



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Ms Marta Podlecka

v

MYM Global Ltd

Heard at: Watford

On: 6 June 2018

Before: Employment Judge Alliott

Appearances

For the Claimant: Mr P Soszynski (Lay Representative)

For the Respondent: No appearance

REMEDY JUDGMENT

1. The respondent is ordered to pay the claimant notice pay in the gross sum of £350 plus 12½% uplift for failure to comply with the ACAS Code, total £393.75.
2. The respondent is ordered to pay the claimant's holiday entitlement in the gross sum of £1,250 plus 12½% for failure to comply with the ACAS Code, total £1,406.25.
3. The respondent is ordered to pay the claimant compensation as follows:-
 - 3.1 Loss of earnings: £1,750 plus 12½% for failure to comply with the ACAS Code, total £1,968.75;
 - 3.2 Injury to feelings: £10,000 plus 12½% for failure to comply with the ACAS Code, total £11,250

REASONS

1. The claimant was employed by the respondent on the 21 December 2016 as a Cost Estimator. Initially she worked full-time but latterly she has been working three and a half days a week at a rate of £350 gross. The claimant was dismissed on the 11 August 2017.
2. By a claim form presented on the 8 January 2018 the claimant brought

complaints of sex discrimination and a failure to pay her notice pay and holiday pay.

3. The response was due to be served by the 28 February 2018. No response has been filed in this case. Accordingly, on the 23 March 2018, Employment Judge Manley issued a default judgment in the following terms:-
 - 3.1 The complaints of sex discrimination, unpaid wages and notice pay as set out in the claim form is declared to be well founded.
 - 3.2 Any remedy to which the claimant is entitled will be determined at a Hearing for which two hours have been allocated at **2pm on Wednesday 6 June 2018 at Watford Employment Tribunal, 51 Clarendon Road, Watford, WD17 1HP**, to which the claimant must bring the following:
 - A witness statement detailing the effects of the discrimination on her for any injury to feelings award;
 - Payslips from this employment;
 - Payslips from any subsequent employment;
 - Any other relevant documents.

The evidence

4. The claimant has brought today 10 documents. The first one consists of two Fit Notes indicating that she was signed off work for a total of six weeks following her dismissal due to stress and anxiety. I have a Jobseekers Allowance stencil indicating that the claimant was seeking a job as of the 5 October 2017. I have an extremely short witness statement from the claimant running to three paragraphs. I have a number of "invoices" submitted by the claimant to the respondent and lastly I have the first two pages of a contract of employment that the claimant entered into in February 2018. In addition, the claimant gave oral evidence before me.

Conclusions

5. As there has already been a default judgment and this is a remedy hearing, so I am not concerned with the issue of liability. I have to approach this case on the basis that the claimant's allegations have been made out. In particular that the claimant was treated in the way she alleges in her claim form and that her dismissal was an act of sex discrimination.
6. The claimant has not produced any form of employment contract before me. Indeed, it would appear that the relationship between the claimant and the respondent was structured so that she would appear self-employed. However, I have to take it that she has established that she was an employee. The minimum notice period that the claimant was entitled to is one week. She was not paid any notice pay. Consequently, I award the claimant one week's pay gross for her notice period, namely £350.

7. At the time of the dismissal the claimant was working three and a half days per week. Her holiday entitlement would therefore have been $5.6 \times 3.5 = 19\frac{1}{2}$ days. The claimant told me that between December 2016 and August 2017 she had not received any paid holiday. Pro rata and on the basis that she had worked for the respondent for 233 days and taking the holiday year as beginning with her employment on the 21 December 2016, she had an accrued holiday entitlement of $12\frac{1}{2}$ days as of the date of dismissal. Twelve and a half days at £100 gross per day gives a total of £1,250.
8. Turning to the issue of compensation. The claimant was signed off work with stress for six weeks following her dismissal. One of those weeks has been compensated for by virtue of the notice pay. The claimant told me that on 1 December 2017 she obtained alternative employment at a rate equivalent to or greater than what she was earning with the respondent. The claimant seeks to advance a loss of earnings claim from early October onwards after she became fit for work. However, as regards this period, I regard the evidence of the claimant to be wholly unsatisfactory. She told me that she had worked some shifts but could not give an accurate figure of what she had worked. Further, she was in receipt of Jobseekers Allowance for some of that time but again I have no documentary evidence as to how much she received. The default judgment specifically directed that the claimant should bring wage slips for any employment she has had since which she has not done. I find that I am unable to calculate any loss of earnings figure after she became fit for work. I do not consider that the claimant has proved her case on this head of damage save for the period when she was signed off work sick. Accordingly, I award five weeks loss of earnings at the rate of £350 gross per week giving a figure of £1,750.
9. Injury to feelings: in both her claim form and in her oral evidence the claimant sets out that in June 2017 she was subjected to sex discrimination in the workplace by Mr Moshe Genish, the owner of the business and her boss. She told me that comments of a sexualised nature occurred quite frequently and sometimes they were accompanied by inappropriate touching of her hand on a few occasions. She told me that she felt very stressed to stay alone in the workplace so she made sure she finished work whilst others were still around. She gave evidence of a feeling of powerlessness because Mr Genish was the boss. She told me that she told Mr Genish not to touch her because she did not like it. The claimant also told me that she experienced hostility from co-workers, in particular Mr Claudiu Praj. She gave evidence that she was subjected to abusive language and derogatory comments about her religion and how old she was and that Claudiu Praj would treat her as a secretary and not in the same way as he would treat male colleagues.
10. On the 8 August the claimant spoke to Mr Moshe Genish about the problem. He apparently launched an informal investigation which the claimant felt did not include her sufficiently and she went home. On her return the next day she sent Mr Genish an email with a formal grievance within it. I have seen this email on the claimant's mobile phone and it complains not about the sexual comments of Mr Genish but concerns principally Claudiu

Praj and his abusive language and chit chat.

11. On the 11 August 2017 Mr Genish dismissed the claimant saying that the claimant's conduct was immature and the workplace was not a kindergarten. No response had been made to the claimant's grievance. The claimant's claim is based on the fact that she was dismissed because she made the formal complaint about discrimination at work.
12. Following her dismissal the claimant's witness statement indicates that she cried for the first few days and felt she did not have energy for normal daily routine things. She says her self-confidence dropped and she found herself physically ill because of the amount of stress. She has produced medical Fit Notes indicating that she was signed off work with stress and anxiety for six weeks following her dismissal.
13. In my judgment there are a number of aggravating features to the conduct experienced by the claimant. Firstly, it was experienced over a period of three months. Secondly, it involved unwanted sexual advances as well as abusive and derogatory treatment on a regular basis. Thirdly, it caused physical and mental illness. Fourthly, it resulted in her losing her job. A major factor in my assessment of the appropriate Vento band is the fact that the discrimination included the dismissal of the claimant. In my judgement the dismissal was sufficient to take the injury to feelings award into the Vento middle band, currently £8,600 - £25,700. In my judgment it is towards the bottom of that band and accordingly I award £10,000 for injury to feelings.
14. The claimant having raised a grievance the respondent did not deal with it at all. In my judgment the respondent's failure to deal with the claimant's grievance pursuant to the ACAS Code of Practice was unreasonable and I consider it to be just and equitable in all the circumstances to increase the awards I have made by 12½%.

Employment Judge Alliott

Date: 14 / 6 / 2018

Sent to the parties on:

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For the Tribunal Office