



## EMPLOYMENT TRIBUNALS

Claimant

Mr R Aslam

Respondent

Poundworld Retail Limited

v

### PRELIMINARY HEARING

Heard at: Reading

On: 31 May 2017

Before: Employment Judge Gumbiti-Zimuto

Appearance:

For the Claimant: Mr V Manne (Legal Adviser)

For the Respondent: Mrs G Cardwell (Solicitor)

### JUDGMENT

The claimant's complaint of unfair dismissal is struck out. The claimant does not have two years qualifying employment and section 108(3) of the Employment Rights Act 1996 does not apply.

### 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 two days. It has been listed at **Reading Employment Tribunal, 30-31 Friar Street (entrance in Merchants Place), Reading RG1 1DX** to start at 10.00am or so soon thereafter as possible on **6 and 7 November 2017**. The parties are to attend by 9.30 am. The hearing may go short, but this allocation is based on the on the claimant's intention to give evidence and call four further witnesses and the respondent's to call two or three witnesses. The time will be used as follows:-
  - 1.1. Maximum one day for oral and other evidence on liability (including reading time for the Tribunal);
  - 1.2. A maximum total of forty minutes (half each) for submissions on liability;
  - 1.3. Approximately one day for the Tribunal to determine the issues which it has to decide and reach its conclusions; for the Tribunal to give judgment, with reasons if possible; for the Tribunal to identify issues relevant to remedy, hear further evidence if appropriate and reach its conclusions in respect thereof, if the claimant succeeds in whole or part.

### **The complaint(s)**

2. By a claim form presented on 21 February 2017, the claimant brought complaints of unfair dismissal, wrongful dismissal, sex discrimination, race discrimination, holiday pay and breach of contract (expenses). The respondent defended the claims. They arise out of the claimant's dismissal and the sums payable to the claimant on termination of his employment. The claim of unfair dismissal has been struck out for the reason set out in the judgment above.

### **The issues**

3. I now record that the issues between the parties which will fall to be determined by the Tribunal are as follows:
4. **Section 13: Direct discrimination because of race**
  - 4.1. Has the respondent subjected the claimant to the following treatment falling within section 39 Equality Act, namely by dismissing the claimant.
  - 4.2. Has the respondent treated the claimant as alleged less favourably than it treated or would have treated the comparators?
  - 4.3. If so, has the claimant proved primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of the protected characteristic?
  - 4.4. If so, what is the respondent's explanation? Does it prove a non-discriminatory reason for any proven treatment?
5. **Section 13: Direct discrimination because of sex**
  - 5.1. Has the respondent subjected the claimant to the following treatment falling within section 39 Equality Act, namely by dismissing the claimant.
  - 5.2. Has the respondent treated the claimant as alleged less favourably than it treated or would have treated the comparators?
  - 5.3. If so, has the claimant proved primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of the protected characteristic?
  - 5.4. If so, what is the respondent's explanation? Does it prove a non-discriminatory reason for any proven treatment?
6. **Time/limitation issues**
  - 6.1. The claim form was presented on 21 February 2017. Accordingly and bearing in mind the effects of ACAS early conciliation, any act or omission which took place before 14 September 2016 is potentially out of time, so that the tribunal may not have jurisdiction.
  - 6.2. Does the claimant prove that there was conduct extending over a period which is to be treated as done at the end of the period? Is such conduct accordingly in time?
  - 6.3. Was any complaint presented within such other period as the employment Tribunal considers just and equitable?
7. **Unpaid annual leave – Working Time Regulations**
  - 7.1. What was the claimant's leave year?

- 7.2. How much of the leave year had elapsed at the effective date of termination?
  - 7.3. In consequence, how much leave had accrued for the year under regulations 13 and 13A?
  - 7.4. How much paid leave had the claimant taken in the year?
  - 7.5. How many days remain unpaid?
  - 7.6. What is the relevant net daily rate of pay?
  - 7.7. How much pay is outstanding to be paid to the claimant?
8. **Breach of contract**
- 8.1. It is not in dispute that that respondent dismissed the claimant without notice.
  - 8.2. Does the respondent prove that it was entitled to dismiss the claimant without notice because the claimant had committed gross misconduct? (The allegation of gross misconduct has not yet been articulated by the respondent. The respondent is giving permission to file an amend response in which the respondent is to set out the basis on which the respondent contends that the claimant committed gross misconduct. NB This requires the respondent to prove, on the balance of probabilities, that the claimant committed the gross misconduct.)
  - 8.3. It is not in dispute that the claimant's contractual entitlement was to 4 weeks' notice.
9. **Remedies**
- 9.1. If the claimant succeeds, in whole or part, the Tribunal will be concerned with issues of remedy.
  - 9.2. There may fall to be considered a declaration in respect of any proven unlawful discrimination, recommendations and/or compensation for loss of earnings, injury to feelings, breach of contract and/or the award of interest.

### **Judicial mediation**

10. The question of judicial mediation was raised. I was of the view that this case is not suitable for judicial mediation in view of the issues in dispute between the parties. With both side being legally represented it is not likely that judicial mediation could achieve anything that the parties could not do themselves.
11. I made the following case management orders by consent.

## **ORDERS**

### **Made pursuant to the Employment Tribunal Rules 2013**

#### **1. Amended response**

- 1.1. The respondent is ordered to present a draft amended response, marked for my attention, to arrive with the Tribunal and the claimant on or before **28 June 2017**. The amended response will set out the respondent's factual assertions about the claim as now understood and leave will be granted if it does this.

2. **Disclosure of documents**

- 2.1. The parties are ordered to give mutual disclosure of documents relevant to the issues identified above by list and copy documents to arrive on or before **12 July 2017**. This includes, from the claimant, documents relevant to all aspects of any remedy sought.
- 2.2. 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, evidence of all attempts to set up in self-employment, all pay slips from work secured since the dismissal, the terms and conditions of any new employment.
- 2.3. 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.
- 2.4. 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.

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 **9 August 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 hearing.
- 3.3. The respondent is ordered to provide to the claimant a full, indexed, page numbered bundle to arrive on or before **23 August 2017**.
- 3.4. The respondent is ordered to bring sufficient copies (at least five) 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 to arrive on or before **9 October 2017**.

5. **Other matters**

- 5.1. The claimant is to provide to the respondent an updated schedule of loss at the same time as the exchange of witness statements takes place.
- 5.2. 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.
- 5.3. The claimant is ordered to prepare a short, neutral chronology for use at the hearing.
- 5.4. 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 Gumbiti-Zimuto**

Date: 17 June 2017

Sent to the parties on:

.....

For the Tribunal:

.....