative,] “... to check her pay. We requested payslips from Jazz Hair & Beauty. From May to August some payslips and timesheets are unavailable and therefore we have not asked for this periods outstanding amounts but since August 2017 we have found the following...”.

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...

“BACs payment received did not match net pay on payslips and a further £428.56 is still outstanding”

“Hours worked and not paid for, including being below minimum wage after 21st Birthday, £2,498.06 still outstanding”,

“Holiday pay still outstanding of £429.52”

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“Payslips have lots of incorrect figures on them with the year to date figures not corresponding with each other along with pay for each period. Employee NI was also deducted before Georgina turned 21 years old [of] £113.54”.

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The Claimant asserted that she had provided a full breakdown to Jaspreet Kaur but had had no response.

The Respondent's submissions

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15. Today, the appeal has been listed for a Full Hearing.

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16. The Respondent has attended, together with her husband. It is clear that this Respondent feels a significant degree of frustration regarding the manner in which this claim is being pursued. She has explained that she believes that she has paid the Claimant everything that is due and owing to her. Further, the Respondent believes that she has paid the correct rate of National Minimum Wage at the relevant time. She accepts that there was discrepancy of some £400, but states that a cheque was sent to the Claimant for that amount, together with an additional £200 in respect of any inconvenience caused because of that discrepancy.

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17. The Respondent explained that she has attended today, having taken time away from her business, which is a small business, and furthermore that her husband has been required to take a day off from his work to attend the hearing. She explained that she has had to pay for accommodation overnight and to pay for care of her children last night. The Respondent explained that she has found the Claimant's claims difficult to follow; that she has felt frustrated

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A that at many times and that the Tribunal had to chase the Claimant in respect of the claim.
Furthermore, she is concerned that she thinks that the Claimant has taken rotas and diaries and
B the cashbook from her work and that this has placed her in difficulty because that is where, for
example, cash paid to an employee would be signed for. Those documents have been missing
from her business. The Respondent explained that she has seen today, in the bundle, copies from
them. She also is concerned that some of those documents may have been altered by the
C Claimant.

The Claimant's case on appeal

18. The Claimant did not attend and nor did her representative. A message was received by
D the Employment Appeal Tribunal from the Claimant that she had had a baby last week and had
not been well. The Respondent did not dispute that the Claimant had had a baby, although she
believed that the baby was over three weeks old and questioned why the Claimant was not able
E to attend today, given that she had seen information on social media showing that she is out and
about and celebrating the arrival of a new baby. However, the Respondent believes that the
Claimant could have attended today.

F 19. No party asked me to adjourn the appeal. The Respondent raised the issues above. The
Claimant asked me to consider her written submissions within the bundle. I have done so. In
particular, the Claimant asked me to consider the document at page 70 of the bundle and the many
G spreadsheets which appear within the bundle from page 113 onwards. In the letter the Claimant
sets out, and the letter is dated 11 September 2019, more details regarding her claim. It states as
follows;

H **“The claim made was that the Claimant worked 2,280 hours for which she received a total of
£12,944.25 based on her payslips. We calculated that at National Minimum Wage she should
have been paid £14,731.85, an underpayment of £1,787.60. The Claimant was also paid on her
payslips a total of £36.96 in holiday pay for the whole period worked, and we calculate that per
the Working Time Regulations 1998, she was entitled to £1,629.03, an underpayment of
£1,592.07. This leaves a total of £3,379.67”.**

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20. The Claimant asserts that the documents in the bundle at page 191-226 set against the net pay on the payslips, and pay paid directly into the bank account, shows that there is an overall overpayment from the payslips to the bank account of £125.58. The Claimant therefore believes that the balance due is £3,379.67 less £125.25 which is £3,254.09. The Claimant asserts that she has tried to identify why there are these discrepancies with the Respondent, and the Claimant believes, on the basis of the documents provided by the Respondent, that she may have been underpaid on an hourly rate, being paid £4.75 an hour, which was below the National Minimum Wage that she was employed on at the time.

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21. The Respondent doubts the veracity of some of the points that are made by the Claimant and considers that her accountant had carefully checked all of the figures. She also observes that the Claimant, at the time she worked for the Respondent, had another job and she appeared to pay a lot of tax. The Respondent asserts that the Claimant was repaid tax of approximately £674. The Respondent considers that as the Claimant had failed to provide details of her age discrimination claim, all of her claims should be struck out. Furthermore, the Respondent considers that the way that the claim has proceeded has felt like a vendetta against her.

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Conclusions

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22. I consider that the appeal should succeed on both grounds of appeal which were permitted to proceed the full appeal today. On the face of the ET1 there were sufficient particulars upon which the claim for outstanding pay and holiday pay could, and in my judgement, should, have been calculated.

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A 23. Furthermore, the strike out warning related to the age discrimination claim and required
the Claimant to provide particulars of the age discrimination claim. In my judgement, when those
B particulars in respect of that claim were not forthcoming, it was disproportionate to then go on
and proceed to strike out all claims, particularly when the Claimant had given details of her
money claims. In addition, having seen the documents referred to above, it would appear that the
Claimant had sought to provide further details of her money claim, by way of two letters in
January 2019.

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D 24. Before the case was considered on appeal, the Employment Judge had helpfully provided
a detailed note of the history of the litigation, and identified the documents which had been
received by the Tribunal. In his conclusion, he stated that he could not consider a reconsideration
of the strike out judgment of the Tribunal's own initiative under Rule 70 because the extent of
the Claimant's claim still remained unclear. Furthermore, he noted that it remained open to the
E Claimant to make an application for reconsideration under Rule 71, on the basis that the money
claims are pursued in accordance with the spreadsheet now produced. The Claimant appears not
to have availed herself of that route.

F 25. I have allowed the appeal. I consider, having regard to the history of litigation, having
regard to the detail of the note provided by the Employment Judge, that the appropriate order for
me is to remit the claim to the same Employment Judge to consider in the light of the information
G provided by the parties about the figures.

H 26. I add the following note of caution to the Claimant: The Claimant cannot expect the
Tribunal to pursue her claim on her behalf. She is responsible for pursuing her claim and must
properly engage with the litigation process. If she fails now, without good reason, to do so, she

A can expect robust case management to be exercised. In addition, if she is not well she will need to provide evidence of that illness.

B 27. The appropriate course of action for both parties at this point is that they each consider the calculations and figures which are advanced by the other. It might even be helpful to see whether or not the parties can agree where there may be a discrepancy. For example, it would be
C helpful to work out what the rate of National Minimum Wage was at the relevant time; to work out the hours that the Claimant worked; and then to see whether she was paid in accordance with the National Minimum Wage.

D 28. If the parties cannot agree the matter, then it may be that there will need to be a fully contested Hearing before an Employment Tribunal, but it seems to me that this is a matter that could and should be capable of resolution either through a Hearing before the Tribunal, or through
E the parties availing themselves of some alternative form of dispute resolution.

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