Case Number: 1400150/2018

EMPLOYMENT TRIBUNALS

Claimant: **Mrs C Chater**

Respondent: **Alyce Rogers Ltd**

Heard at: **Bristol** **On:** **13 August 2018**

Before: **Employment Judge R Harper**
Members Ms S M Pendle
Mr E Beese

Representation
Claimant: **In Person**
Respondent: **Mr Clarke**

JUDGMENT having been sent to the parties on 17 August 2018 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The Tribunal heard evidence on oath or affirmation from the claimant, Mr Chater and Mr Derham and from the respondents we heard evidence from Mrs Rogers. The Tribunal has considered all the documentary evidence which has been placed before us both in the bundle and in the witness statements and we have considered the written and oral evidence of the witnesses and also the submissions made by both parties.

2. The Tribunal has had regard to the statutory definition of disability set out in Section 6 of the Equality Act 2010 and the guidance appearing in later parts of that Act. The Tribunal has had regard to Section 13 of the Equality Act 2010 relating to direct discrimination. The Tribunal has had regard to Section 15 of the Equality Act 2010 in relation to the claim of disability discrimination arising from disability. The Tribunal has also had regard to the burden of proof provision of the Equality Act 2010 Section 136 and the

case law guidance in relation to the burden of proof in the two cases of Igen v Wong and Madarassy v Nomura International.

3. In relation to the breach of contract claim the Tribunal has had regard to the Employment Tribunal's Extension of Jurisdiction England and Wales Order 1994 in relation to the notice pay claim and also Section 86 of the Employment Rights Act 1996 with regard to any contractual entitlement to notice.

4. In relation to the unlawful deduction from wages claim the Tribunal has had regard to Section 13 of the Employment Rights Act 1996.

5. In relation to the two other claims for £20 in relation to a pole class and a sum relating to loss of earnings by the claimant's husband for taking time off for the case management hearing in April, those do not fit within any of the jurisdictional headings that can be dealt with by the Tribunal.

6. The claimant was employed for a very short time between 24 August 2017 and 14 September 2017 and her claim was filed with the Tribunal on 10 January 2018. The claimant is an experienced hair stylist and is also experienced as a hair styling tutor. She had discussions with the respondent to provide cover for a hair stylist called Lorraine.

7. Section 1 of the Employment Rights Act 1996 requires a statement to be given in writing of the terms and conditions of employment within the first eight weeks of employment but although the issue was flagged up in this case by the Tribunal in fact the tribunal find that the respondent is not in breach as the employment lasted only a very short period.

8. We find that there was no discussion at the initial chat between the claimant and the respondent as to the notice period. There was a discussion about the hourly rate. The Tribunal were impressed with the evidence of Mrs Rogers who we found gave her evidence in an honest and a consistent manner. We accept her evidence that this was a brand new business being opened effectively on a shoe string and that after paying for the rental and the insurance it had little other money until the customers started coming into the business. We accept from the evidence that things were very tight.

9. Although the claimant is a very experienced stylist and there was a discussion about remuneration, we find on balance that we prefer the evidence of the respondent about the amount that was agreed and make a finding of fact that it was £8.50 an hour not £10.00 and hour. It was agreed that there would be a probationary period.

10. The claimant relies in relation to her disability claim on CFS Chronic Fatigue Syndrome/ME and to a lesser extent depression. The medical evidence was compelling that she suffers with CFS and ME and somewhat less compelling that she suffers with depression but she really relies on the CFS and ME as the main disability in this case. The impact statement, although slightly exaggerated, nonetheless substantiated assertions that the medical disability caused substantial adverse effect on day-to-day activities and we make a finding that she was disabled at the relevant time.

11. However, we find that the respondent had no knowledge of the claimant's disability until this claim was filed. She said that she had previously told a customer about the CFS and ME but we do not accept that knowledge was attributed to the respondent about the knowledge of the alleged disability.

12. The claimant showed a picture of herself with her pole, wearing what was described as underwear, certainly it was what might be described as under clothing. This picture was showed to Mrs Rogers' husband Alex. Not only was he her husband but he is also associated with the business. The claimant also showed this picture to other people. It was inappropriate for her to do so and Mrs Rogers was horrified when she heard from her husband that he had been shown this picture of her.

13. The parties had had a discussion that the claimant would bring some clientele with her but the amount of clientele did not materialise as quickly as the respondent hoped and the respondent lost money on the claimant being there. That assertion by Mrs Rogers was not challenged by the claimant in cross examination.

14. There was an allegation that the claimant made, that there was a discussion where the respondent is said to have said something along the lines of "things being in her head". We find that this was not said. We find that Mrs Rogers was a witness of truth and we were impressed with the way in which she described herself as being somebody sensitive to discrimination. She herself had brought a race claim arising out of the fact that her husband is black and that she has one relative who is blind and one who is autistic. She impressed the Tribunal as somebody who has understanding of discrimination issues. We make a finding of fact that the expression "in your head" was not said. It is alleged that that was said the day before the claimant was dismissed. She was in fact dismissed as a result of a telephone call being made to her asking her to come in. The claimant chose to come in immediately and travelled in with her father. It was explained that the respondent was losing money. It was explained that Mrs Rogers was not happy about the photograph that had been shown to her husband and Mrs Rogers explained that she was also not happy with the claimant's reference to her husband as "buff."

15. The claimant explained that she was not saying that his whole physique was buff, just his arms but it was something that caused a great deal of upset to Mrs Rogers for understandable reasons. We make a finding that the reason for the dismissal was completely unrelated to any disability and that the dismissal was for exactly the reasons which the respondent asserted.

16. The Tribunal find therefore that the two allegations of direct discrimination do not succeed in the sense that we make the finding that the "in your head" comment was not made and that dismissal was unrelated to disability. It is for exactly the same reasons as a result of our findings of fact that the claim of disability discrimination arising from disability also does not succeed.

17. Turning to the question of breach of contract. The claimant is not statutorily entitled to any notice because she had not worked for the respondent for at least one month. The Tribunal considered whether there was any

contractual entitlement to notice and have concluded that there was none because there was no discussion about any notice.

18. In terms of the unlawful deduction from wages this was rather more difficult to resolve. We make a finding for reasons set out earlier that £8.50 was the going hourly rate. The claimant produced at the hearing, having not previously produced it, an email dated 11 October 2017, which set out the hours that she had worked. It is rather curious that she has not brought with her to the Tribunal, and not disclosed to the respondent, her calculations showing the hours which resulted in her putting these figures on the email. It seems the dispute between the parties seems to largely revolve around payment for the lunch hour and what we have done is to apportion the number of hours that we think should be paid in relation to each of the dates. Working through the list in the same order as set out in the email of 11 October for the 29th we say 7 hours, for the 30th we say 7 hours, 31st we say 7 hours, for the 4th we say 3 hours, for the 5th we say 5 hours, for the 6th we say 7 hours, for 7th we say 1 plus 1 ie 2, for the 9th we say 7 hours, for the 12th we say 7 hours, for the 13th we say 7 hours and that totals 59 hours to be calculated at the rate of £8.50 per hour which totals £501.50.

19. In relation to the claim for the pole activity of £20 this is not an unlawful deduction. At highest it may have been a consequential loss but the Tribunal does not have jurisdiction to deal with it. Also, the Tribunal does not have jurisdiction to deal with loss of earnings of her partner for taking time off for the case management hearing in April.

20. In conclusion the only claim which succeeds relates to the unlawful deduction from wages figure in the sum of £501.50 but at the start of the proceedings the respondent acknowledged that they would pay a further £78 in relation to holiday pay.

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Employment Judge R Harper

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Date 24th September 2018

REASONS SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE