

Case Number: 2302817/2017
2302815/2017
2302813/2017
2302814/2017
2302811/2017



EMPLOYMENT TRIBUNALS

BETWEEN

Claimants

and

Respondent

Paul McCann (1)
Esther Otoo (2)
Mildred Panda-Noah (3)
Gaylord Sam Jonah (4)
Elwira Lukaszewicz (5)

Nightingale Hammerson
Trust Company

Watford

On: 9 January 2019

Employment Judge Smail

JUDGMENT ON RECONSIDERATION

The Judgment sent to the parties on 27 July 2018, awarding a redundancy payment to the Second, Third and Fourth Claimants, is confirmed.

REASONS

1. By a written application dated 9 August 2018 the Respondent applies for reconsideration of the redundancy payment awards made in favour of the Second, Third and Fourth Claimants. There is no such application in respect of the awards to the First and Fifth Claimants. Submissions were received from Counsel for the Second, Third and Fourth Claimants on 28 August 2018. Unfortunately these were not served on the Respondents until done so by the Tribunal on 12 November 2018. Submissions in reply were received on 19 November 2018. The Respondent's application and reply, on the one hand, and the Claimants' answer, on the other, are full and clear. No interest would be served by a further hearing and none has been asked for.

2. In respect of each of the awards to the Second, Third and Fourth Claimants the Respondent refines its argument to submit that those Claimants unreasonably refused the Respondent's offers of suitable employment because they refused them for reasons unrelated to the loss of employment (paragraph 6 of the submission dated 19 November 2018). That is put forward as a qualification to the passage in Bird v Stoke-on-Trent Primary Care Trust UKEAT/0074/11/DM which provides –

'The question is not whether a reasonable employee would have accepted the employer's offer, but whether that particular employee, taking into account his personal circumstances, was being reasonable in refusing the offer: did he have sound and justifiable reasons for turning down the offer?'

3. It is further submitted by the Respondent that in each of those 3 Claimants' cases, there was inadequate consideration of the job offer. Reference was made to the dictum of Pill LJ in Devon Primary Care Trust v Readman [2013] EWCA Civ 1110, where he said in respect of a Claimant who may have had aspirations to emigrate to Canada –

'Further, the relevance of emigration plans required further analysis, if they were to be found as a reason for the refusal. The tribunal declined to find expressly that the job was refused because the respondent was emigrating. The somewhat vague statement that it was 'against her desire to emigrate' was insufficient. Still further, a person's desire, if possible, to take advantage of redundancy rights does not necessarily defeat her claim. An employee may be conscious of the benefits of a redundancy payment but still give adequate consideration to a job offer'.

4. The 3 Claimants in question as a matter of fact gave plenty of thought to the job offer. I have no doubt that they gave adequate consideration to it. The question is, taking into account their personal circumstances, whether each was being reasonable in refusing the offer: did they have sound and justifiable reasons for turning down the offer? In my judgment, no qualification is appropriate to be made on that question. The reasons do not have 'to relate to loss of employment'.
5. I agree with the Claimants' submission that the relatively old reports from the ITR are unhelpful. I am to derive the test from the modern authorities.
6. I do not alter my view that each Claimant had sound and justifiable reasons, bearing in mind their personal circumstances, for refusing the job offer.
7. Ester Otoo had multiple reasons. She had pressing family obligations, to look after her brother and father. She did not want to double her commute, which was also true of bus travel. She had phobia of underground travel. These were genuine reasons. They were sound and justifiable.

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8. Mildred Panda-Noah decided she had to move out of London to reduce living costs. That was genuine. It was sound and justifiable.
9. Gaylord Sam Jonah, having been made redundant from his job at Hammerson House, decided on a career change. That was genuine. It was sound and justifiable.

Employment Judge Smail

Dated: 10 January 2019

South East Region

_____ 10 January 2019 _____

Judgment sent to the parties on
