



EMPLOYMENT TRIBUNALS

Claimant

Mrs E Adams –Aliu

v

Respondent

ASDA UK

PRELIMINARY HEARING

Heard at: Birmingham

On: 11 May 2017

Before: Employment Judge Dean

Appearances

For the Claimant: Mr E Adams- Aliu, lay representative

For the Respondent: Mr N Roberts, of counsel

JUDGMENT

1. The claimant's complaint that she has been unfairly dismissed is struck out it having been determined that it has no reasonable prospect of success.
2. The claimant's complaints that she has been subject to unlawful discrimination because of the protected characteristic of her race are struck out, it having been determined that they have no reasonable prospect of success.
3. Subject only to the continued complaint in respect of an alleged unlawful deduction from final pay as set out at 4 below the claimant confirms that she withdraws all other complaints in respect of unlawful deduction from pay and for annual leave under the Working Time Regulations which are hereby dismissed.
4. The claim which presently continues to hearing is the complaint of unlawful deduction from wages in respect of alleged overpayment of holiday pay in excess of accrued entitlement continues.

REASONS

Note: Reasons for the decision having been given orally at the hearing, written reasons will not be provided unless a written request is received from either party within 14 days of the sending of this record of the decision.

CASE MANAGEMENT SUMMARY

Listing the hearing

1. After all the matters set out below had been discussed, we agreed that the hearing in this claim were it to proceed to a hearing would be completed within 2 hours. Subject to the claimant confirming her intention to proceed with her complaint of unlawful deduction from pay the complaint will be listed for a 2 hour hearing before an employment judge sitting alone.

The issues

2. I now record that the issues between the parties which will fall to be determined by the Tribunal are as follows:
 - 2.1. What was the claimant's leave year?
 - 2.2. How much of the leave year had elapsed at the effective date of termination?
 - 2.3. In consequence, how much leave had accrued for the year under regulations 13 and 13A?
 - 2.4. How much paid leave had the claimant taken in the year?
 - 2.5. How many days were paid in excess of the claimants accrued entitlement to paid leave?
 - 2.6. What if any written terms of the claimant's contract of employment provide for the deduction of pay, whether of holiday pay paid in excess of accrued entitlement at the termination of employment or at all?
 - 2.7. How much pay was deducted from the claimant pay on termination of her employment?
 - 2.8. Was a deduction made from the claimant's pay and if so in what sum and was it lawful?

Other matters

3. I made the following case management orders by consent.

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. Further information

- 1.1 The claimant is ordered on or before 26 May 2017 to inform the respondent and copy to the Tribunal marked for my attention whether the application for unlawful deduction from pay is to be pursued at the tribunal to a hearing or it is to be withdrawn.

2. Disclosure of documents

2.1 The parties are ordered to give mutual disclosure of documents relevant to the issue identified above by copy documents so as to arrive on or before 8 June 2017. This includes, from the claimant, documents relevant to all aspects of any payment of the unlawful deduction sought.

2.2 Subject to the claimant pursuing the complaint for unlawful deduction from pay the following directions are made in preparation for hearing of that complaint.

3. Bundle of documents

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

3.2 To this end, the claimant is ordered to notify the respondent on or before 15 June 2017 of the documents to be included in the bundle at their request. These must be documents to which they intend to refer, either by evidence in chief or by cross-examining the respondent's witnesses, during the course of the hearing.

3.3 The respondent is ordered to provide to the claimant a full, indexed, page numbered bundle to arrive on or before 22 June 2017.

3.4 The respondent is ordered to bring sufficient copies (three) to the Tribunal for use at the hearing, by 9.30 am on the morning of the hearing.

4. Witness statements

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

4.2 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.

4.3 The facts must be set out in numbered paragraphs on numbered pages, in chronological order.

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

4.5 It is ordered that witness statements are exchanged so as to arrive on or before 6 July 2017.

CONSEQUENCES OF NON-COMPLIANCE

1. 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.
2. 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.
3. 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.

Employment Judge Dean

12 May 2017

Sent to the parties on:

...17 May
2017.....

For the Tribunal:

...Shareen

Brown.....