



THE EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondent

Ms C Wass

AND

Finest Care Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Held at: Teesside Justice Centre

On: 23 January 2018

Before: Employment Judge Johnson

Appearances

For the Claimant: Mr T Devlin, Solicitor

For the Respondent: Mr Hardeep Gill, Director

JUDGMENT ON REMEDY

- 1) The respondent is ordered to pay to the claimant compensation for unfair dismissal in the sum of £2,310.50, comprising a basic award of £138.46 and a compensatory award of £2,172.10.
- 2) The respondent is order to pay to the claimant compensation for its refusal to permit the claimant to be accompanied at a disciplinary hearing and for that person to make representations on her behalf, in the sum of £276.92.
- 3) The respondent is ordered to pay compensation to the claimant in the sum of £553.84 due to its failure to provide the claimant with a written statement of her terms and conditions of employment.

- 4) The respondent is ordered to pay compensation to the claimant for injury to feelings caused by the respondent's discrimination on the grounds of pregnancy, in the sum of £12,000.00
- 5) The total compensation ordered to be paid by the respondent to the claimant is therefore £15,141.26.

REASONS

- 1) This matter came before me this morning by way of a remedies hearing pursuant to a default judgment on liability only promulgated by Employment Judge Garnon on 4 January 2017.

By claim form presented on 24 November 2017, the claimant brought complaints of:-

- (i) automatic unfair dismissal for reasons relating to pregnancy
 - (ii) wrongful dismissal (failure to pay notice pay)
 - (iii) failure to permit her to be accompanied to a disciplinary hearing and for the person who accompanied her to be allowed to make representations on her behalf
 - (iv) failure to provide her with a written statement of terms and conditions of employment
 - (v) unlawful discriminations on the grounds of pregnancy
- 2) The respondent was named as Finest Care Limited. The claimant's normal place of work was 94 – 96 Clifton House, Clifton House, Hartlepool, County Durham, TS26 9QP. The respondents registered office address is 37 Allenby Road, Southall, Middlesex, UB1 2EY.
- 3) The claim form was served upon the respondent at the Hartlepool address, by letter dated 27 November 2017. The respondent was informed that it had until 25 December in which to submit its response. No response was ever received. The letter addressed to the respondent was not returned to the Employment Tribunal office.
- 4) On 20 December 2017, Employment Judge Garnon issued a default judgment in respect of all of the claims. That was sent to both the Hartlepool address and the respondents registered office. By covering letter dated 4 January, the respondent was informed that the remedies hearing would take place at Middlesbrough, 9.45 am on Tuesday 23 January 2018. Again, the Employment Tribunal's correspondence has not been returned to the Employment Tribunal office. I am satisfied that the Employment Tribunal's correspondence to the respondent, including the claim form and notice of hearing, were properly served upon and received by the respondent.

- 5) At 9.45 am this morning the claimant was present along with her solicitor, Mr Devlin. The hearing commenced at 9.45 am. Shortly after 10.00 am, Mr Hardeep Gill was brought into the court room by the tribunal clerk. Mr Gill identified himself as a director of the respondent company. Mr Gill informed me that the respondents had received the default judgment and notice of hearing on 5 January. He informed me that he had reported the matter to the respondent's insurers, but had taken no steps to seek permission to file a response form ET3 out of time, to apply for reconsideration of the liability judgment or to appeal against that judgment. I explained to Mr Gill that the claimant had the benefit of a regular default judgment and the purpose of today's hearing was to consider what, if any, compensation should be awarded to her pursuant to that default judgment. I explained to Mr Gill that I would be prepared to hear what he had to say about the level of compensation to be awarded to the claimant, but nothing else. Mr Gill insisted upon explaining to me on a number of occasions that the respondents had never received the claim form, or if it had then it must have been "stolen" from their office. He went on to tell me that the claimant had not been dismissed for any reason related to her pregnancy, but because of her misconduct. Mr Gill initially stated that a letter had been sent to the claimant, pointing out the reasons for her dismissal. Mr Gill subsequently insisted that the claimant had not in fact been dismissed and that the respondent was still paying her wages. I explained to Mr Gill that if he wished to challenge the judgment on liability, then he must do so in accordance with the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.
- 6) The claimant gave evidence under oath, and confirmed the contents of her witness statement and the schedule of loss attached to that statement. None of the claimant's evidence was challenged by Mr Gill.

I was satisfied from the claimant's evidence on the following matters:-

- The claimant left secure employment with another employer in order to take up employment with the respondent in March 2016.
- The claimant informed the respondent that she was pregnant in December 2016 and that her baby was due in early July 2017.
- No risk assessment was carried out in relation to the claimant's pregnancy.
- In February 2017 the claimant was suspended pending an investigation into an allegation that she had failed to treat residents "with dignity or respect". That investigation lasted over four months.
- The claimant was invited to a disciplinary hearing, which took place on 26 June 2017. At that disciplinary hearing, whilst the claimant was accompanied by her trade union representative, the trade union representative was not permitted to make any representations on the claimant's behalf. The claimant was informed at the meeting that she was being summarily dismissed for gross misconduct. The decision to dismiss the claimant had been taken before the disciplinary hearing. The claimant vehemently denied any wrongdoing.

- The respondent failed to provide the claimant with a written statement setting out the reasons for her dismissal. The claimant lodged an appeal, but that was neither acknowledged, nor was any appeal hearing convened.
 - The claimant has two young children aged 3 and 5 and gave birth to her third child in July 2017. The claimant does not have a partner or anyone else who contributes towards the household finances. The claimant ordinarily would have expected to receive statutory maternity pay during her maternity leave and then would have expected to return to the same role, on the same salary, with the respondent in or about November 2017.
 - The claimant has continued to receive statutory maternity pay via the respondent, although she does not understand why. She does believe that the respondent will reclaim any such outlay from the Government.
 - The claimant was hugely concerned, shocked and upset at the manner of her dismissal. She became extremely worried and stressed, particularly in the latter stages of her pregnancy. She was particularly concerned about family finances, as she no longer had a job to go to once her maternity leave came to an end. Because of the manner of her dismissal and the impact it had upon her, the claimant decided to undergo a fallopian tube ligation so that she could not have any more children.
 - The claimant has applied for between 20 and 30 jobs, and her most recent interview was yesterday 22 January. As yet she has not been able to obtain alternative employment.
 - The major reason for her inability to obtain work in the care sector is because she has been reported by the respondent to the Disclosure and Barring Service.
- 7) I am satisfied that the claimant suffered subjective feelings of upset, frustration, worry, anxiety, mental distress, fear, humiliation, unhappiness and stress. She has a previously unblemished record in the care sector. She now has an allegation of misconduct hanging over her. This was a discriminatory dismissal for reasons related to the claimant's pregnancy. The manner in which the investigation was dragged out and the manner in which the disciplinary hearing was conducted, contributed towards the claimant's distress. On top of that, the respondent failed to acknowledge he appeal, let alone consider it. It further aggravated the claimant's genuine sense of injustice.
- 8) Mr Devlin for the claimant submitted that this was a case that fell easily with the middle band of the new Vento guidelines, namely somewhere between £8,400.00 and £25,200.00. I invited Mr Gill to respond, but rather predictably, he simply said that he believed the case would fall within the lower band of between £800.00 and £8,400.00.

- 9) I am satisfied that this is a case which does fall within the middle band. It was a discriminatory dismissal, following a prolonged suspension, which has been found to be an unfair and discriminatory dismissal. Taking into account the fact that the claimant was pregnant throughout this period of time and taking into account all of the factors set out above, I am satisfied this is a case where compensation for injury to feelings should be assessed in the sum of £12,000.00.
- 10) The claim for unfair dismissal includes a basic award of £138.46 and the compensatory award of £1,737.63. That compensatory award is increased by 25% to reflect the respondent's failure to follow the ACAS Code of Practice. The uplift is £434.41.
- 11) I award £276.92, being two weeks pay, for the respondent's failure to permit the claimants representative to attend and make representations on her behalf at the disciplinary hearing. I award the claimant four weeks pay in the sum of £553.84 due to the respondent's failure to provide the claimant with a written statement of her terms and conditions of employment

EMPLOYMENT JUDGE JOHNSON

**JUDGMENT SIGNED BY EMPLOYMENT
JUDGE ON
25 January 2018**