



EMPLOYMENT TRIBUNALS

At a Preliminary Hearing

Claimant: Mrs C Warriner
Respondent: Carmand Ltd
Heard at: Lincoln
On: Monday 30 April 2018
Before: Employment Judge Hutchinson (sitting alone)

Representation

Claimant: Ms A Del Priore of Counsel
Respondent: No appearance

JUDGMENT

The Employment Judge gave judgment as follows:

1. The Claimant has a disability and has suffered from a disability as defined under Section 6 Equality Act 2010 since 23 July 2015.

CASE MANAGEMENT SUMMARY

1. The Claimant presented her claim to the employment tribunal on 9 October 2017. She had been employed by the Respondent from 3 July 2014 until she resigned on 12 July 2017. She worked for them as a manager.

2. Her claims are;

2.1 unfair dismissal

2.1.1 under Section 94 Employment Rights Act 1996 (ERA)

2.1.2 under Section 103A ERA;

2.2 disability discrimination namely

2.2.1 direct discrimination under Section 13 Equality Act 2010(EA)

2.2.2 discrimination arising from disability under Section 15 EA

2.2.3 failure to make reasonable adjustments under Section 20/21 EA;

2.3 harassment under Section 26 EA;

2.4 sex discrimination namely direct;

2.5 detriments for making protected disclosures under Section 47B ERA;

2.6 notice pay;

2.7 holiday pay;

2.8 failure to provide written particulars of employment.

3. The matter came before my colleague, Employment Judge Ahmed, on 16 January 2018. He ordered that this hearing should take place to consider;

3.1 whether the complaints of sex and disability discrimination, breach of contract, unfair dismissal, unlawful deduction from wages and harassment should be struck out as having no reasonable prospect of success;

3.2 alternatively, to consider ordering a deposit under Rule 39 of the Employment Tribunals Rules 2013;

3.3 to determine whether the Claimant was a “disabled person”;

3.4 in relation to the complaints of detriment and/or dismissal for making protected disclosure, to identify which acts amounted to a protected disclosure and which acts can and should properly proceed to a final hearing.

The hearing today

4. The Claimant attended and was represented by Ms A Del Priore, Counsel. The Respondent did not attend. I asked my usher to contact the Respondent’s representative over the telephone but there was no reply to that at that number. The Respondent has not explained why they have not attended today’s hearing.

5. At the hearing, I heard evidence from the Claimant about her disability and considered the medical evidence produced by the Claimant. I have not given written reasons with this judgment but I can say that I was satisfied that the Claimant has suffered from a disability as defined in Section 6 EA since 23 July 2015. If written reasons are requested, I can provide these in the usual way.

Striking out the Response

6. In view of the Respondent’s behaviour in not attending the hearing today and not giving any explanation, I am satisfied that I should consider striking out the Response under the provisions of Rule 37 of the Employment Tribunals Rules of Procedure 2013.

7. The reason for this is that the defence of the matter is apparently not being actively pursued in accordance with Rule 37(1)(d).

Striking out warning

8. I am considering striking out the Response because it is not being actively pursued. If the Respondent wishes to object to this proposal, they should give reasons in writing by **14 May 2018**. If there is no response, the parties will be notified of my decision.

Notes

Reasons having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published in full online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent out to the claimant(s) and respondents in a case.

Listing the hearing

9. The case is currently listed on 9, 11 and 12 July 2018. At this stage, it does not appear that the Respondent intends to defend the proceedings. The hearing therefore will proceed before an Employment Tribunal Judge sitting with members at the **Magistrates Court, The Court House, 358 High Street, Lincoln LN5 7QA on Monday 9 July 2018 at 10 am** or as soon thereafter on that day as the tribunal can hear it. One day has been allocated to determine liability and remedy.

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. **Further information**

The Claimant is to provide to the tribunal and to the Respondent by **14 May 2018** a Scott Schedule setting out each of the acts complained of under each jurisdiction that the complaint is made in respect of.

2. **Schedule of loss**

The Claimant is ordered to provide to the Respondent and to the tribunal so as to arrive on or before **14 May 2018**, a properly itemised statement of the remedy sought. The Claimant is also to include information relevant to the receipt of any state benefits.

3. **Disclosure of documents**

3.1 The parties are ordered to give mutual disclosure of documents relevant to the issues identified above by list and copy documents so as to arrive on or before **28 May 2018**. This includes, from the Claimant, documents relevant to all aspects of any remedy sought.

3.2 Documents relevant to remedy include evidence of all attempts to find alternative employment: for example a job centre record; all adverts applied to; all correspondence in writing or by email with agencies or prospective employers; evidence of all attempts to set up in self-employment; all pay slips from work secured since the dismissal, the terms and conditions of any new employment.

3.3 This order is made on the standard civil procedure rules basis which requires the parties to disclose all documents relevant to the issues which are in their possession, custody or control; whether they assist the party who produces them, the other party or appeal neutral.

3.4 The parties shall comply with the date for disclosure given above but if, despite their best attempts, further documents come to light (or are created) after that date, then those documents shall be disclosed as soon as practicable in accordance with the duty of continuing disclosure.

4. **Bundle of documents**

4.1 It is ordered that the Claimant has primary responsibility for the creation of the single joint bundle of documents required for the Hearing.

4.2 The Claimant is ordered to provide to the Respondent a full index, page numbered bundle to arrive on or before **11 June 2018**.

4.3 The Claimant is ordered to bring 4 copies to the tribunal for use at the hearing by **09:30 on the morning of the Hearing**.

5. **Witness statements**

5.1 It is ordered that oral evidence in chief will be given by reference to typed witness statements from parties and witnesses.

5.2 The witness statements must be full but not repetitive. They must set out all the facts about which a witness intends to tell the tribunal, relevant to the issues as identified above. They must not include generalisations, argument, hypothesis or irrelevant material.

5.3 The facts must be set out in numbered paragraphs on numbered pages and in chronological order.

5.4 If a witness intends to refer to a document, the page number in the bundle must be set out by the reference.

5.5 It is ordered that witness statements are exchanged so as to arrive on or before **25 June 2018**.

5.6 The Claimant is ordered to bring 4 copies to the tribunal for use at the Hearing by **09:30 on the morning of the hearing**.

Employment Judge Hutchinson

Notes

(i) The above Order has been fully explained to the parties and all compliance dates stand even if this written record of the Order is not received until after compliance dates have passed.

(ii) Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.

(iii) The Tribunal may also make a further order (an “unless order”) providing that unless it is complied with the claim or, as the case may be, the response

shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice or hold a preliminary hearing or a hearing.

(iv) An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative. Any further applications should be made on receipt of this Order or as soon as possible. The attention of the parties is drawn to the Presidential Guidance on 'General Case Management': <https://www.judiciary.gov.uk/wp-content/uploads/2013/08/presidential-guidance-general-case-management-20170406-3.2.pdf>

(v) The parties are reminded of rule 92: "*Where a party sends a communication to the Tribunal (except an application under rule 32) it shall send a copy to all other parties and state that it has done so (by use of "cc" or otherwise). The Tribunal may order a departure from this rule where it considers it in the interests of justice to do so*". If, when writing to the Tribunal, the parties do not comply with this rule, the tribunal may decide not to consider what they have written.

Order sent to Parties on

01 May 2018

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