



EMPLOYMENT TRIBUNALS

Claimant: Miss C Fogarty

Respondent: Colman Greaves Fabrications Limited

Heard at: Manchester **On:** 3 January 2019

Before: Regional Employment Judge Parkin

REPRESENTATION:

Claimant: In person

Respondent: No response presented and no representation

JUDGMENT having been sent to the parties on 8 January 2019 and written reasons having been requested, the following reasons are provided. Although the request for written reasons was not received until 1 February 2019, it is in accordance with Rules 2 and 5 of the Employment Tribunals Rules of Procedure 2013 to extend time and provide them.

REASONS

1. By a claim presented on 10 May 2018 the claimant claimed unfair dismissal, age and sex discrimination and notice and holiday pay. The Notice of Claim was sent to the respondent at the address given by the claimant: Unit 7, Bizmark House, Bower Street, Oldham, Manchester OL1 3XB. Save for a mis-spelling of the name Bismarck as “Bizmark”, that appears to be a correct business address and is now the registered office address for the respondent.

2. No response was received from the respondent and upon a referral at Rule 26 and Rule 21 stage, the Employment Judge directed that the matter should proceed

to the case management hearing which had already been listed at service but that the respondent should be notified at its then registered office, 10-12 County End Business Centre, Jackson Street, Springhead, Oldham OL4 4TZ.

3. A further copy of the Notice of Hearing for the case management hearing, listed for 14 August 2018, together with a “No Response Received” letter, was sent to the company. It appears that these were sent by email to a company email address on 1 August 2018; certainly, an immediate email reply that day was received by the Tribunal from Mr Heath Michaels, who described himself as the respondent’s General Manager, on a company email:

“Please be aware that this is the first we have heard about this claim, it appears Miss Fogarty has used an old email address...as her personal email address. Could you please send a copy of the original claim to our trading address...

As far as I am aware, our only current links with Miss Fogarty are that of criminal investigations through the report we made to the police as a result of the money she stole from the business via credit cards, pre-paid credit cards and falsifying her timesheets.”

The address Mr Michaels gave for his request was the original Unit 7, Bismarck House address (spelt correctly).

4. Accordingly, the hearing on 14 August 2018 was postponed and the Notice of Claim was re-sent to the respondent at its correct Unit 7, Bismarck House address on 30 August 2018, together with a Notice of Hearing for a new case management hearing on 25 October 2018. Again, no response was presented and no application for an extension of time to present was received. Another “No Response Received” letter was sent to the company at the correct Unit 7, Bismarck House address on 19 October 2018.

5. The respondent did not attend the case management hearing on 25 October 2018. A Rule 21 Judgment on liability only was made by the Tribunal following it, and was sent to the parties on 1 November 2018. At the same time, the Tribunal’s Case Management Order was sent out; the Order sets out the background to the claim at paragraphs 1 and 4 and 5 of the discussion and reasons and lists the remedy hearing.

6. At this remedy hearing, the claimant amplified the basis of her claims in oral evidence, representing herself. The respondent again did not attend and was not represented.

7. Further to its original narrative at paragraphs 1 and 4 of the discussion and reasons for its Order, the Tribunal found the claimant a compelling witness, detailing how she and her partner had earlier given up the business running a sunbed and beauty salon they had shared together when the claimant took up full-time employment as Office Manager with the respondent. She worked with the respondent from 14 April 2015 to 28 February 2018, remaining committed to the

business and especially to the owner, Mr Mark Standley, who in turn showed her loyalty despite his wife's allegations about her explained at paragraph 4 of the discussion and reasons. The claimant worked as Office Manager alongside Mr Standley as he built up the business of highly expert specialist plastic fabrication from 5 to 23 employees whilst she was there. After his sudden death in December 2017, Mr Standley's family tried hard to maintain the existing workforce to keep the business running despite his death and also a move of premises from Denton to Oldham. The claimant continued to show loyalty to the business despite encountering a much more difficult journey, having previously been picked up by a colleague in a work's van at her home in Denton to travel the short distance to Ashton, but then needing to take a journey involving three bus rides from Denton to Oldham to get to work.

8. The claimant amplified what she saw as the falsity of the allegations of dishonesty made by the respondent against her, explaining that within a week or so of the earlier Tribunal hearing she had been arrested by the police who were investigating an alleged credit card fraud by her. She considered that the police as well as her took the view that the respondent's claims had no substance, and she was never charged or bailed to re-appear. She understood that by the date of the remedy hearing the newer managers involved in the business, Glen Mullen and Heath Michaels, had also left, although she understood the respondent's business was continuing.

9. Whilst not signing on at the Jobcentre as unemployed, the claimant had sought fresh employment diligently by applying to other similar plastic fabricators in the first place for similar employment by written applications or personal contact to no avail. She was aware that the fact she had been branded as a thief was counting against her. Eventually she commenced better paid employment after 34 weeks being out of work not claiming benefits in late October 2018 as an Engineering Purchasing Buyer. She explained that she would have wished to work for the respondent's business until retirement as she was committed to it, but that she had been concerned at the allegations of theft, in particular when her new employers became made aware of them. Nonetheless, at the hearing she made clear that in respect of her discrimination claims she did not seek any additional award of compensation for injury to feelings beyond the standard awards such as for loss of earnings.

The Law

10. To its findings of fact, the Tribunal applied the law found in various statutory provisions. In respect of the discrimination claims, the foundation was the Equality Act 2010 in particular the definition of protected characteristics at section 4, the protected characteristics of age at section 5 and sex at section 11, read together with the direct discrimination provision at section 13 and the employee and applicants provision at section 39.

11. In respect of unfair dismissal, the law is at Part X of the Employment Rights Act 1996. In respect of the notice pay claim, at section 85 of the Employment Rights

Act 1996 together with section 3 of the Employment Tribunals Act 1996 and the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994. Finally, in respect of the holiday pay claim, the relevant law is at regulations 12, 13 and 14 of the Working Time Regulations 1998.

Conclusion

12. Having previously concluded that the respondent was liable to the claimant in the absence of presenting a response, the Tribunal considered much more fully aspects of liability as well as remedy at this hearing. It was entirely satisfied that the claimant would not have been dismissed by the respondent for instance had Mr Mark Standley continued to live or the claimant herself been a man of her same age or a considerably older woman who was not seen by Mr Standley's widow, Janice Standley, as having presented a threat. There was no evidence but that the claimant was a committed and capable Office Manager within the business.

13. Accordingly, the Tribunal moves to consideration of remedy for direct age and sex discrimination, beginning with loss of earnings for the period from the claimant's dismissal until her commencement of new employment 34 weeks later, which operated as a complete cut-off to ongoing losses.

14. In the first place, the Tribunal awards 34 weeks' loss of earnings at £330 net per week, a total of £11,220. The interest provisions provide for the addition of interest from a mid-point date between date of discrimination and date of hearing at the standard rate of 8%, which in these circumstances amounts to 155 days and an additional £381.17 interest.

15. Turning to unfair dismissal and notice pay, the Tribunal found that the claimant was unfairly dismissed by the respondent in circumstances where the respondent failed to provide a potentially fair reason for dismissal, and concluded that dismissal was not in the range of reasonable responses open to a reasonable employer in any event. The claimant was born on 25 February 1983 and had 2 continuous years' employment when aged over 22 at date of dismissal, entitling her to a basic award for unfair dismissal representing two weeks' pay at her gross pay of £380, an award of £760. In addition, whilst making no loss of earnings award since that is covered by the discrimination award, the Tribunal makes a loss of statutory rights award, again for two weeks' pay, in the sum of £760. Whilst the Tribunal finds the claimant was wrongfully dismissed in breach of contract in not being given notice or pay in lieu of notice, no additional award is made in view of the discrimination award.

16. Finally, the Tribunal dealt with the holiday pay claim whereby the claimant claimed compensation pursuant to regulation 14 for entitlement to outstanding paid annual leave as at date of termination. She satisfied the Tribunal that her outstanding leave entitlement represented 174 hours at her £10 per hour rate, a total of £1,740 gross, and the respondent is ordered to pay this further sum to the claimant.

Regional Employment Judge Parkin

12 February 2019

REASONS SENT TO THE PARTIES ON

14 February 2019

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