



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs K Aktas

v

Original Smoke Shack Ltd

Heard at: Cambridge

On: 1 September 2017

Before: Employment Judge Tynan

Members: Mr J Vaghela and Mrs CA Smith

Appearances

For the Claimant: In person

For the Respondent: Did not attend and was not represented

JUDGMENT

1. The tribunal amends paragraph 1. of the Judgment sent to the parties on 30 June 2017 by substituting for the sum of £140.01 the sum instead of £141.01.
2. The tribunal orders the respondent to pay to the claimant the sum of £1,167.60 as damages for breach of contract/wrongful dismissal.
3. The tribunal orders the respondent to pay to the claimant the sum of £14,775.82 as compensation for having unlawfully discriminated against her on grounds of her sex.
4. The tribunal orders the respondent to pay to the claimant the sum of £400 in respect of the respondent's failure to issue to the claimant a written statement of particulars of employment as required by s.1 of the Employment Rights Act 1996.

REASONS

1. On 30 June 2017 the tribunal sent to the parties its Judgment in which, amongst other things, the tribunal declared that the claimant's complaint that the respondent had made unlawful deductions from her wages was well founded and ordered the respondent to pay to the claimant the sum of £140.01. The tribunal further declared that the respondent had unlawfully discriminated against the claimant contrary to s.39 of the Equality Act 2010 by subjecting her to detriment and by dismissing her. Finally, the tribunal concluded that the respondent had dismissed the claimant in breach of contract by failing to give to the claimant two months' notice to terminate her employment in accordance with her contract of employment.
2. At the substantive hearing of this matter on 9 and 10 May 2017 the claimant represented herself and the respondent was represented by Mr Darren Isaac. The claimant represented herself again on 1 September 2017 and was accompanied and assisted by Mr Orchard in his personal capacity. The respondent was not represented and Mr Isaac did not attend. The tribunal had before it a bundle of documents for the remedy hearing, comprising various documents numbered 1 to 12.2. The tribunal also heard evidence from the claimant. As it did on 9 and 10 May 2017 the tribunal found the claimant to be an honest and straightforward witness. She was understated in her evidence and there was no attempt by her to embellish her evidence or to exaggerate the impact upon her of the respondent's discriminatory treatment of her.
3. Section 124 of the Equality Act 2010 enables the tribunal in its discretion, and where it is just and equitable to be so, to make an award of compensation where it upholds a complaint of unlawful discrimination.
4. In awarding compensation in this matter the tribunal has regard to the original schedule of loss submitted by the claimant prior to the substantive hearing on 9 and 10 May 2017. The schedule of loss was updated by the claimant and the updated schedule is included in the bundle of documents for this hearing.
5. At the outset of the remedy hearing it was identified that the Judgment which was sent to the parties on 30th June 2017 had incorrectly recorded the amount of the unlawful deduction from wages which arose from the failure by the respondent to pay to the claimant certain expenses due to her. The correct amount of the expenses due to her was £141.01, as evidenced at document 4 in the bundle of documents. Paragraph 1. of the Judgment shall be amended accordingly.

Breach of contract

6. Damages for breach of contract are intended to put the claimant in the position she would have been in had the contract been performed. The claimant was dismissed on 15 January 2016, but was paid up to and

including 31 January 2016. The respondent was required to give her two months' notice to terminate her employment. She is entitled to her net loss of earnings from 1 February 2016 to 11 March 2016. Although her notice period ran to 14 March 2016 the claimant in fact fully mitigated her ongoing losses by securing new employment which commenced on Monday 14 March 2016. Her net monthly pay whilst employed at the respondent was £843.31 per month or £10,119.72 per annum. On the basis that there are 260 working days in the year she was paid net the sum of £38.92 per day. There were 30 working days in the period 1 February 2016 to 11 March 2016. Accordingly she is entitled to the sum of £1,167.60 by way of damages for breach of contract (equating to 30 days' pay at £38.92 per day).

Discrimination

7. In her original schedule of loss the claimant claimed the sum of £12,000 as compensation for injury to feeling. In her updated schedule of loss she suggested a sum of £6,000 instead. We heard evidence from the claimant as to the impact which the respondent's treatment had upon her. As noted already she was honest and straight forward in the evidence which she gave the tribunal. Following her dismissal the claimant became depressed and in February 2016 she was prescribed anti-depressant medication. The tribunal notes that at page 12 of the remedy bundle there is evidence of the medication which the claimant was prescribed covering the period from 22 February 2016 to 5 July 2016. The tribunal further notes that at page 12.1 of the remedy bundle there is evidence that the claimant was referred for an initial telephone assessment by Central and North West London NHS Foundation Trust. A subsequent letter dated the 3 March 2016 confirms that the claimant was recommended for a course of cognitive behavioural therapy. The tribunal notes that during her assessment by the Trust there was discussion of the claimant having experienced thoughts of "not wanting to be here and/or causing harm to yourself". In her evidence to the tribunal the claimant said that she had still not fully recovered from her experiences. She also described having being tearful and unable to sleep and that her son had witnessed her distress during this period. The tribunal has regard to the Court of Appeal's guidance in the case of Vento v Chief Constable of West Yorkshire Police [2003] ICR 318, in which the Court of Appeal identified three potential bands of compensation for injury to feeling; a lower band, a middle band and an upper band. The Vento guidelines as they are known were reviewed by the Employment Appeal Tribunal in Dar'bell v National Society for Prevention of Cruelty to Children [2010] IRLR 19. The EAT endorsed a 20% increase to each of the limits so that the lower band is now £600-£6,000, the middle band is now £6,000-£18,000 and the upper band is now £18,000-£30,000. The tribunal was unanimously of the view that this was a middle band case. Specifically the claimant had lost her employment, something she attached particular significance to and from which she derives a significant sense of self-worth. Following the loss of her employment the claimant had suffered with depression over an extended period, and over a year and a half since she was dismissed still suffers ongoing feelings of depression and low self-esteem. The tribunal fully

accepts the claimant's evidence that she has not fully recovered from events and that the discriminatory treatment she experienced adversely impacted her relationship with her son. The tribunal concludes that the appropriate sum to award the claimant for injury to feelings is £9,000.

8. Employment Tribunals have the power to increase or decrease awards in discrimination claims by up to 25% where there has been an unreasonable failure, by either party, to comply with the ACAS Code of Practice on disciplinary and grievance procedures. The power is contained in s. 207(A) of the Trade Union and Labour Relations (Consolidation) Act 1992. In this case the tribunal found the respondent had failed to follow any procedure when dismissing the claimant. She was dismissed by email and in a fit of pique by Mr Isaac. The respondent's failure to follow the ACAS Code of Practice was in the tribunal's view deliberate and unreasonable. It was a serious breach of the ACAS Code of Practice and in the circumstances the tribunal has concluded that the maximum 25% uplift should be applied both to the award of injury to feelings and to the award of compensation to be made in respect of the claimant's financial losses. As regards the award for injury to feeling that uplift means that the claimant will be awarded an additional sum of £2,250.
9. Employment tribunals are empowered to award interest on awards made in discrimination cases. Indeed, an employment tribunal is required to consider whether to award interest even if the claimant does not specifically apply for it. There are different approaches to calculating interest according to whether the interest relates to a sum for injury to feelings or to compensation for financial losses. For injury to feelings awards, regulation 6(1)(a) of the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 provides that the period of the award of interest starts on the date of the act of discrimination complained of and ends on the date on which the employment tribunal calculates the amount of interest. In this case the date of the act of discrimination was the date upon which the claimant was dismissed, namely 15 January 2016. Interest is calculated at 8% per annum. 595 days have elapsed since the date of the act of discrimination and accordingly the tribunal calculates that interest of £1,173.70 is due on the sum of £9,000 awarded for injury to feelings.
10. Turning to the claimant's financial losses, we deal with these under three headings.

Travel expenses

11. On 14 March 2016 the claimant started a new job in Silverstone, a distance of 20 miles from her home. Her bank account statements in the remedy bundle evidence that her wages were unchanged. However she had the additional costs of a round trip of 40 miles which she undertook 4 days per week. The tribunal accepts the claimant's evidence that she would have undertaken the journey over the course of 240 days between 14 March 2016 and 21 June 2017 when she secured new employment just a few minutes away from her home and her additional travel costs came to an end.

12. The tribunal has considered whether the claimant's employment with the respondent would have ended in any event even if she had not been dismissed on 15 January 2016, in circumstances where the respondent has since ceased trading. However the claimant's evidence, which again the tribunal accepts, is that the Original Smoke Shack restaurants have continued to trade and Mr Isaac and the respondent's other former directors and/or shareholders have continued to be involved with them. It seems to the tribunal that the claimant's employment would have continued but for her discriminatory dismissal and that her employment might have transferred to whatever entity is now operating the two Original Smoke Shack restaurants.
13. In the circumstances the tribunal concludes that it would be just and equitable to award the claimant the sum of £1,440 in respect of the additional travel expenses which she incurred between 14 March 2016 and 21 June 2017.

Loss of statutory rights

14. The claimant sought the sum of £500 in respect of her loss of statutory rights. She did not have two years' continuous employment when dismissed but nevertheless had accrued other statutory rights by the date of her dismissal and had to start again in terms of accruing service for statutory purposes. The tribunal considers that it would be appropriate to award the claimant the sum of £300 in respect of the loss of her rights in this regard.

Working Tax Credits

15. The final element of the claimant's claimed losses is in respect of the loss of Working Tax Credits and the childcare element of Working Tax Credits. The tribunal found this a difficult issue and spent some time exploring the matter with the claimant. On the evidence available to it the tribunal concludes as follows. Documents 5.1 and 5.2 of the remedy bundle indicate that the claimant was expecting to be paid Tax Credits of £658.80 on 9 February 2016. Her Nationwide bank account statement at page 6 of the remedy bundle confirms that this payment was indeed made to her. She expected further Tax Credits of £662.56 to be paid on 8 March 2016, however in the event only £138.69 was paid to her (see page 6.1 of the remedy bundle), a shortfall of £523.87. There was a further shortfall in her Tax Credits of £56.97 in April 2016 - documents 5.1 and 5.2 confirm that the claimant expected to receive the sum of £684.79 but in fact received £526.92 and a further sum of £100.90 on 24 March 2016. The tribunal is satisfied that the total shortfall in Working Tax Credits (including the childcare element of Working Tax Credits) amounted to £580.84. However, the claimant received various payments in respect of income support, housing benefit and by way of Council Tax credit. The sums involved were £313.58, £52.22, £69.56, £29.88 and £67.05, or £532.29 in total. These payments are to be off-set against the loss of Tax Credits. The tribunal calculates that the net loss of benefit which resulted from the claimant's dismissal was £48.55.

16. The total of the travel costs, loss of statutory rights and loss of Tax Credits is £1,788.55. The tribunal has already determined that there should be an uplift of 25% to that award, giving rise to an uplift of £447.14. Furthermore, in accordance with Regulation 6(1)(b) the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 a further sum of £116.43 is payable by way of interest on those losses, calculated from what is known as the mid-point, namely the date mid way between the date of dismissal and today's date. Interest is calculated at 8% per annum on £1,788.55 over a period of 297 days.
17. Adding the various sums above together, the total award of compensation for unlawful discrimination is £14,775.82.
18. Finally, and pursuant to section 38 of the Employment Act 2002 the tribunal has regard to the respondent's failure to provide a written statement of terms and conditions to the claimant within two months of the commencement of her employment. She commenced employment on 24 September 2014 (see paragraph 1. of the tribunal's written reasons). She was first issued with a contract of employment on or around 10 December 2014 (see paragraph 11 of the tribunal's written reasons). There is no explanation for the respondent's failure to issue a written statement of particulars of employment within the prescribed statutory period of two months. Having upheld the claimant's claim of discrimination the tribunal is required as a minimum to award the claimant two weeks wages in respect of the respondent's breach of s.1 of the 1996 Act and has discretion to award up to four weeks' wages. In this case the claimant's gross weekly wage was £200, reflecting 20 hours per week at £10 per hour. The tribunal has regard to the fact that the respondent endeavoured to provide the claimant with a written statement of particulars on or around 10 December 2014 albeit further work was required to that statement before it was finalised. The tribunal has concluded in this case that it would be appropriate to limit the award of compensation to two weeks' gross wages, namely to the sum of £400.

Employment Judge Tynan

Date:11/10/2017.....

Sent to the parties on:

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For the Tribunal Office