



## EMPLOYMENT TRIBUNALS

Miss A Rani  
Claimant

WM Morrisons Supermarkets plc  
Respondent

v

## PRELIMINARY HEARING

Heard at: Cambridge (by telephone)

On: 11 October 2017

Before: Employment Judge Brown

### Appearances

For the Claimant: K Annand, counsel

For the Respondent: I Ferber, counsel

## JUDGMENT

1. The claimant's complaints of:
  - 1.1. direct sex discrimination;
  - 1.2. sex-related harassment;
  - 1.3. direct disability discrimination;
  - 1.4. disability-related harassment; and
  - 1.5. holiday pay

are dismissed on withdrawal by the claimant.

## CASE MANAGEMENT SUMMARY

### Listing the hearing

1. After all the matters set out below had been discussed, it was agreed that the final hearing in this claim would be completed within **4 days**. It has been listed at **Bury St Edmunds Employment Tribunal** to start at 10 am or so soon thereafter as possible on **12 March 2018**. 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 no further witnesses and the respondent's to call two witnesses. The time will be used as follows:-
  - 1.1. Maximum 1½ days for oral and other evidence on liability;
  - 1.2. A maximum total of 2 hours (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;
- 1.4. 2 hours for the Tribunal to give judgment, with reasons if possible;
- 1.5. 3 hours 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 treated as presented on 30 June 2017, the claimant brought complaints of unfair dismissal, breach of contract, failure to permit time off during working hours in respect of dependants, direct and indirect sex discrimination, sex-related harassment, direct disability discrimination, disability-related harassment, less favourable treatment as a part-time worker and holiday pay. The respondent defended the claim. In advance of the hearing on 11 October 2017, the claimant gave notice of the withdrawal of her complaints of direct sex discrimination, direct disability discrimination, sex- and disability-related harassment and holiday pay. In essence, the remaining complaints arise out of an alleged failure to allow the claimant time away from work on 10 February 2017, and the claimant's subsequent resignation on 12 February 2017.

### **The issues**

3. The parties have agreed a List of Issues, which is appended to this Summary. It shall form the list of issues to be used at the final hearing of the claimant's complaints.

### **Judicial mediation**

4. The parties' representatives understood the judicial mediation scheme. They were not united in wishing the claim to be considered for judicial mediation. I therefore explained that I could not refer the case to the Regional Employment Judge to be considered for an offer of judicial mediation. Should the parties reach a common view that they would like the case to be considered for judicial mediation, they should write in jointly for the attention of the Regional Employment Judge.
5. I made the following case management orders by consent.

## **ORDERS**

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

#### **1. Disclosure of documents**

- 1.1 The parties shall give mutual disclosure of documents relevant to the issues identified:
  - 1.1.1 by **list** by 4pm on **8 November 2017**; and
  - 1.1.2 by **inspection** by 4pm on **22 November 2017**.

This includes, from the claimant, documents relevant to all aspects of any remedy sought.

- 1.2 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.
- 1.3 This order is made on the standard Civil Procedure Rules basis.
- 1.4 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.

## 2. Statement of remedy/schedule of loss

- 2.1 The **claimant** shall provide to the respondent and the Tribunal, so as to arrive by 4 pm on **25 October 2017** an itemised statement of the remedy sought (also called a schedule of loss).
- 2.2 The claimant shall include information relevant to the receipt of any state benefits.

## 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 The parties shall agree a **bundle index** by 4pm on **6 December 2017**.
- 3.3 The respondent shall provide the claimant a full, indexed, page numbered **bundle** to arrive by 4pm on **20 December 2017**.
- 3.4 The respondent shall bring sufficient copies (at least five) to the Tribunal for use at the hearing, by 9.30 am on the morning of the first day of the hearing.

## 4. Witness statements

- 4.1 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, ordinarily 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 **Witness statements** shall be exchanged so as to arrive by 4pm on **23 February 2018**.

**5. Other matters**

- 5.1 The parties shall agree a cast list and a short neutral chronology for use at the hearing.

**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.

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**Employment Judge Brown**

**11 October 2017**

Sent to the parties on:

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For the Tribunal:

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IN THE EMPLOYMENT TRIBUNALS  
(SOUTH EAST)  
BETWEEN

ANITA RANI

Claimant

v

WM MORRISON SUPERMARKETS PLC

Respondent

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DRAFT LIST OF ISSUES

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1. The Claimant was employed by the Respondent as a Checkout Operator from 5 August 2013 until her resignation on 12 February 2017.
2. The Claimant brings complaints of
  - a) Constructive unfair dismissal pursuant to the Employment Rights Act 1996 (ERA 1996).
  - b) Constructive wrongful dismissal.
  - c) Failure to permit a reasonable amount of time off during working hours in respect of dependants pursuant to section 57A ERA 1996.
  - d) Indirect sex discrimination pursuant to section 19 of the Equality Act 2010.
  - e) Less favourable treatment on the grounds of being a part time worker pursuant to the Part Time Workers (Less Favourable Treatment) Regulations 2000.
3. The Claimant confirms that she withdraws her claims of direct sex discrimination, harassment on grounds of sex, direct discrimination by association, and harassment by association, and holiday pay.

Constructive unfair dismissal

4. The Claimant claims:
  - a) On 10 February 2017, Dan King refused to accept the Claimant's Fit Note and threatened to dismiss her unless she returned to work by 14 February.
  - b) On 10 February 2017, Dan King refused to grant the Claimant unpaid leave or a lifestyle break because she worked part time hours.

c) On 10 February 2017 Mr King failed to offer the Claimant compassionate leave, parental leave or dependants' leave, to which she was entitled.

5. Did these acts occur?
6. If so, did any or all or a combination of the above acts amount to a breach of the implied term of trust and confidence?
7. Was it an implied term of the Claimant's contract that the Respondent would care for her physical, financial and psychological welfare?
8. If so, did any or all or a combination of the above acts amount to a repudiatory breach of that implied term?
9. If there was a repudiatory breach of the Claimant's contract, did the Claimant resign in response to it?
10. Did the Claimant affirm the contract and/or waive the breach?

Wrongful dismissal

11. Is the Claimant entitled to any notice pay? If so, how much?

Time off during working hours in respect of dependants – s. 57A ERA 1996

12. The Claimant claims that, on 10 February 2017, she was denied a reasonable amount of time off during working hours in respect of dependents under section 57A ERA 1996.

13. The Claimant claims that, on 10 February 2017, she was requesting time off -

a) Because of unexpected disruption or termination of arrangements for the care of dependents

and/or

b) To provide assistance on an occasion when a dependent fell ill.

14. Was this the reason(s) for the Claimant's request for time off?

15. If yes, did the Respondent refuse to permit the Claimant to take time off (which she was entitled to)?
16. If yes, was the Respondent's refusal to permit the Claimant to take time off (to which she was entitled) reasonable?

Indirect sex discrimination

17. The Claimant claims the Respondent applied the following PCPs:
  - a) requiring all its employees to maintain a certain prescribed level of attendance.
  - b) requiring all its employees to be available for work during contracted hours.
18. The Respondent accepts it applied the PCPs referred to above.
19. Did the Respondent apply the PCPs referred to both male and female employees with children?
20. If so, did the PCPs put, or they would put, female employees with children at a particular disadvantage when compared with male employees with children?
21. If so, did it put the Claimant at a particular disadvantage?
22. Can the Respondent show the PCPs as being a proportionate means of achieving a legitimate aim?

Less favourable treatment on grounds of being a part-time worker

23. The Claimant claims that on 10 February 2017, Dan King refused to grant the Claimant a) unpaid leave and/or b) a life style break because she worked part-time hours.
24. Did these acts occur?
25. If so, did they amount to less favourable treatment?
26. If so, was it less favourable treatment on the grounds that the Claimant worked part-time?
27. If so, was the less favourable treatment justified?