



EMPLOYMENT TRIBUNALS
London Central Region

Heard by CVP on 16/2/2022

Claimant: Ms G Soares

Respondent: Scooters Ltd

Before: Employment Judge Mr J S Burns
Members Mr M Simon and Ms P Keating

Representation

Claimant: in person

Respondent: Mr M Todd (MD)

JUDGMENT

The claims are dismissed.

REASONS

1. The case had not been properly case-managed as a PH in November 2021 had been adjourned and not relisted before the trial. There was no proper bundle although both sides had provided informal statements and piece-meal documentation.
2. The Claimant's first language is Portuguese but she is able to converse reasonably well in English and she said she was content to proceed without an interpreter.
3. At the beginning of the trial I had a discussion with the parties to ascertain what the claims were. The Claimant explained that she claimed (i) unfair dismissal (ii) holiday pay for the period 31/3/2021 onwards and (iii) direct marriage discrimination consisting in the Respondent not offering her work/and not placing her on flexible furlough from 31/3/21 onwards.
4. Having heard these explanations, the Tribunal decided that we could deal with the claims fairly without a substantive adjournment and we proceeded with the trial.
5. We heard evidence from the Claimant and then from Mr Todd and then from Ms S Gebremdhin, the Respondent's Accountant.
6. The Respondent is a company based in London which deals in scooters and bike sales and servicing.
7. The Claimant was employed as a cleaner and later as a filing clerk from 20/6/2019 on a written zero-hours contract typically earning £612 per month. Before March 2020 she had reduced her hours and worked only 18 hours that month, and said she was not going to continue working because her son had asthma. After a delay and the Claimant contacting ACAS, the Respondent placed her on the government furlough scheme with effect from March 2020 to the end of February 2021. On 18 March 2021 the Claimant returned to work for a few hours, and was subsequently paid for March 2021 part furlough and part for the hours she had worked that month.

8. She did not attend work from 1/4/2021 onwards although the Respondent had work available. On 29/7/2021 she presented her ET1.
9. The Respondent filed a response agreeing that she was owed holiday pay of £834.57 accrued during the period January 2020 to March 2021. The Respondent paid her the sum of £834.57 on 13/9/2021 and a further sum £566.10 representing 2019 holiday pay on 10/2/2022. The Claimant (who has the burden of proof) has not shown that she was owed any more pay in lieu of holiday than the sums already paid.
10. The Claimant did not work after 31 March 2021. As she was on a zero-hours contract and entitled to holidays only in proportion to the hours actually worked, she is not entitled to receive holiday pay in relation to that period.
11. In any event, an employee is not entitled to receive pay in lieu of holidays not taken unless this is expressly provided for in the contract, or unless under the Working Time Regulations 1998 (reg 13(9)(b)) the employment has been terminated, neither of which apply here.
12. The Claimant has not resigned from her employment nor has the Respondent taken any step to dismiss her - the Respondent's position remains that it has and has had work available for the Claimant under her zero hours contract which remains in force, if the Claimant wishes to do it. The Claimant has not been dismissed and hence she cannot bring a valid unfair dismissal claim.
13. The Claimant contends that she was not given work after 31 March 2021, not allowed to work from home, and not put on flexible furlough (as she had requested), and that these decisions/omissions were acts of direct discrimination because she had married in December 2020.
14. She bases this claim on the fact that when she told Ms S Gebremdhin on 18 March 2021 that she had married, the latter responded by saying "*how nice - now you wont have to work so much as you have someone to help support you*".
15. Ms Gebremdhin, who had been friendly with the Claimant at that stage, agreed in her evidence that the Claimant on 18/3/2021 had told her about her wedding. We accept that Ms Gebremdhin responded simply as a friend saying words approximately as follows "*Congratulations- I am happy for you - you will now have someone to help you in every situation - and to look after you.*"
16. We find that this information conveyed to Ms Gebremdhin and the Claimant's married status did not have any bearing on the decisions about the Claimant's work about which she has subsequently complained.
17. The Claimant wanted to work from 1/4/2021 but on her terms only - allowing her to accommodate her child care needs.
18. The Claimant wanted to be allowed to work from home. Ms Gebremdhin refused this request because the Claimant's work (cleaning and filing documents which had sensitive client information on them) could not be done from home. Also, although during lock-down the Respondent adopted an electronic filing system, the Claimant had not been trained on the computer.
19. In March 2021, the Respondent did not want to continue furloughing any employees and required them all to return to work. Mr Todd's evidence was that there were no Respondent employees retained on furlough after 31/3/2021. Ms Gebremdhin could not remember this point clearly, but was clear that her reason for not agreeing to the Claimant staying on furlough was because, having looked

into the furlough rules, she concluded that using furlough to allow the Claimant to accommodate child care would be an abuse of the scheme.

20. No employer has a duty to participate in furlough and no employee has a right to be granted furlough. It is a scheme which exists to cover work absence caused by Covid19, and not child care issues. There was no obligation on the Respondent to extend furlough of any kind to the Claimant from March 2021 onwards.
21. Unfortunately, there appears to have been poor communication from the Respondent and a situation in which Mr Todd failed to reply to various emails sent to him by the Claimant both in 2020 and in April 2021. It may be that Mr Todd felt that other managers were dealing with or should be dealing with these issues or that he was simply too busy and stressed with other business matters to devote the time to replying. For present purposes, however we are satisfied that the poor communication was not because the Claimant had married. The Claimant's marital status was not something that Mr Todd regarded as relevant.
22. The suggestion that the Respondent should decide not to give the Claimant work, ignore her emails etc, simply because she had got married, does not make sense.
23. For purposes of section 136 Equality Act 2010 the Claimant has not proved facts from which we could in the absence of other evidence decide that direct marriage discrimination has occurred. If we should have concluded that she has proved such facts, we are in any event satisfied by the Respondent's non-discriminatory explanation.

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Note to Claimant: The Citizens Advice Bureau offers advice about employment problems.

J S Burns Employment Judge
London Central
16/2/22
For Secretary of the Tribunals
Date sent to parties
17 Feb. 22