



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Ms S Shine

v

Manor Lodge School

Heard at: Watford, by telephone

On: 20 June 2022

Before: Employment Judge Hyams, sitting alone

Appearances:

For the claimant:

Not present or represented

For the respondent:

Mr David Arnold, representative (a governor of the respondent)

JUDGMENT

The claimant's claims of unfair dismissal within the meaning of the Employment Rights Act 1996 and of age discrimination contrary to section 39 of the Equality Act 2010 are dismissed.

REASONS

- 1 In these proceedings, the claimant claims that she was dismissed unfairly and discriminated against because of her age.
- 2 The claimant had by the time of her dismissal less than 2 years' continuous employment. In the claim form, the claimant's dates of employment were stated to be 17 May 2019 to 16 April 2021. It was the respondent's case that the claimant's dates of employment were in fact 17 June 2019 to 5 March 2021, when the claimant was given pay in lieu of notice.
- 3 In any event, the claimant's claim of unfair dismissal within the meaning of section 98 of the Employment Rights Act 1996 ("ERA 1996") was (in my view

rightly) rejected by the tribunal on the basis that the claimant had less than 2 years' continuous employment by the time of her dismissal. If and in so far as it is necessary to do so, I have for the avoidance of doubt dismissed it in the above judgment.

- 4 The claim of age discrimination was stated in this way in box 8.2 of the claim form:

“Until autumn 20, I was considered to be a valuable and important employee with an expectation that I was part of the future administration team. I was told by a senior member of the finance team that all administrators contracts were being reviewed and that all of us were around the same age and that would be taken into account.

I firmly believe that my instant dismissal was because of my age (and consequential cost) despite denials. Two older members of the admin staff have either left or been forced to accept less advantageous contract terms and I am of the view that I was sacked when I was so that the School did not have to be involved in protracted negotiations with me to reduce my cost.”

- 5 In box 6.1 of the ET3 response form, this was said in response:

“We strongly refute Mr Shine’s allegations. We have requested, during the appeal meeting that she provides evidence and name of the ‘Senior member of the finance Team’ she referred to in her claim, so that the School can further investigate those allegations, but Ms Shine refused to provide any detail. Following a restructure, a post with different set of skills and experience required was advertised and following a rigorous selection process an offer to a lady of similar age to Ms Shine was made. Sadly, she has not accepted and a second best candidate was offer and accepted the post. At no point Ms Shine was refrained from applying.”

- 6 On 12 September 2021, the claimant was ordered by Employment Judge R Lewis “**within 2 weeks** to send the Respondent and the Tribunal the name of the 2 older members of staff referred to in the ET1”. The claimant did not comply with that order.

- 7 A preliminary hearing in private was listed to take place on 22 April 2022. On 22 March 2022, the claimant sent to the tribunal and copied to the respondent’s bursar an email stating that she had “only recently obtained full time employment” and was “unable to take time away to be available for the hearing”. In the circumstances, she asked that she be represented at the hearing by her partner, Mr Maurice Quieros. On 21 April 2022 the claimant confirmed that Mr Quieros would be representing her at the hearing of the following day, and she gave his telephone number for that purpose. Later on that day, the hearing was postponed for want of a judge to hear it. The hearing was relisted, taking the parties’

availability into account, to be heard on 20 June 2022 at 2pm. Notice of that hearing was sent to the parties on 10 May 2022.

- 8 On 13 June 2022, the claimant emailed the tribunal (not copying the email to the respondent) in the following terms:

“Dear Sir

With regard to the above remote hearing, due to work commitments, I am unable to attend. However I request that my partner, Maurice Quieros, attends on my behalf. He has my full authority to not only represent me but also to make decisions on my behalf. He has full knowledge of the case. His direct telephone number is: 01462.892807.

I intend no disrespect to the tribunal but unfortunately it took some time to find my present employment and I am afraid to take time away from work. On the 7 April I emailed the tribunal attaching the completed agenda for case management, proposed directions for the hearing and a copy Request for Further Information and Documentation addressed to the respondent. Copies of all these documents have been sent to the respondent and have been acknowledged. The Request was sent as long ago as the 26 September 2021 but has not been answered.

With regard to the proposed directions, these had been intended to be ordered at the last postponed directions hearing on the 22 April 2022 and clearly the dates set out need amending.

If I can provide any further assistance at this stage, please let me know.

I await hearing from you.

Yours faithfully

Sharon Shine (Ms)”

- 9 On 17 June 2022, at 11:46, the parties (including, of course, the claimant) were informed that the hearing of 20 June 2022 was now going to start at 12pm and not 2pm.
- 10 I conducted that hearing. I first (at 12:01) called Mr Quieros on the telephone number given by the claimant for him (it was the same in the email of 21 April 2022 to which I refer in paragraph 7 above as it was in the email of 13 June 2022 which I have set out in paragraph 8 above). He did not answer the call. I then called Mr Arnold. He did answer the call and I started the hearing. I then called Mr Quieros again. Again, he did not answer the call.
- 11 In the circumstances, rule 47 of the Employment Tribunals Rules of Procedure 2013 (“the 2013 Rules”) applied. That provides:

“If a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider any information which is available

to it, after any enquiries that may be practicable, about the reasons for the party's absence."

- 12 I decided to proceed with the hearing in the absence of the claimant.
- 13 I then spent some time discussing the claim with Mr Arnold and the background to it. There was no communication from Mr Quieros or the claimant before, at 12:27, I concluded that the remaining claim of age discrimination should be dismissed. That was because
- 13.1 the claimant had not complied with the order which I have set out in paragraph 6 above;
- 13.2 she had not given any explanation for her failure to do, or asked for any extension of time for doing so;
- 13.3 there was no apparently good reason for the failure by the claimant to attend the hearing of 20 June 2022, whether in person or by her chosen representative; and
- 13.4 in the circumstances it appeared to me to be in the interests of justice that the claim was dismissed.
- 14 If the claimant had genuinely good reason for not attending (whether in person or by a representative) the hearing of 20 June 2022, then she can apply for a review of my above judgment, but unless she (1) puts before me cogent evidence to show why for example Mr Quieros did not attend the hearing, and (2) complies with the order set out in paragraph 6 above, her application for reconsideration will be likely to have no chance of success and will therefore be liable to be dismissed.

Employment Judge Hyams
Date: 22 June 2022

JUDGMENT SENT TO THE PARTIES ON

1 July 2022

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FOR THE TRIBUNAL OFFICE