



EMPLOYMENT TRIBUNALS

Claimant: Miss O Dore
Respondent: The Urban Partnership Group

Heard at: London Central Employment Tribunal **On:** 4, 5 September 2018

Before: Employment Judge Davidson
Mrs J Griffiths
Dr S Jary

Representation

Claimant: in person
Respondent: Mr T Gillie, Counsel

JUDGMENT

The unanimous decision of the tribunal is as follows:

1. The claimant's complaints are out of time but time is extended to allow the claims to proceed as the tribunal accepts that it was not reasonably practicable for the claimant to present her claim within the time limit. In relation to the discrimination claim, the tribunal considers it would be just and equitable to extend time.
2. The claimant's complaints of unfair dismissal, pregnancy discrimination, failure to pay maternity pay and failure to make a redundancy payment fail and are hereby dismissed.

Employment Judge Davidson

Date 17 September 2018

JUDGMENT SENT TO THE PARTIES ON

21 September 2018

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FOR THE TRIBUNAL OFFICE

REASONS

Issues

1. The issues as set out at the case management discussion on 18 December 2017 were as follows:

Unfair dismissal

- 1.1. Was the claimant an employee under section 230(1) of the Employment Rights Act 1996 for the purposes of her unfair dismissal claim?
- 1.2. If so, was the claimant dismissed?
- 1.3. If so, when was she dismissed and is the claim out of time?
- 1.4. If the claim is out of time, should it be allowed to proceed on the basis that it was not reasonably practicable to pursue it within the time limit and it was nevertheless pursued within a reasonable period thereafter?
- 1.5. Was the claimant dismissed or asked to leave the respondent?

Discrimination

- 1.6. If so, did the respondent treat the claimant less favourably during the protected period because of her pregnancy and/or because she was seeking to exercise her right to maternity leave?
- 1.7. Are the claimant's complaints of discrimination out of time and if so, would it be just and equitable to extend the period in which to bring a claim. The claimant claims that in the period leading to 17 March, she was kept in the dark despite her questions about taking maternity leave.

Maternity Pay

- 1.8. Was the claimant entitled to maternity pay?

Redundancy Pay

- 1.9. In the alternative, is the claimant entitled to a redundancy payment?

Evidence

2. The tribunal heard evidence from Mr El-Hajj Bellot-James and from the claimant on behalf of the claimant and from Ms Ushma Bal (Parenting Projects and Performance Manager) and Mr Andy Sharpe (Chief Executive Officer) on behalf of the respondent. The tribunal also had before it an agreed bundle of documents.

Facts

3. The tribunal made the following findings of fact on the balance of probabilities:
 - 3.1. The respondent is a charity which operates a youth club in

Hammersmith and Fulham 3 days a week. The club is staffed by permanent employees, sessional workers and volunteers.

- 3.2. The claimant began working at the club as a volunteer. After a time, she was invited to become a sessional worker.
- 3.3. The respondent produced to the tribunal a contract between the claimant and the respondent entitled 'Sessional Worker Contract' for the claimant which stipulated that the arrangement was not one of employment and expressly excluded any mutuality of obligation on the parties.
- 3.4. The claimant says that she never received this document and we note that the document before us was not signed. We find that the claimant was not issued with this contract. However, it is still valid evidence of the respondent's position, and is consistent with the following facts.
- 3.5. We find that the claimant generally worked every Friday if the club was open. In addition, she was from time to time asked to cover for others and to assist on day trips during holiday time.
- 3.6. We find that the respondent was not obliged to offer her these sessions. We also find that the claimant was not obliged to accept sessions which were offered to her. In reaching this finding we note the variable number of sessions each month, including months with no sessions at all.
- 3.7. If there was insufficient funding or insufficient staff were available to maintain the required staff/young people ratios, the club would not open and the claimant would not be paid in those circumstances.
- 3.8. The claimant submitted timesheets and invoices at the end of each month and was paid by cheque.
- 3.9. On 5 December 2016, the claimant told her manager, Mary Riley, that she was pregnant. She said that her baby was due in April.
- 3.10. The respondent carried out a risk assessment. The respondent's evidence is that this took place in December but the claimant's recollection is that it was in January 2017. The risk assessment record is dated 15 December and records that a leaving date had been agreed of 10 February. This part of the document is shaded. The claimant denies that any leaving date had been agreed.
- 3.11. We find that the claimant's line manager drew up the document in draft form on 15 December, using a precedent she had found online which she amended. We find that this was discussed with the claimant in January on her return after the Christmas close down, and the document was then completed. The respondent's witnesses had no evidence other than the information on the face of the document that the risk assessment had been carried out in December as they had not been involved themselves with this. We did not hear from Mary Riley who has since left the respondent's employment.

- 3.12. We find on the balance of probabilities that Mary Riley raised the issue of the last working day before maternity with the claimant and suggested 10 February, which would be two months before the due date. The claimant may not have expressly agreed with this but she did not challenge it. We find that this is the reason Mary Riley recorded 10 February on the risk assessment form.
- 3.13. The claimant raised the issue of maternity pay with Mary Riley who told her that the CEO would have to answer this query. He was on holiday from 11 to 31 January 2017. On his return in early February, Mary Riley asked him about the paperwork for the claimant's leaving and what her maternity pay arrangements were. He replied that the claimant was an occasional part time sessional worker and no paperwork was needed. He added that her details would be kept on file for sessional work after she had had the baby.
- 3.14. The claimant attended work on 10 February. The respondent's clocking system show that this was her last day at work.
- 3.15. The claimant complains of an incident which she said took place on 17 March when she was allegedly told by Mary Riley, in front of her colleagues, that she was being let go. The respondent has adduced cogent evidence in the form of clock records, email and sicknotes, that Mary Riley was not at work on that day. There is also no evidence that the claimant worked on that day, was paid for that day or claimed pay for that day.
- 3.16. We therefore find that there was no such conversation on 17 March.
- 3.17. It is plausible that Mary Riley announced to staff that the claimant would not be at work after her last day as she was having a baby. This would be a natural thing to say to colleagues. It is possible that the claimant was not expecting this announcement and was shocked by it.
- 3.18. We consider that the claimant was concerned about her role after having the baby and may have understood Mary Riley's comment to indicate finality rather than pre-maternity.
- 3.19. The claimant gave birth on 8 April 2017.
- 3.20. The claimant's pregnancy had been considered high-risk and she had been told to avoid stressful situations. She was asked to attend a follow-up appointment after the birth for a check-up. She attended this appointment on 1 May and received the all-clear in early June.
- 3.21. She contacted ACAS for early conciliation on 14 June and was told she should inform the respondent of her claim. She did this on 23 June addressed to the Chief Executive. In his response, he explained that she was not an employee of the respondent.
- 3.22. At about this time, the claimant had contacted her MP who, in turn, contacted the CEO of the respondent. In his reply to the MP, Andy Sharpe explained that the claimant was not an employee but that she

would be considered for occasional sessions in future. We find that this was his position.

3.23. The claimant presented her claim on 7 August 2017.

Determination of the Issues

4. We determine the issues as follows:

Time issue

- 4.1. We find that it was not reasonably practicable for the claimant to present her claim within the three-month time limit due to her pregnancy and her underlying medical condition which required her to avoid stressful situations.
- 4.2. In relation to the discrimination claim we find that it would be just and equitable to extend time.

Unfair dismissal/maternity/redundancy

- 4.3. We find that the claimant was not an employee. We find that there was no mutuality of obligation and that she did not meet the legal definition of employee.
- 4.4. Having found that the claimant was not an employee, her claims of unfair dismissal, maternity and redundancy fail and are hereby dismissed.

Discrimination

- 4.5. The claimant relies on a conversation on 17 March as the basis of her discrimination claim. We have found that this did not take place. The claimant has therefore failed to shift the burden of proof as there is no prima facie case of discrimination requiring an explanation from the respondent.
- 4.6. We do not find that the claimant has shown that she was dismissed by the respondent. We find that she stopped working for the respondent due to her pregnancy but that the Chief Executive had said that she could be considered for future sessions after she had the baby. The claimant's discrimination claim therefore fails and is dismissed.

Employment Judge Davidson
17 September 2018
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