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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case Number: 4104293/2018

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Held in Glasgow on 15 November 2018

Employment Judge: J D Young

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Ms Karleen Burke

Claimant
Represented by:
Mr McCusker –
Solicitor

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Bute House Limited

Respondent
Represented by:
Mr Edward –
Counsel

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that:-

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- (1) there has been non-compliance with the Order made on 10 July 2018 in terms of Rule 38 of the first Schedule of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 and the claim so far as it relates to an alleged detriment under section 47B of the Employment Rights Act 1996 is dismissed by reason of non-compliance; and

E.T. Z4 (WR)

- (2) the application made by the respondent to strike out the whole claim under Regulation 37(1)(b) of the first Schedule of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 is refused.

Note of Preliminary Hearing

- 5 1 In this case a Preliminary Hearing was heard on the application by the respondent for (a) strike out of the claim made by the claimant under s47B of the Employment Rights Act 1996 alleged to have resulted from her making protected disclosures which claim was the subject of a “Unless Order” issued by the Tribunal on 10 July 2018; and (b) an application for dismissal of the remainder of the claim under Rule 37(1)(b) of the Tribunal Rules of Procedure on the ground that the manner in which the proceedings had been conducted was “unreasonable”.
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- 2 For the reasons given at the Preliminary Hearing I considered that there had been non-compliance with the Unless Order and so the claim of detriment under section 47B of the Employment Rights Act 1996 was dismissed.
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- 3 However again for the reasons given at the hearing I did not consider that the remainder of the claim made by the claimant should be struck out and refused that application.
- 4 Thus the claimant’s claims remain as a claim of (a) dismissal by reason of making protected disclosures; (b) “ordinary” unfair dismissal and (c) a claim for unlawful deduction of wages i.e. the claimant was not paid her notice pay.
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- 5 After indicating reasons for the judgment discussion took place on future procedure. Further and better particulars were required from the claimant on her claims. There had also been discussed at the Preliminary Hearing in July production of e-mails and personnel file from the respondent.
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- 6 At the conclusion of that discussion I considered that it was appropriate to make the following orders.

Orders of the Employment Tribunal

7 The Orders of the Employment Tribunal are:-

5 (1) that by 6 December 2018 the respondent shall produce to the claimant (a) the personnel file of the claimant kept by the respondent and (b) all e-mails relating specifically to the claimant from the e-mail accounts of Julia Harland and Nigel Paul relevant to the claimant's claim that she had made protected disclosures in respect of the period between 1 January 2017 and 18 December 2017.

10 (2) that by 27 December 2018 the claimant will provide to the Tribunal and the respondent:-

(a) further and better particulars of the claimant's claim that "the respondent compromised her registration" referred to in paragraph 2 of the paper apart in her initiating ET1.

15 (b) further and better particulars of the details of the other employees of the respondents whose registration it is claimed had expired and who had not been dismissed as referred to in paragraph 4 of the paper apart to the initiating ET1.

20 (c) further and better particulars as to which families and residents made complaints about the unkempt nature of the residents in the home run by the respondent as referred to in paragraph 3 of the claimant's previous particulars.

25 (d) further and better particulars of the dates when the claimant made what she maintains were protected disclosures to the respondent; the nature of those complaints; to whom they were made; and in what manner.

(e) clarification on whether the claimant still claimed that as a student she did not require to be registered as a social service worker.

- (f) A Schedule of Loss for the claimant with appropriate vouching.

IMPORTANT INFORMATION ABOUT ORDERS

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- 1 You may make an application under Rule 29 for this Order to be varied,
suspended or set aside. Your application should set out the reason why you
say that the Order should be varied, suspended or set aside. **You must
confirm when making the application that you have copied it to the other
party(ies) and notified them that they should provide the Tribunal with
any objections to the application as soon as possible.**
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- 2 If this order is not complied with, the Tribunal may make an Order under Rule
76(2) for expenses or preparation time against the party in default.
- 3 If this order is not complied with, the Tribunal may strike out the whole or part
of the claim or response under Rule 37.
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25 **Employment Judge: JD Young**
Date of Judgment: 30 November 2018
Entered in register: 05 December 2018
and copied to parties

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