



EMPLOYMENT TRIBUNALS

Claimant
(1) Mrs Agnieszka Hamoudi
(2) Mr Nourredine Hamoudi

v

Respondent
Sainsburys Supermarkets Limited

PRELIMINARY HEARING

Heard at: Bury St Edmunds **On:** 9 May 2018

Before: Employment Judge Laidler

Appearances

For the Claimant: In person.

For the Respondent: Mr H Zovidavi, Counsel.

JUDGMENT having been sent to the parties on 9 May 2018 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The claimants bring complaints of unfair dismissal and sex discrimination by Mrs Hamoudi only in connection with their redundancy.
2. In relation to the sex discrimination complaint a role had been created for the Hamoudi's at the new store prior to the redundancy process by which Mrs Hamoudi worked 2 nights and Mr Hamoudi 4 nights which enabled them to cover their childcare commitments between them. During the redundancy process they argue that those hours were no longer offered to them. Mrs Hamoudi stated clearly at this hearing that it was not a case that there was an existing shift pattern which she was not offered, however it was also said that in the new schedule Mr Hamoudi's hours reduced from 39 hours to 32 hours, and although Mrs Hamoudi could have accommodated less hours they couldn't manage if her husband's hours went down to 32 and he was not offered a further 7 hours. It appears that the claimants want to be considered by the respondent in the redundancy as a couple and do not seek to compare themselves to others.
3. The Tribunal had some difficulty in striking the claim out as having no reasonable prospects having considered the recent authorities on this

point in particular the cases of Mechkarov v Citibank NA UKEAT/0041/16 and Kwele-Siakam v The Co-operative Group Ltd UKEAT/0039/17 which emphasised that the guidance in Ezsias v North Glamorgan NHS Trust [2007] EWCA Civ 330 is still the guidance that should be followed. Having considered those authorities, the Tribunal finds that evidence must be heard in relation to this claim before it can be determined whether or not the claims succeed.

4. However, in relation to the application for a Deposit the test is different and it must be considered whether the claims have 'little reasonable prospect.' The Tribunal is satisfied the sex discrimination claim has little reasonable prospect. The claimant does not cite any comparators and it appears to the Tribunal that she is suggesting she should have received more favourable treatment. The Tribunal cannot see any connection to the earlier events and the transfer to a new store, but any time issues can only be determined on hearing the evidence. They will be background evidence in any event which the Tribunal will have to hear. A deposit will therefore be ordered for Mrs Hamoudi to pay in relation to the sex discrimination claim.
5. Both claimants bring unfair dismissal complaints, and the Tribunal has reached the same conclusions, namely that it cannot determine the matter without hearing the evidence, in particular of the shift patterns the claimants had and what was then offered to them in the redundancy process. There appears to be a dispute as to whether the claimants were actually offered anything or whether they had to look for it themselves internally. The claimants state they were not offered alternative employment whereas the respondent says they were. They wish to be still treated as a couple and for the respondent to make adjustments to the hours offered to them on that basis. They wish to keep the hours and pattern they had to fit in with their childcare, and the question for a Tribunal hearing all the evidence will be whether the alleged failure to do so made the dismissal unfair if in all other respects the respondent had fairly consulted with the claimants. The Tribunal is satisfied those arguments have little reasonable prospects such as to justify the order of a Deposit to both Mr and Mrs Hamoudi, so there will be three deposit orders made.
6. It was explained that if the Deposits (or any one of them) is not paid the particular complaint in relation to which it has been ordered will be struck out. If it is paid and the Tribunal decides the specific allegations against the claimants for substantially the same reasons as outlined here, then the claimants will be treated as having acted unreasonably in pursuing those allegations for the purposes of making a costs order and the amount of any deposit paid will go towards any costs order obtained by the respondents.
7. The above decision having been given to the parties, the claimants were heard on their means. Both have obtained alternative employment since being made redundant. Mrs Hamoudi is receiving £600 per month and Mr Hamoudi £1,100 per month. They have a mortgage of £440 per month

and their utilities and household expenses come to approximately £500 per month. They also receive disability allowance for their disabled child. They have no savings or assets other than their property which they bought from the council for £85,000 last year having used savings of £60,000 towards it borrowing £25,000 on mortgage.

8. Having heard this evidence the Tribunal determined that a Deposit should be paid as a condition of each of the claims proceeding was £100 in respect of each claim.

Employment Judge Laidler
Date: 7 June 2018

Judgment sent to the parties on

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For the Tribunal office