



EMPLOYMENT TRIBUNALS

Claimant: Miss K. Elliott

Respondent: K & E European Enterprises Limited (1)
Mr E. Eden (2)
Miss K. Eden (3)

Heard at: North Shields **On:** 3rd and 4th April 2018

Before: Employment Judge Johnson

Representation

Claimant: Mr Barker, Solicitor

Respondent: No attendance

JUDGMENT

1. By Judgment promulgated on the 17 April 2018 following a Hearing which took place on the 03 April 2018, the Employment Tribunal ordered the first Respondent to pay to the Claimant the sum of £108.47 for unpaid notice pay and ordered all three Respondents jointly and severally to pay compensation to the Claimant for unlawful discrimination on the grounds of sex, maternity and pregnancy in the sum of £2,603.28 for lost earnings and £14,000.00 for injury to feelings.
2. By letter dated the 17 April 2018 the third Respondent asked for “written responses from the Tribunal”. It is now understood that the third Respondent seeks written reasons for the Judgment promulgated on the 17 April. These are those written reasons.

WRITTEN REASONS

1. By Claim Form presented on the 13 September 2017, the Claimant brought complaints of unlawful discrimination on the grounds of pregnancy, maternity and sex. She also alleged that she was owed notice pay. The Claim was brought against three Respondents, namely K & E European Enterprises Limited, Eddie Eden and Karen Eden. The second and third Respondents were alleged to be Directors of the first Respondent.

2. The claim form was served by letter dated 20 September 2017. By letter dated the 03 October 2017, the second Respondent confirmed receipt of the claim form and sought an extension of time to file the response. By letter dated the 18 October, the second Respondent informed the Employment Tribunal, “the Directors will not attend the Court as the company has now been dissolved”.
3. The claim against the second and third Respondents had originally been rejected by the Employment Tribunal as they had not been named on the ACAS early conciliation certificate. However, by Order made on the 15 November 2017, the Tribunal ordered that the second and third Respondents be joined into the proceedings and that both be served with the claim form. That was done and on the 27 November the Tribunal received a response form completed by Miss Karen Eden stating that she intended to defend the claim. A similar response form was received from Mr Eddie Eden.
4. A Preliminary Hearing took place on the 11 January, the purpose of which was to identify the claims brought by the Claimant, the issues arising from those claims and to make such Case Management Orders as were appropriate to ensure that the case was fully prepared for the final hearing. No one attended on behalf of any of the Respondents. The case was then listed for final hearing on Tuesday and Wednesday 03 and 04 April 2018.
5. Thereafter, the second Respondent embarked upon a course of inflammatory correspondence with the Tribunal and the Claimant’s representative, alleging that the Claimant was lying and that the Employment Tribunal process was itself “corrupt”. The second Respondent stated that the first Respondent had been dissolved and that he and the third Respondent were likely to be declared bankrupt. The Respondents failed to comply with the Case Management Orders made at the preliminary hearing on the 11 January. The correspondence from the first Respondent constantly refers to “we”, which the Tribunal accepted as being on behalf of himself and the third Respondent.
6. By letter dated the 29 March 2018 the second Respondent said in an email to the Employment Tribunal;

“As we are no longer in the Country and the Court is being challenged under the European Court of Human Rights to a fair Trial, we are not attending and any decision taken by this Court will be unjust and biased as per previous email.”
7. The matter came on for final hearing on the 03 April. The Claimant attended along with her witness Georgia Kliment-Temple. The Claimant was represented by Mr Barker, Solicitor. No one attended for or on behalf of the first Respondent. Neither the second or third Respondents attended. The Tribunal was satisfied that all Respondents had been served with the Notice of Hearing and were fully aware of the Hearing date.
8. The Tribunal heard evidence from the Claimant and Miss Kliment-Temple. The Claimant confirmed that she was employed by the first Respondent as

a member of its Bar Staff at the Queens Head public house near Gilesgate in Durham. Her partner Jason was also employed at the Queens Head as a Chef. The Claimant worked approximately 13 hours each week.

9. In May 2017 the Claimant informed the second and third Respondents that she was pregnant and would need some time off to attend hospital appointments. Within a few days of the Claimant making that request, her partner Jason was dismissed on the basis that the Respondents had insufficient hours work for him. The Claimant continued working until she was signed off work due to illness for two weeks on the 28 June 2017. On the 29 June 2017 she received a text from the second Respondent stating that she would not be offered any further or permanent employment. She later received a letter dated the same date informing her that she had been dismissed. She had received no prior warnings or details of any disciplinary hearing. On the 06 July, the Claimant appealed against her dismissal, stating that she believed her dismissal was due to her pregnancy. Thereafter, the Claimant received a series of texts from the second and third Respondents stating that they intended to take legal action against her. A County Court claim was issued in the name of the first Respondent on the 26 July 2017, alleging that the Claimant had given away stock and fraudulently claimed extra wages for time she had never worked. That claim was issued in the name of the first Respondent and the Claimant believes it could only have been issued at the instigation of both the second and third Respondents. The Tribunal accepted the Claimant`s evidence in this regard.
10. The Claimant confirmed in evidence to the Tribunal that she had never stolen anything from the Respondents throughout the course of her employment or following her dismissal.
11. Thereafter, the Claimant was accused of intimidating witnesses, failing to comply with Police warnings and generally being aggressive towards the second and third Respondents. The Claimant`s evidence for the Tribunal was that she never exhibited any of that behaviour and had not contacted any of her former colleagues in relation to her dispute with the Respondents. The Tribunal accepted the Claimant`s evidence that the letter sent to her could only have been instigated by the second and third Respondents.
12. Miss Kliment-Temple confirmed in her evidence that once the Claimant announced she was pregnant, she was instructed by the third Respondent to draft a rota for the bar staff, so that the Claimant`s hours would be reduced so that she could not claim to be entitled to maternity pay. Miss Kliment-Temple confirmed that she had been told by the third Respondent not to tell the Claimant why her hours were being reduced. Miss Kliment-Temple`s evidence was that she became aware that the second and third Respondents were considering giving a warning to the Claimant with a view to progressing it to a disciplinary dismissal. Miss Kliment-Temple confirmed that she received a text from the third Respondent which stated, "sorted Kailey, gave her a warning". After the Claimant was dismissed, Miss Kliment-Temple received a text from the third Respondent stating that the second Respondent had "messed it all up" by dismissing the Claimant by text after losing his temper.

13. As none of the evidence from the Claimant or Miss Kliment-Temple was challenged by the Respondent, the Tribunal accepted the evidence of the Claimant and Miss Kliment-Temple as being honest and truthful.
14. The Tribunal found that the Claimant was dismissed without notice by the first Respondent and ordered the first Respondent to pay to the Claimant compensation for the breach of contract (unpaid notice) in the sum of £108.47.
15. The Tribunal accepted the Claimant's evidence that she would ordinarily have continued to work for the first Respondent until she began her maternity leave. The Tribunal found that the reason for the Claimant's dismissal was related to her pregnancy and maternity and was thus an act of discrimination on the grounds of pregnancy/maternity. The Tribunal found that the Claimant had lost income in the total sum of £2,603.28. The Tribunal found that the acts of discrimination were committed jointly and severally by all three Respondents.
16. The Claimant further alleged that she had suffered injury to feelings due to the manner in which she had been treated after she announced that she was pregnant and also after she was dismissed. The Tribunal accepted the Claimant's evidence that the Respondents had embarked upon a course of conduct which included false and malicious allegations about the Claimant's behavior, which was designed to intimidate her to withdraw her claims before the Employment Tribunal. The Tribunal accepted the Claimant's evidence that she was genuinely distressed, worried and frightened by the Respondents' behaviour and particularly so because it took place during a period of time when she was expecting a child. The Tribunal assessed the claim for damages for injury to feelings in the lower portion of the middle band in accordance with *Vendo -v- Chief Constable of West Yorkshire Police* and assessed compensation in that regard in the sum of £14,000.00. The Tribunal found the Respondents to be jointly and severally liable for that compensation.

Employment Judge Johnson

15 August 2018
Date