



EMPLOYMENT TRIBUNALS

Claimant

Ms O Khorochilova

v

Respondent

Euro Rep Ltd

PRELIMINARY HEARING

Heard at: **Watford**

On: **1 March 2018**

Before: **Employment Judge Wyeth**

Appearances:

For the Claimant: **Mr P Curry (claimant's friend)**

For the Respondent: **Mr A Mellis (of counsel)**

1. The conditions of Multi Personality Disorder and/or the symptoms of anxiety and depression relied upon by the claimant did not amount to a disability for the purposes of the Equality Act 2010 at the material time (during her period of employment with the respondent up to and including her dismissal).
2. Accordingly, the Tribunal has no jurisdiction to consider her complaint of disability discrimination.

CASE MANAGEMENT SUMMARY

Listing the hearing

3. After all the matters set out below had been discussed, we agreed that the hearing in this claim would be completed within 2 days. It has been listed at Watford Employment Tribunal, Radius House, 51 Clarendon Road, Watford WD17 1HP to start at 10am or so soon thereafter as possible on **18 September 2018 to 19 September 2019**. 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 call one further witness and the respondent's to call three witnesses. The time will be used as follows:-

- 3.1 Tribunal reading time of 2 hours;

- 3.2 Remainder of day one for oral and other evidence on liability;
- 3.3 A maximum total of 30 minutes each for submissions on liability;
- 3.4 Approximately 2.5 hours for the tribunal to determine the issues which it has to decide and reach its conclusions;
- 3.5 1 hour for the tribunal to give judgment, with reasons if possible;
- 3.6 If possible, any time remaining 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 complaints

- 4. By a claim form presented on 2 May 2017, the claimant brought complaints of: a) unfair dismissal; b) detriment for making a protected disclosure; c) disability discrimination; c) breach of contract/unauthorised deductions from wages; d) failure to give notice or pay in lieu (breach of contract); and e) holiday pay. The respondent defended the claims. The complaints of unfair dismissal and protected disclosure detriment were struck out by EJ Smail at a Preliminary Hearing on 28 July 2017. At today's Preliminary Hearing I determined that the claimant was not a disabled person at the material time and thus the tribunal has no jurisdiction to hear a complaint of disability discrimination.
- 5. By way of its ET3 the respondent seeks to counterclaim against the claimant for breach of contract alleging that the claimant took excessive quantities of crickets without the knowledge or consent of the respondent to sell these for a profit, in breach of the implied term of mutual trust and confidence and the implied duty of fidelity. Further particulars have been ordered (see below).

The issues

I now record that the issues between the parties which will fall to be determined by the tribunal are as follows:

6. Unpaid annual leave – Working Time Regulations

- 6.1 What was the claimant's leave year?
- 6.2 How much of the leave year had elapsed at the effective date of termination?
- 6.3 In consequence, how much leave had accrued for the year under regulations 13 and 13A?
- 6.4 How much paid leave had the claimant taken in the year?
- 6.5 How many days remain unpaid?

- 6.6 What is the relevant net daily rate of pay?
- 6.7 How much pay is outstanding to be paid to the claimant?
- 6.8 The claimant alleges that she is owed the sum of £119.34.

7. Breach of contract/unauthorised deduction of wages

- 7.1 The claimant alleges that she was entitled to be paid for 52.5 hours for the period between 1 and 9 February 2017 but was only paid for 47 hours. She seeks the balance of pay which she maintains to be £55 gross.
- 7.2 Was the claimant entitled to be paid for an additional 5.5 hours for this period and if so, is the gross amount due £55 or some other amount?
- 7.3 The claimant also alleges that she was entitled to be paid for 18 hours of overtime that she worked during November and December 2016 and seeks the sum of £180 gross.
- 7.4 On the face of it, this claim appears to be out of time (subject to any applicable extension to allow for ACAS Early Conciliation). If this claim is was not brought within three months less one day of the date of the alleged deduction or non-payment, did any such non-payment/deduction form part of a series of deductions the last of which was within three months less on day of the claim being issued?
- 7.5 If this claim is in time, did the claimant undertake the overtime alleged and if so was she entitled to be paid for it either at the rate of £180 (gross) in total or at some lesser rate?

8. Breach of contract – notice pay

- 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 in that she disregarded reasonable and express management instructions? NB This requires the respondent to prove, on the balance of probabilities, that the claimant actually committed the gross misconduct.
- 8.3 If the claimant was entitled to notice, was this for a period of four weeks as she alleges or some other period?

9. Respondent Counterclaim

- 9.1 The respondent has yet to fully particularise its counterclaim. Broadly the issues are as follows.

- 9.2 Did the claimant take excessive amounts of crickets without the consent of the respondent?
- 9.3 If so, was the claimant in breach of contract?
- 9.4 If so, what is the appropriate compensation to be awarded to the respondent for any such breach?
10. I made the following case management orders by consent.

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. Further information
- 1.1 The respondent is ordered to present to the tribunal and the claimant on or before **15 March 2018** detailed particulars of its counterclaim to specify as precisely as possible:
- 1.1.1 the respondent's factual assertions in connection with the counterclaim;
 - 1.1.2 the dates of any alleged acts or incidents relied upon;
 - 1.1.3 the basis for alleging such acts or incidents occurred (identifying relevant witnesses as appropriate);
 - 1.1.4 how such activity amounts to a breach of contract that arose or was outstanding on the termination of the claimant's employment;
 - 1.1.5 the amounts and/or values of stock said to have been taken with and without consent.
- 1.2 The claimant is to file with the tribunal and serve on the respondent a response to the counterclaim by **29 March 2018**.
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 so as to arrive on or before **13 April 2018**.
- 2.2 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.
- 2.3 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 **27 April 2018** of the documents to be included in the bundle at her request. These must be documents to which she intends to refer, either by evidence in chief or by cross-examining the respondent's witnesses, during the course of the hearing.
- 3.3 The respondent is ordered to provide to the claimant a full, indexed, page numbered bundle to arrive on or before **11 May 2018**.
- 3.4 The respondent is ordered to bring sufficient copies (at least three, including one for its own use) 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 so as to arrive on or before **8 June 2018**.

5. **Other matters**

- 5.1 The respondent is ordered to prepare a cast list and short, neutral chronology for use at the hearing. The cast list must set out, 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.
- 5.2 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 Wyeth

Sent to the parties on: 14 March 2018

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For the Tribunal:

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