



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs Annette Clay

**Respondent:** British Car Auctions Ltd

## RECORD OF A PRELIMINARY HEARING

**Heard at:** Nottingham (in private; by telephone) **On:** 16 February 2018

**Before:** Employment Judge Camp (sitting alone)

### Appearances

For the claimant: Mr S Mars, solicitor

For the respondent: Mr P Crowe, solicitor

## CASE MANAGEMENT SUMMARY

### Final hearing

- (1) This matter remains listed for a 3 day final hearing (a.k.a. "trial") before an Employment Judge sitting with Members in Nottingham in December 2018, as set out in the "*Notice of a Claim*" dated 4 December 2017.

### Further preliminary hearings

- (2) There will be a further telephone preliminary hearing to deal with case management on **4 June 2018** at 10 am, before Employment Judge Camp if at all possible. At this case management hearing, amongst other things, case management orders will be made relating to a preliminary hearing in public to deal with the respondent's 'genuine material factor' defences as preliminary issues, which has been listed to be heard by an Employment Judge sitting alone at The Tribunal Hearing Centre, 50 Carrington Street, Nottingham, NG1 7FG on **3 & 4 September 2018**.

### Judicial mediation

- (3) The parties are interested in judicial mediation. There will be a judicial mediation, to be conducted as a private preliminary hearing, with a time estimate of 1 day, before an Employment Judge sitting alone. The preliminary hearing will be held at The Tribunal Hearing Centre, 50 Carrington Street,

Nottingham, NG1 7FG, on **29 June 2018** at 9.30 am, or as soon as possible afterwards.

### The claim

- (4) The claimant was employed by the respondent from December 1998. Her claim is to the effect that she has for some years been paid less than a number of men doing the same job as her. She also claims she was promised a pay rise in February 2017 which she was not given. She brought her claim on 15 November 2017, at a time when she was off work sick, and has since been dismissed for capability. If her appeal against dismissal is unsuccessful, she will probably add breach of contract, unfair dismissal and disability discrimination to her current equal pay claim (which already incorporates a back-up sex discrimination claim).
- (5) This appears likely to be a simple 'like work' claim, with the response standing and falling on the respondent's GMF defences.

### Other matters

- (6) The attention of the parties is drawn to the Presidential Guidance on 'General Case Management', which can be found at:  
[www.judiciary.gov.uk/publications/employment-rules-and-legislation-practice-directions/](http://www.judiciary.gov.uk/publications/employment-rules-and-legislation-practice-directions/)
- (7) 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)...*". **If, when writing to the tribunal, the parties don't comply with this rule, the tribunal may decide not to consider what they have written.**
- (8) The parties are also reminded of their obligation under rule 2 to assist the Tribunal to further the overriding objective and in particular to co-operate generally with other parties and with the Tribunal.
- (9) The following case management orders were essentially made by consent.

## ORDERS

### Made pursuant to the Employment Tribunal Rules of Procedure

#### 1. Existing case management orders

- 1.1 The case management orders set out in the "*Notice of a Claim*" dated 4 December 2017 are set aside.

#### 2. Judicial mediation

- 2.1 The parties are referred to the "Judicial Mediation" section of the Presidential Guidance on 'General Case Management', which can be found at:

[www.judiciary.gov.uk/publications/employment-rules-and-legislation-practice-directions/](http://www.judiciary.gov.uk/publications/employment-rules-and-legislation-practice-directions/). Judicial mediation is a voluntary process. Its purpose is to provide an opportunity for parties to explore the possibility of mutually acceptable ways of resolving their differences without going to a final hearing. The process is facilitated by an impartial mediator, who will be an Employment Judge trained in mediation. During the mediation, the Employment Judge will not judge the case, make decisions for the parties, predict the outcome, impose solutions, or hear evidence. All discussions during the mediation are private and confidential and 'without prejudice'. Nothing said at the judicial mediation may be quoted or referred to afterwards, including at any hearing that takes place, if the mediation does not result in the case coming to an end.

- 2.2 The parties must exchange 'without prejudice' position statements for the mediation, setting out what offers, if any, have been made so far, what outcome they want from the mediation, and what their opening position (including any opening offer) is, on **21 June 2018**. They must provide the tribunal with copies of those position statements by the same date.

### 3. Further information

- 3.1 By **16 March 2018**, the respondent must provide the following information in writing to the claimant:
- 3.1.1 full details, fully broken down, of the pay and benefits between 16 November 2011 and 13 December 2016 of –
    - 3.1.1.1. the individuals named in paragraph 14 i) of the claimant's Particulars of claim. This information must not be anonymised;
    - 3.1.1.2. any other man occupying the role of National Accounts Manager and/or National Corporate Accounts Manager and/or doing like work between these dates. This information may be anonymised, but must include job titles;
  - 3.1.2 full details, fully broken down, of the pay and benefits between 14 December 2016 and 31 January 2018 of –
    - 3.1.2.1. the individuals named in paragraph 14 ii) of the claimant's Particulars of Claim apart from Phil Kelly. This information must not be anonymised;
    - 3.1.2.2. any other man occupying the role of Major Accounts Manager and/or doing like work between these dates. This information may be anonymised, but must include job titles.
- 3.2 By **16 March 2018**, the respondent must also inform the claimant and the tribunal in writing whether it accepts that the individuals named by the claimant as comparators in her Particulars of Claim were engaged in like work at any relevant time. It must include as part of this information, if applicable, the dates when those individuals were engaged on like work.

- 3.3 By **16 April 2018**, the claimant must confirm in writing to the respondent which individuals she relies on as comparators for the purposes of her equal pay claim.
- 3.4 By **14 May 2018**, the respondent must set out in writing to the claimant and the tribunal in relation to each individual relied on by the claimant as a comparator full details of any genuine material factor defence relied on.

#### 4. Amendment

- 4.1 The claimant must make any application to amend her claim by **30 April 2018**. Any such application must include full draft amended Particulars of Claim.
- 4.2 Any objections to any application to amend must be set out in writing by the respondent to the claimant and the tribunal by **14 May 2018**.

#### 5. Other matters

- 5.1 Anyone affected by any of these orders may apply for it to be varied, suspended or set aside. Any further applications should be made on receipt of these orders or as soon as possible.
- 5.2 **Judgments and any written reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the parties in a case.**
- 5.3 **Any person who without reasonable excuse fails to comply with a Tribunal Order for the disclosure of documents commits a criminal offence and is liable, if convicted in the Magistrates Court, to a fine of up to £1,000.00.**
- 5.4 **Under rule 6, if any of the above orders is not complied with, the Tribunal may take such action as it considers just which may include: (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.**

Employment Judge Camp

16 February 2018

Sent to the parties on:

9 March 2018

For the Tribunal: