



Case Number: 2301275.2017

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EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Ms M Lewer

and

Respondent

McMillan Williams Solicitors Ltd

Held at Ashford on 14 Jul 2017

Representation

Claimant:

Mr J Wallace, Counsel

Respondent:

Mr M Smith, Solicitor

Employment Judge Kurrein

JUDGMENT

- 1 The Claimant's claims alleging
 - 1.1 unfair and wrongful dismissal;
 - 1.2 harassment and victimisation related to disability;
 - 1.3 less favourable treatment for being a part-time worker; and
 - 1.4 breach of contract, failure to pay holiday pay, unauthorised deductions and failure to pay other pay;are all dismissed on withdrawal.
- 2 The Claimant's purported claim alleging her dismissal was for a health and safety reason was entered in error and is dismissed.
- 3 The Claimant is ordered to pay the Respondent its costs in the sum of £600.00 including VAT.

REASONS

- 1 The Claimant, who was previously employed by the Respondent as a private client solicitor, presented her claim on 14 April 2017. It included the above claims and claims alleging disability discrimination contrary to Ss.15, 19 and 20 Equality Act 2010.
- 2 Notice of Hearing for today's date was sent to the parties on 19 May 2017. The hearing was to be in person, rather than by telephone, as the Claimant was not represented. That Notice was accompanied by an Agenda for the hearing that clearly informed the parties that at the hearing they would have to be in a position to clarify the claims. It also informed the parties that Judicial Assessment ("JA") might be available and provided a link to the Presidential Guidance on that subject.

- 3 The Claimant gave her solicitors instructions on the 7 July 2017. On 13 July 2017 those solicitors:-
 - 3.1 Informed the Tribunal office they were acting;
 - 3.2 Attached a completed Agenda in which they:-
 - 3.2.1 Withdrew the claims set out above;
 - 3.2.2 Set out in some detail the basis on which the Claimant's case was now advanced;
 - 3.2.3 Expressed the view the case was suitable for JA.
- 4 Shortly after the start of the hearing Mr Wallace informed me that the Claimant wished to give further and better particulars of her claim at a future date. I expressed the view that if that was the case the hearing would not be able to proceed to JA. I granted the Claimant a brief adjournment to take instructions.
- 5 I was then informed that the case as set out by his solicitors in the Agenda did "not accurately reflect the issues in the case".
- 6 I expressed my concern at the position: I could not give full directions for the further conduct of the case, and JA could not take place¹, until the issues were clearly defined.
- 7 I gave the Claimant a further short adjournment to take instructions. Mr Wallace then confirmed to me that he was applying for an adjournment and the opportunity to give further and better particulars. Having heard submissions on that I acceded to his application. That is the subject of a Case Management Order of even date.
- 8 The Respondent then made an application for costs. I heard submissions on that application and reached the above Judgment. It was my conclusion that:-
 - 8.1 The Claimant's conduct of the proceedings had been unreasonable because:-
 - 8.1.1 She was aware of the listing, its purpose and the need for accurate information to be available when it took place.
 - 8.1.2 Whilst I accept that the Claimant only instructed solicitors a week before the hearing, it was open to them to request a postponement on the basis that they were likely to withdraw some claims but needed time to clarify others.
 - 8.1.3 It is highly likely the Respondent and Tribunal would have granted such a postponement., and a Judge might well have made an Order for a disability impact statement of their own motion: that is commonly done when disability is, as here, in issue. At most there might have been a brief telephone Preliminary Hearing for that purpose.

¹ See para. 20 Presidential Guidance.

- 8.1.4 The Claimant's Agenda, if given at a later date, might then have been a useful document, with her claims and issues clearly defined and the matter able to proceed to JA.
- 8.1.5 As a consequence of the Claimant not being in a position to define her claims and the issues within them today the hearing has effectively been wasted. The Respondent has incurred substantial costs in attending and travelling.
- 8.2 I also took into account that the Claimant had sought an adjournment in the course of the hearing.
- 9 I accepted that Mr Jones' hourly rate of £250 + vat was appropriate and reasonable in light of the serious allegations raised against his firm in the proceedings. He has spent two hour travelling and been here for two hours.
- 10 Against that he would have spent time preparing in any event, and would have had to deal with his own Agenda, and probably a telephone hearing, in any event.
- 11 I was told, and accepted, that the Claimant was of limited means.
- 12 In all the circumstances of the case I consider an award of costs in favour of the Respondent in the sum of £500 + vat to be reasonable.

Employment Judge Kurrein

14 July 2017