



# EMPLOYMENT TRIBUNALS

Claimant: Miss L Thomas

Respondent: (1) Refurb Group Ltd  
(2) Wayne Bryant

## RECORD OF A PRELIMINARY HEARING

Heard at: Reading Employment Tribunal On: 14 December 2018

Before: Employment Judge George (sitting alone)

Appearances:

For the claimant: In person (Mr A Lennard – fiancé – supporting)

For the respondent: Mr D Bain, solicitor

## JUDGMENT

1. The claimant was employed by the Refurb Group Ltd.
2. Refurb Group Ltd is added as the first respondent to the claim pursuant to rule 34 of the Employment Tribunal Rules of Procedure 2013.
3. The claim form is to be served upon them at their registered address of The Sanderum Centre, Oakley Road, Chinnor, Oxfordshire, England OX39 4TW.
4. Wayne Bryant shall hereafter be referred to as the second respondent.
5. All claims except those for pregnancy and maternity discrimination pursuant to s.18 and s.110 of the Equality Act 2010 are dismissed as against the second respondent.

## REASONS

1. Full reasons were given for my conclusion that the claimant was employed by the Refurb Group Ltd at the hearing and are not provided in writing unless the parties make a written request for them within 14 days of the date on which this record is sent to them.
2. In brief, the reasons were that all of the documentary evidence provided by Wayne Bryant and by the claimant was consistent with the employer being Refurb Group Ltd and not Mr Bryant personally. Mr Bryant is the managing director of Refurb Group Ltd. That documentation included the contract of employment, the claimant's payslips, the P45 which was sent to her (giving an inaccurate date of 30 September 2017 as the date of termination of employment) and a signed confidentiality agreement. The claimant was dismissed by email which on the face of it was sent by Mr Bryant on behalf of the company on 13 December 2017. It states that the reason for the dismissal is that the company had no work but the claimant alleges that the true reason was that she was pregnant.
3. In reaching my conclusion, I took into account the statement read out to me by the claimant in oral evidence upon which she was cross-examined by Mr Bain. However, all of the documentary evidence points to her being employed by the corporate entity and none points to her being employed by Mr Bryant personally.
4. The claimant then applied to add Refurb Group Ltd as a respondent. I am told that the company is not trading but is still listed at Companies House. It will be served with the claim form. Consequently, the only claim which it is possible for the claimant to proceed with against Mr Bryant personally is that for pregnancy discrimination contrary to s.18 of the Equality Act 2010 and the other claims were dismissed as against him.

## CASE MANAGEMENT SUMMARY

### Final hearing

1. All issues in the case, including remedy, will be determined at a final hearing before an Employment Judge sitting with Members at the Employment Tribunals, 30-31 Friar Street, Reading, Berks, RG1 1DX on 14 and 15 October 2018, starting at 10 am or as soon as possible afterwards. The parties and their representatives must attend by 9.30 am on that day. The time estimate for the hearing is 2 days, based on the claimant's intention to give evidence and the likelihood that the second respondent will be the first respondent's only witness.

2. The claimant(s) and the respondent(s) must inform the Tribunal as soon as possible if they think there is a significant risk of the time estimate being insufficient and/or of the case not being ready for the final hearing.

#### The claim

3. The claimant was employed by the first respondent, as a project manager/office assistant, from 29 June 2016 until dismissal with effect on 13 December 2017. By a claim form presented on 9 July 2018, following a period of early conciliation from 29 December 2017 to 16 January 2018, the claimant brought complaints of unfair dismissal, pregnancy/maternity discrimination, redundancy payment, notice pay, arrears of pay and holiday pay accrued but not taken on termination of employment. The claimant states that she told the second respondent that she was pregnant in about July 2017 (her baby was born on 19 February 2018). In the course of her employment as project manager she was required to visit sites and she complains that the respondents failed to carry out a risk assessment in relation to her as required under the reg.16 of the Management of Health & Safety at Work Regulations 1999, failed to provide her with suitable personal protective equipment and then dismissed her, ostensibly on grounds of redundancy but in reality because she was pregnant and was due to go on maternity leave. The first respondent has not yet been served with the claim and the second respondent's defence so far has been to allege that the claimant was employed by the first respondent. Therefor provision is made today for them to provide their responses to the claim as presently understood.

#### The issues

4. The issues between the parties which potentially fall to be determined by the Tribunal are as follows:

##### Time limits / limitation issues

- 4.1 Were all of the claimant's complaints presented within the time limits set out in sections 123(1)(a) & (b) of the Equality Act 2010 ("EQA") sections 23(2) to (4), 48(3)(a) & (b) and 111(2)(a) & (b) of the Employment Rights Act 1996 ("ERA")? Dealing with this issue may involve consideration of subsidiary issues including: whether there was an act and/or conduct extending over a period, and/or a series of similar acts or failures; whether it was not reasonably practicable for a complaint to be presented within the primary time limit; whether time should be extended on a "just and equitable" basis; when the treatment complained about occurred; etc.
- 4.2 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 16 April 2018 is potentially out of time, so that the tribunal may not have

jurisdiction to deal with it. The exception is the claim for a redundancy payment, for which the time limit is six months.

EQA, section 18: pregnancy & maternity discrimination

- 4.3 Did the first respondent, by the second respondent, treat the claimant unfavourably as follows:
- a. failing to carry out a risk assessment,
  - b. Failing to provide her with appropriate PPE,
  - c. dismissing her with effect from 13 December 2017?
- 4.4 Did the unfavourable treatment take place in a protected period and/or was it in implementation of a decision taken in the protected period?
- 4.5 Was any unfavourable treatment: because of the pregnancy or because she was exercising or seeking to exercise, or had exercised or sought to exercise, the right to ordinary or additional maternity leave?
- 4.6 Is the second respondent liable for any act found to have been unlawful pregnancy/maternity discrimination by reason of s.110 of the Equality Act 2010?

Unpaid annual leave – Working Time Regulations

- 4.7 When the claimant's employment came to an end, was she paid all of the compensation she was entitled to under regulation 14 of the Working Time Regulations 1998?

Unauthorised deductions

- 4.8 Did the first respondent make unauthorised deductions from the claimant's wages in accordance with ERA section 13 by
- a. Underpaying the claimant (when compared with the sums notified to her on her payslips) during the period 1 October 2017 and 13 December 2017?
  - b. Failing to account to HM Revenue & Customs for sums deducted from the claimant's wages in respect of income tax and national insurance from 1 March 2017 to 13 December 2017?

If so how much was deducted?

Breach of contract

- 4.9 To how much notice was the claimant entitled? It is not in dispute that the claimant's contractual entitlement was to 1 week notice of termination of employment.
- 4.10 Did the first respondent pay the claimant the notice pay which was due to her?

#### Other claims

- 4.11 The claimant accepts that the claim which she made for statutory maternity pay has been paid in full by the Department of Work and Pensions and that no further claim is made in these proceedings in respect of that.
- 4.12 The claimant claims to be entitled to a redundancy payment but she does not have two years' qualifying service. This claim will need to be disposed of at the full merits hearing.

#### Remedy

- 4.13 If the claimant succeeds, in whole or part, the Tribunal will be concerned with issues of remedy and in particular, if the claimant is awarded compensation and/or damages, will decide how much should be awarded. Specific remedy issues that may arise and that have not already been mentioned include:
- a. if it is possible that the claimant would still have been dismissed at some relevant stage even if there had been no discrimination, what reduction, if any, should be made to any award as a result?
  - b. would the claimant have returned to work following her maternity leave? If so at what date?
  - c. would the claimant have returned to work on the same hours as she worked prior to maternity leave?
  - d. has the claimant failed to mitigate her loss by failing to take all reasonable steps to obtain suitable alternative employment?
  - e. did the respondent unreasonably fail to comply with a relevant ACAS Code of Practice, if so, would it be just and equitable in all the circumstances to increase any award, and if so, by what percentage, up to a maximum of 25%, pursuant to section 207A of the Trade Union & Labour Relations (Consolidation) Act 1992 ("section 207A")?

#### Other matters

- 5 The attention of the parties is drawn to the Presidential Guidance on 'General Case Management', which can be found at: [www.judiciary.gov.uk/publications/employment-rules-and-legislation-practicedirections/](http://www.judiciary.gov.uk/publications/employment-rules-and-legislation-practicedirections/)
- 6 The parties are reminded of rule 92: "Where a party sends a communication to the Tribunal (except an application under rule 32) it shall send a copy to all other parties, and state that it has done so (by use of "cc" or otherwise)...". If, when writing to the tribunal, the parties don't comply with this rule, the tribunal may decide not to consider what they have written.
- 7 The parties are also reminded of their obligation under rule 2 to assist the Tribunal to further the overriding objective and in particular to co-operate generally with other parties and with the Tribunal.
- 8 If the Tribunal determines that the respondent has breached any of the claimant's rights to which the claim relates, it may decide whether there were any aggravating features to the breach and, if so, whether to impose a financial penalty and in what sum, in accordance with section 12A Employment Tribunals Act 1996.]
- 9 The following case management orders were uncontentious and effectively made by consent.

## ORDERS

Made pursuant to the Employment Tribunal Rules of Procedure

1. Amended Response
  - 1.1 The first respondent is to file and serve a response to the claim within 28 days of the day on which it is served upon it;
  - 1.2 The second respondent has leave, if so advised, to file and serve an amended response to the claim as now understood against him within 28 days of the day on which the claim is served upon the first respondent.
2. Applications
  - 2.1 The claimant's application to add the first respondent as a respondent is granted.
3. Complaints and issues
  - 3.1 The parties must inform each other and the Tribunal in writing within 14 days of the date this is sent to them, providing full details, if what is set out in the

Case Management Summary section above about the case and the issues that arise is inaccurate and/or incomplete in any important way.

4. Statement of remedy / schedule of loss

- 4.1 The claimant must provide to the respondent by 25 January 2019 a document – a “Schedule of Loss” – setting out what remedy is being sought and how much in compensation and/or damages the tribunal will be asked to award the claimant at the final hearing in relation to each of the claimant’s complaints and how the amount(s) have been calculated.
- 4.2 The claimant must provide an updated schedule of loss to the respondent no later than 28 days prior to the first day of the final hearing.
- 4.3 If any part of the claimant’s claim relates to dismissal and includes a claim for earnings lost because of dismissal, the Schedule of Loss must include the following information: whether the claimant has obtained alternative employment and if so when and what; how much money the claimant has earned since dismissal and how it was earned; full details of social security benefits received as a result of dismissal.
- 4.4 The parties are referred to: the Presidential Guidance on pension loss at [www.judiciary.gov.uk/wp-content/uploads/2013/08/presidential-guidancepension-loss-20170810.pdf](http://www.judiciary.gov.uk/wp-content/uploads/2013/08/presidential-guidancepension-loss-20170810.pdf);  
If the claimant is claiming for loss of pension, the Schedule of Loss must include information about how much is being claimed and on what basis. If the claimant’s employment was subject to auto-enrollment then the employment tribunal will need to know the amount of the employer’s contributions.

5. Documents

On or before 1 March 2019 the claimant and the respondent shall send each other copies of all documents which are relevant to any issue in the case, including the issue of remedy. These should include not only the documents which they wish to refer to at the final hearing but all documents relevant to the issues whether they support their case or support the arguments of the other parties.

6. Final hearing bundle

- 6.1 By 15 March 2019, the parties must agree which documents are going to be used at the final hearing.

6.2 The respondent must paginate and index the documents, put them into one or more files (“bundle”), and provide the claimant with a ‘hard’ and an electronic copy of the bundle by 29 March 2019. The bundle should only include documents relevant to any disputed issue in the case that won’t be in the remedy bundle referred to below and should only include the following documents:

- the Claim Form, the Response Form, any amendments to the grounds of complaint or response, any additional / further information and/or further particulars of the claim or of the response, this written record of a preliminary hearing and any other case management orders that are relevant. These must be put right at the start of the bundle, in chronological order, with all the other documents after them;
- documents that will be referred to at the final hearing and/or that the Tribunal will be asked to take into account.

In preparing the bundle the following rules must be observed:

- unless there is good reason to do so (e.g. there are different versions of one document in existence and the difference is relevant to the case or authenticity is disputed) only one copy of each document (including documents in email streams) is to be included in the bundle
- the documents in the bundle must follow a logical sequence which should normally be simple chronological order.

## 7. Remedy bundle

7.1 The claimant must prepare a paginated file of documents (“remedy bundle”) relevant to the issue of remedy and in particular how much in compensation and/or damages they should be awarded if they win their claim and provide the [respondent] with a ‘hard’ and electronic copy of it 28 days before the final hearing. The documents must be arranged in chronological or other logical order and the remedy bundle must have an up to date schedule of loss at the front of it.

## 8. Witness statements

8.1 The claimant and the respondent shall prepare full written statements containing all of the evidence they and their witnesses intend to give at the final hearing and must provide copies of their written statements to each other on or before 26 April 2019. Save as provided below, no additional witness evidence will be allowed at the final hearing without the Tribunal’s permission. The written statements must: have numbered paragraphs; be cross-referenced to the bundle(s); contain only evidence relevant to issues in the case. The claimant’s witness statement must include a statement of the amount of compensation or damages they are claiming, together with an explanation of how it has been calculated.



8.2 The claimant has leave to serve a supplementary statement to update her evidence about remedy, and in particular about her earnings in alternative employment or attempts to mitigate her loss no later than 28 days before the hearing.

9. Final hearing preparation

9.1 On the working day immediately before the first day of the final hearing (but not before that day), by 12 noon, the following parties must lodge the following with the Tribunal:

9.1.1 Four copies of the liability bundle, by the respondent ;

9.1.2 Four copies of the remedy bundle by the claimant;

9.1.3 Four hard copies of the witness statements (plus a further copy of each witness statement to be made available for inspection, if appropriate, in accordance with rule 44), by whichever party is relying on the witness statement in question.

10. Other matters

10.1 The above orders were made and explained to the parties at the preliminary hearing. All orders must be complied with even if this written record of the hearing is received after the date for compliance has passed.

10.2 Anyone affected by any of these orders may apply for it to be varied, suspended or set aside. Any further applications should be made on receipt of these orders or as soon as possible.

10.3 The parties may by agreement vary the dates specified in any order by up to 14 days without the tribunal's permission except that no variation may be agreed where that might affect the hearing date. The tribunal must be told about any agreed variation before it comes into effect.

10.4 Public access to employment tribunal decisions

All judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

10.5 Any person who without reasonable excuse fails to comply with a Tribunal Order for the disclosure of documents commits a criminal offence and is liable, if convicted in the Magistrates Court, to a fine of up to £1,000.00.

10.6 Under rule 6, if any of the above orders is not complied with, the Tribunal may take such action as it considers just which may include: (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's

participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.

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Employment Judge George

17 December 2018

Sent to the parties on:

10 January 2019

For the Tribunal:

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