



## EMPLOYMENT TRIBUNALS

**Claimant**

**Mrs C Bigrave**

v

**Respondent**

**Tesco Stores Limited**

### PRELIMINARY HEARING

**Heard at: Watford**

**On: 28 April 2017**

**Before: Employment Judge R Lewis (Sitting alone)**

**Appearances:**

**For the Claimant: Ms M Murphy, Counsel**

**For the Respondents: Mr B Gray, Counsel**

### JUDGMENT

The claimant's claim that she was discriminated against by Ms Graham telling her that she would not hear her grievance is dismissed on withdrawal.

### 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 would be completed within **7** days. It has been listed at **Reading Employment Tribunal, 30-31 Friar Street (entrance in Merchants Place, Reading, RG1 1DX)** to start at 10am or so soon thereafter as possible on **Wednesday 18 April 2018**. The parties are to attend by **9.30 am**. The hearing may go short, but this allocation is based on the claimant's intention to give evidence, and the respondent's intention to call up to 10 witnesses. The time will be used as follows:-
  - 1.1 Maximum 1 day for pre-reading and for case management.
  - 1.2 A maximum of 1 day for the claimant to give evidence and be cross examined.
  - 1.3 A maximum of 2 days for the respondent's witnesses to give evidence and be cross examined.

- 1.4 Thereafter, in the discretion of the tribunal, time for deliberation, delivery of judgment and disposal of remedy issues if required.

### **The complaint**

2. By a complaint presented to the tribunal on 20 January 2017, to which was attached a 75 paragraph rider, the claimant brought a number of complaints. The respondent defended the claims.
3. The claimant, who had been employed by the respondent for over eight years, had had a working arrangement which was a non-standard arrangement to work fewer hours per week than 37.5. The claimant raised a number of issues about the management of her working arrangements, concluding with her resignation. She extinguished any claim for compensatory loss by immediately taking up fresh employment.
4. Shortly before this hearing, the claimant instructed fresh representatives.

### **The issues**

5. In preparation for this hearing, Mr Gray produced a document called "Proposed List of Issues". It was the clearest of the documents before me in which the claimant's case was set out. In consequence of my decisions today, Head 9 and paragraphs 42 to 48 inclusive fall away.
6. Ms Murphy did not anticipate disagreement with the document, but had not had the opportunity to take instructions, and therefore could not give consent to it.
7. The matter was therefore left on the agreed basis set out below. I confirm that if any disagreement about any point in the list of issues remains for resolution, and if I can appropriately deal with it by telephone hearing, I am likely to agree to any joint request that that be done.

### **Judicial mediation**

8. Both parties have agreed in principle that they wish to apply for judicial mediation.
9. However, my concerns about the non-pecuniary loss element of the original claim form have led me to adopt the path set out below.
10. I remind the parties of course that even if judicial mediation is not available to them, many other means of resolving their differences are available, which they are encouraged to explore.

### **Other matters**

11. The claimant had made a number of applications to amend. A number of these were no more than clarification of the existing claim and were not resisted.

12. The claimant made two applications to amend which would have had the effect of introducing a claim under the Part-time Worker Regulations. It was agreed that there was no such claim in the claim form, and Mr Gray confirmed that the respondent did not agree that the claimant was a part-time worker within the meaning of the Regulations. While the proposed amendments incorporated portions of the existing claim, it did not seem to me that they could fairly be called re-labelling.
13. It did not seem to me in the interests of justice to permit a professionally represented claimant, who had submitted an extensive claim, to add fresh matters to it by amendment. In particular, it did not seem to me in the interest of justice to do so in a case where the claimant was unable to identify a full-time comparator. or other elements of the proposed claim.
14. So far as the claim for equal pay was concerned, Ms Murphy confirmed that the only comparators relied upon are Mr Jackson and Mr Phelan. I have made the order below accordingly. I record that Mr Gray stated in reply that Mr Jackson was in fact paid less than the claimant, and Mr Phelan was regarded as employed in a more senior and demanding role.
15. Ms Murphy applied for specific disclosure, which I have agreed in principle, but I have declined to make an order for specific disclosure in advance of general disclosure, given the timetable in this case.
16. Ms Murphy confirmed that the period for which equal pay is claimed is that during which the claimant had a job title which included the term Manager, ie from April 2015 until her departure.
17. I have listed for a further preliminary hearing of my own initiative. If, closer to the time the parties are in agreement that no such hearing is required; or that any such hearing can be conducted by telephone, they should make a joint application to the tribunal for it either to be cancelled or converted.

## ORDERS

### Made pursuant to the Employment Tribunal Rules 2013

#### 1. Further information

1.1 In light of discussion and agreement at this hearing, the parties are by **12 May 2017** to send to the tribunal the list of issues, stating either that it is fully agreed; or if not fully agreed, identifying clearly any matters are not agreed; and whether application is made for a telephone hearing to deal only with the areas of disagreement.

1.2 The respondent has leave to amend its response, for the purposes only of answering the amendments to the claim, and is to send its amended response to the claimant and the tribunal no later than **2 June 2017**.

2. In the claimant's solicitor's letter of 20 April the following numbered applications to amend are allowed: 1 (first half only to the word "Issues"); 2, 3, 4 and 6.

3. In the same letter, the claimant's other applications to amend, including any application to introduce a claim under the Part Time Workers Regulations, are refused, although the claimant may in evidence rely on the allegations set out at paragraph 31 of the original claim form.

4. **Disclosure of documents**

4.1 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 **30 June 2017**. This includes, from the claimant, documents relevant to all aspects of any remedy sought.

4.2 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 e-mail with agencies or prospective employers, pay slips from work secured since the dismissal, the terms and conditions of any new employment.

4.3 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 appear neutral.

4.4 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.

4.5 It is confirmed for avoidance of doubt that for the purposes of the claimant's equal pay claim, the respondent's disclosure is to include the following:

4.5.1 The relevant pay bands for the relevant managerial posts in the period April 2015 to October 2016;

4.5.2 The person specification and job description for the posts of Produce Team Managers (held by Mr Jackson and Mr Phelan);

4.5.3 Evidence of the actual pay paid to the two named comparators in the above periods;

4.5.4 Any documents to evidence if relevant Mr Phelan's grading or positioning within his pay band, indicating the respondent's rationale for such.

5. **Statement of remedy/schedule of loss**

5.1 The claimant is ordered to provide to the respondent and to the Tribunal, so as to arrive on or before **12 May 2017** a properly itemised statement of the remedy sought (also called a schedule of loss).

5.2 The respondent is by **26 May 2017** to send to the claimant and the tribunal its counter schedule of loss.

## 6. Bundle of documents

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

6.2 To this end, the claimant is ordered to notify the respondent on or before **14 July 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.

6.3 The respondent is ordered to provide to the claimant a full, indexed, page numbered bundle to arrive on or before **11 August 2017**.

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

## 7. Witness statements

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

7.2 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.

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

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

7.5 It is ordered that witness statements are served so as to arrive on or before the following dates: The claimant is to serve her statements (that means, the statement of the claimant herself and of any witnesses to be called on her behalf) by **22 September 2017** and the respondent to serve its statements by **27 October 2017**.

7.6 Each party is ordered to bring sufficient copies of the statements which it has served (at least **five**) to the Tribunal for use at the hearing, by 9.30 am on the morning of the hearing

## 8. Further preliminary hearing

8.1 There is to be a preliminary hearing in public at **10am for 3 hours on Friday 17 November 2017** at the **Reading Employment Tribunal** to deal with the

following matters: Any matter of case management available for consideration at this hearing; any application by either side for deposit or strike out; and any other matter which the tribunal agrees to hear. To that end, a party who wishes to make any application for a specific order is to notify the other party and the tribunal in summary of the order applied for and the reasons for application no later than **3 November 2017**.

**9. Judicial mediation**

9.1 The claimant having applied at this hearing for judicial mediation, it will be assumed unless she informs the tribunal in writing to the contrary that her application remains in being. The respondent is no later than **26 May 2017** to inform the claimant and the tribunal whether it also applies for judicial mediation.

**10. Other matters**

10.1 The respondent is ordered to prepare a cast list, for use at the hearing. It must list, in alphabetical order of surname, the full name and job title of all the people from whom or about whom the Tribunal is likely to hear.

10.2 The claimant is ordered to prepare a short, neutral chronology for use at the hearing.

10.3 These documents should be agreed if possible.

**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 R Lewis**

Sent to the parties on:

**9 May 2017**

For the Tribunal:

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