



## EMPLOYMENT TRIBUNALS

**Between**

**Claimant: Ms Kelly Taylor**

**Respondent: Smarter Applications Limited**

**Heard at London South Employment Tribunal on 1 March 2019**

**Before Employment Judge Baron**

**Representation:**

**Claimant: The Claimant was present in person**

**Respondent: Jen Coyne - Counsel**

### JUDGMENT AT A PRELIMINARY HEARING

It is the judgment of the Tribunal that the claim of sex discrimination is struck out.

### REASONS

- 1 The Claimant was employed by the Respondent from 15 January to 9 May 2018 as Financial Director.<sup>1</sup> The Claimant was dismissed without notice for reasons which the Respondent says amounted to gross misconduct. On 27 June 2018 the Claimant presented a claim form ET1 to the Tribunal. In section 8.1 of the claim form she ticked the boxes to indicate that she was bringing claims of unfair dismissal, sex discrimination, for notice pay and also for 'other payments'. That latter claim relates to what was referred to as a 'bonus' during this hearing, as to which see below.
- 2 On the service of the claim form a letter was sent to the Claimant by the Tribunal on the instruction of an Employment Judge informing the Claimant that it was intended to strike out her claim of unfair dismissal because she had not had two years' continuous service. There was some confusion over the Claimant's address and the Claimant eventually wrote to the Tribunal a letter of just over three pages on 14 September 2018. In that letter she stated that it was her contention that the reason or principal

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<sup>1</sup> The Claimant described her title somewhat differently, but that is not important.

reason for the dismissal was that she had made one or more protected disclosures. In the claim form ET1 the Claimant had stated as follows:

Smarter have provided insufficient evidence of dishonesty and I believe the dismissal was for another reason, namely whistleblowing.

- 3 This hearing was listed to consider the Respondent's application to strike out the various claims on the ground that they had no reasonable prospect of success, or for a deposit order (or orders) to be made under rule 39 of the Employment Tribunals Rules of Procedure 2013 on the ground that there was little reasonable prospect of success. I explained to the Claimant the effects of a deposit order, and in particular the risk of a costs order being made against her in the event of the claim in question not succeeding at a hearing.
- 4 I will deal with each of the heads of claim in turn below, but before so doing record a point made by Miss Coyne. In the claim form the Claimant not only alleged that her dismissal was caused by whistleblowing, but also that the cause was to avoid the Respondent having to pay her a bonus. The Claimant further alleged that the dismissal was an act of direct sex discrimination as another employee accused of gross misconduct had had the benefit of a disciplinary process, including a hearing. Thus, said Miss Coyne, there were two or possibly three reasons being put forward for the dismissal.
- 5 It is the allegation of sex discrimination with which I will deal first. The Respondent was able to deduce that the employee referred to in the ET1 was M. I heard evidence from Isabella Lane, the Managing Director of the Respondent, concerning the circumstances. The background to the case of M was not disputed. What occurred was that a lady from Canada contacted the Respondent saying that she had been recruited by M, a male. The financial offer said to have been made was higher than the Respondent could pay, and further M did not have the authority to make such an offer. M denied the allegation, an investigation was held, and M was dismissed.
- 6 The various aspects of the misconduct alleged against the Claimant were set out in some detail in paragraph 3.2 of the Grounds of Resistance and do not need repeating here. The essential point is that the major allegations against the Claimant related to the disclosure to third parties by email of confidential information, and of indulging in inappropriate email conversations with her partner by email.
- 7 During this hearing the Claimant mentioned another male employee, L. She alleged that he had also been guilty of gross misconduct in that he had been drinking during working hours and had been abusive.
- 8 I conclude that the claim of sex discrimination is to be struck out as having no reasonable prospect of success. The Claimant has compared her treatment to that of two men. Section 23 of the Equality Act 2010 requires that 'there must be no material difference between the circumstances relating to each case.' It is obvious that there are material differences between the circumstances of the Claimant's case and those of her two comparators. Further, it is not sufficient for an individual to prove just a

difference in gender and a difference in treatment. There must be something else from which the Tribunal could reasonably conclude that the treatment of the employee in question was because of his/her sex.

- 9 The main part of this hearing was spent considering the unfair dismissal claim and the alleged protected disclosures. I have decided that it is appropriate to make a deposit order and that order and the reasons for it are set out in a separate document which will not be placed on the register.
- 10 I have decided also to make deposit orders in respect of the claims for notice pay and for the bonus.

**Employment Judge Baron**

**05 March 2019**