



EMPLOYMENT TRIBUNALS

Claimant

Ms D Wilson

v

Respondent

Agentis Solutions Limited

PRELIMINARY HEARING (BY TELEPHONE)

Heard at: Bury St Edmunds

On: 21 May 2018

Before: Employment Judge Laidler

Appearances:

For the Claimant: Ms S Davenport, Solicitor.

For the Respondent: Mr J Crosfill, Counsel.

JUDGMENT

1. Leave is given to the Claimant to add as named Respondents to these proceedings Phillip Saunders and Mario Bardwell.
2. The Claimant's solicitor is to provide addresses for service within 7 days of the date of this hearing when the proceedings will then be served on those named individuals.

CASE MANAGEMENT SUMMARY

1. The parties had agreed a list of issues and an agenda, and this matter had been converted to a telephone hearing.

The issues

2. The following represents the issues as agreed between the parties:-

Unfair dismissal

1. Was the Claimant constructively dismissed for the purposes of section 95(1)(c) of the ERA 1996? In particular:
 - 1.1 Can the Claimant show that the Respondent acted in the manner set out in paragraphs 4 to 18 of the Particulars of Claim and in the Further Particulars of Claim; and
 - 1.2 If so, has the Claimant shown that those matters individually or cumulatively show that the Respondent, without any reasonable cause, acted in a manner calculated or likely to seriously damage the mutual obligation of trust and confidence?
 - 1.3 If so, did the Claimant resign, in whole or in part, as a response to the said breach?
 - 1.4 If so, did the Claimant resign sufficiently promptly after the last act that contributed to the breach that she has not affirmed the contract?

Pregnancy/maternity discrimination

2. Did the Respondent treat the Claimant unfavourably in the protected period because of her pregnancy contrary to section 18(2)(a) of the Equality Act? The Claimant relies upon the following acts as amounting to a detriment:
 - 2.1 Failure to implement a share scheme that the Claimant had been promised.
 - 2.2 Failure to provide the Claimant with a laptop computer equivalent to one that was stolen.
 - 2.3 Failure to keep the Claimant up to date on key business developments.
3. Would it be just and equitable to extend time in respect of the Claimant's claims under section 18(2)(a)?
4. Did the Respondent treat the Claimant unfavourably because she had exercised her right to take maternity leave contrary to section 18(4) of the Equality Act? The Claimant relies upon the following acts as amounting to a detriment:
 - 4.1 Requiring the Claimant to return company equipment when she extended her maternity leave, thereby preventing her from

continuing the work that she had been doing when first on maternity leave.

- 4.2 Putting pressure on the Claimant to return to work before the end of her maternity leave.
 - 4.3 Failure to provide the Claimant with business information that she had previously received as a matter of course, including weekly performance figures and financial reports, thereby diminishing her role.
 - 4.4 Failure to keep the Claimant up to date on key business developments and involve her in key business decisions as had happened in the past, thereby diminishing her role.
 - 4.5 Failure to consult the Claimant on matters previously dealt with through her, going instead directly to members of her team, thereby diminishing her role.
 - 4.6 Failure to discuss the future direction of the business and the Claimant's role in it with her as had happened in the past, thereby diminishing her role.
 - 4.7 Failure to take the Claimant's advice on employee/recruitment matters and to discuss their intentions with her as had happened in the past, thereby diminishing her role.
 - 4.8 Removal of the Claimant's company car and replacement with a car allowance.
 - 4.9 Failure to implement a share scheme that the Claimant had been promised.
 - 4.10 Failure to implement a profit/commission scheme that had been promised.
5. Are the Claimant's claims under section 18(4) out of time? If so, would it be just and equitable to extend time?

Direct sex discrimination

- 6. Did the Respondent treat the Claimant less favourably because of her sex contrary to section 13 of the Equality Act? The matters that the Claimant relies on as amounting to less favourable treatment are set out in paragraphs 7, 11 and 18 of the Particulars of Claim and in the Further Particulars of Claim.
- 7. The Claimant relies on a hypothetical comparator.

8. Is the Claimant's claim under section 13 out of time? If so, would it be just and equitable to extend time?

Detriment under section 47 of the ERA

9. Did the acts and failures in paragraphs 4 to 18 of the Particulars of Claim, in the Further Particulars of Claim and in paragraphs 3 and 5 above occur and did they amount to a detriment?
10. Did the Claimant suffer any detriment for a reason relating to pregnancy, childbirth or maternity contrary to section 47C(2)(a) of the ERA and/or or the fact that she was exercising or had exercised her statutory right to maternity leave contrary to section 47C(2)(b) of the ERA?
11. Are the Claimant's claims under section 47C(1) out of time? If so, was it reasonably practicable for the claim to have been submitted within the three-month time limit? If not, was it presented in a reasonable time thereafter?

Further and better particulars

3. The Respondent had pleaded in its response that certain allegations made by the Claimant were very general and asked for further information. The Claimant has agreed to give this on a voluntary basis by 30 May 2018, but no order has been made.

Additional Respondents

4. There has been a sale of the shares of the Respondent and these proceedings are being dealt with the new owner. Ms Davenport wishes to join Phillip Saunders and Mario Bardwell who were the relevant owners at the time and those that the Claimant makes allegations of discriminatory conduct against. There was no objection to that application by Mr Crosfill on behalf of the Respondent. Ms Davenport is to obtain addresses for the two individuals and once they have been received the proceedings will be served upon those too.

Listing

5. In view of the number of Respondents, the fact that the Claimant may call one witness and the Respondent anticipates three witnesses, it was agreed the matter would be listed for 5 days to include time for the Tribunal's deliberations and the issue of remedy if it comes to be dealt with. It is not anticipated that the issue of remedy will be particularly complicated. Although on a reading of the claim it appeared that this might include a claim relating to the shareholding the Claimant asserts she never got, Ms Davenport confirmed that this is not how her case is being put.
6. The matter has been listed taking into account dates to avoid and the fact that the Claimant is in the very early stages of pregnancy with her second child. Her expected date of confinement is in early December 2018 and she would not

wish to be attending a hearing after the end of October 2018. The hearing has therefore been listed for 22 October 2018 for 5 days.

Judicial mediation

7. This was raised by the Judge though at the present time she did not feel that an offer could be made in view of the complexity of the number of Respondents and the link to other commercial matters. It was raised however as something the parties should bear in mind, and if they did ever consider it to be something they wished to explore they could make a joint application to the Tribunal.

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. Statement of remedy/schedule of loss

- 1.1 The Claimant is ordered to provide to the Respondent and to the Tribunal, so as to arrive on or before **30 May 2018**, a properly itemised statement of the remedy sought (also called a schedule of loss).
- 1.2 The Claimant is ordered to include information relevant to the receipt of any state benefits.

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 **16 July 2018**. 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 Claimant has primary responsibility for the creation of the single joint bundle of documents required for the hearing.
- 3.2 To this end, the Respondent is ordered to notify the Claimant on or before **9 August 2018** 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 Claimant's witnesses, during the course of the hearing.
- 3.3 The Claimant is ordered to provide to the Respondent a full, indexed, page numbered bundle to arrive on or before **16 August 2018**.
- 3.4 The Claimant is ordered to bring sufficient copies (at least five/three) to the tribunal for use at the hearing, by 9.30am 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 **24 September 2018**.

5. **Listing the hearing**

- 5.1 The matter has been listed for a final hearing over **5 days** at **Bury St Edmunds Employment Tribunal, 1st Floor, Triton House, St Andrews Street North, BURY ST EDMUNDS, IP33 1TR commencing on 22 October 2018, and continuing on 23, 24, 25 and 26 October 2018.**

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 Laidler

Sent to the parties on:
29 May 2018

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For the Tribunal:

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