



EMPLOYMENT TRIBUNALS

Claimant: Mrs Wendy Smith

Respondent: Olive Tree Day Nursery Ltd

Heard at: Leeds (in private) **On:** 30 May 2019

Before: Employment Judge R S Drake (sitting alone)

Appearances

For the Claimant: In Person

For the Respondent: Mr J Peel (Consultant)

JUDGEMENT

BY CONSENT

- (1) The Claimant was unfairly dismissed in that she had not being warned about potential dismissal but was dismissed on grounds of redundancy. If she had been warned, she would still have been dismissed in any event on the same date i.e. 24 December 2018 and thus suffered no loss as a result of her dismissal being unfair. Any remedy is subsumed within the finding of damages for breach of contract.
- (2) The Claimant is entitled to a Redundancy Payment which in her case is calculated on the basis of her being aged 48 at the date of dismissal, had 5 years continuous service and was paid the sum of £236.54 gross per week and thus her entitlement is 5 x 1.5 weeks gross pay of £236.54 which equals the sum of £1,774.05.
- (3) The Claimant is not entitled to a statement of reasons for dismissal having received such a statement in April 2019.
- (4) The Claimant is was entitled to but did not receive 5 weeks' notice given 5 years continuous service and she was not paid in lieu. Thus she is entitled to and the Respondents shall pay to her damages for breach of contract in the sum of 5 weeks net pay and thus the sum of £1,129.35.
- (5) The Claimant is entitled to 2.5 days holiday pay for holiday not taken as at the date notice would have expired if given and thus, she is entitled to and the Respondents shall pay to her the sum of £236.54.

- (6) The Claimant's complaint of disability discrimination is dismissed upon her withdrawal of the same.

Notes and Findings

- (7) I noted that today's hearing was originally listed as a Case Management Discussion designed to identify the issues claimed, analyse them and then promulgate Directions to enable the matter to be listed for full trial of the merits.
- (8) However, after detailed discussion with the parties in seeking to isolate the issues, it became apparent that certain claims could remain but others had no prospect of success to the extent that the parties were able to agree terms of Orders and Declarations which thus dispose of the entirety of all heads of claim in these proceedings.
- (9) I find that the Respondents engaged the Claimant on part time basis in May 2013 but her employment matured to full time in April 2014 and that it ended with summary termination on 24 December 2018. Thus, she had been employed 5 continuous years as at the effective date of termination of her employment which was the date of the dismissal letter and the date it was received being the same date.
- (10) On her own admission and concession, the Claimant accepts she was not subjected to any detriment nor dismissed because of alleged disability (which the Respondent contests in any event) but that the reason for dismissal was redundancy. It is common ground that she was not paid in lieu or required to work notice and nor was she paid a Redundancy payment. She had accrued 20.5 days Holiday (annual entitlement being 28 days) but taken only 18.5 at the date of dismissal and would have been entitled to 2.5 days more as at expiry of the notice she should have received.
- (11) Therefore by consent I made the declarations listed in paragraphs 1,2,3 and 6 above and Judgments in paragraphs 4 and 5 also as above.

Employment Judge R S Drake

Date: 14 June 2019