



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Ms R Jain

v

BTL Network Ltd

Heard at: Watford

On: 30 May 2019

Before: Employment Judge Smail

Appearances

For the Claimant: In person

For the Respondent: Shahed Uddin

JUDGMENT

1. The claims for unfair dismissal, sexual orientation and sex discrimination and a redundancy payment are dismissed upon withdrawal.
2. The Claimant's claim of unauthorised deductions is well founded. The Claimant is owed net salary in the amount of £1,757.50 and unpaid expenses in the amount of £815.70.
3. The Claimant's claim for holiday pay is well founded, three days holiday at £92.50 per day, makes £277.50.
4. The Respondent must pay the total amount of £2,850.70 within **14 days**.

REASONS

1. A claim was issued on 2 July 2018. The Claimant had worked for the Respondent between 8 May 2018 and 29 June 2018. She was the Business Development Manager. She had been introduced to the Director of the Respondent, Mr Shahed Uddin through a mutual friend. The employment relationship ended unhappily. It is plain to me that both parties had lost trust in one another. I will come back to the circumstances of that.

2. In terms of the proceedings, the Claimant made some very substantial claims. She claimed unfair dismissal, she claimed discrimination on the basis of sexual orientation, and on the basis of sex. She claimed a redundancy payment, she claimed notice pay, holiday pay, arrears of pay. On analysis the claim is actually for unpaid expenses, unpaid salary, a weeks' notice and holiday pay. She did not have the length of service to claim unfair dismissal. She did not have the length of service for a redundancy payment. There is no suggestion of there actually being a discrimination claim whatsoever. So, her claim form was unrepresentative of what was, in truth, in dispute. The address given for the Respondent was its' registered address.
3. The Respondent has not put in a response and therefore this hearing was designed to draw the matter to a close. I have allowed Mr Uddin to participate fully in the hearing because it is his company that is liable for any remedy. Neither party had any documents with them ready for the tribunal. Mr Uddin did have some documents which we could photocopy. The Claimant had documents on her phone which had been e-mailed into the tribunal and then printed out. I am pleased that I did obtain all the documents. It is very clear to me what has happened in this case.
4. I have seen the contract between the Claimant and the Respondent, and there was a contract. Mr Uddin tells me this is the first employee he has had, he has relied upon a 'self-employed' sales force up until now. The company places electronic point of sale devices in shops, in particular, credit and debit card readers. They make representations to customers as to how quickly their money will hit their accounts. The Claimant tells me there is a next day representation. In any event, the contract records that the Claimant will begin on 8 May 2018, her job title is Business Development Manager, she is on a six month probationary period from the start date, 35 hours per week, remuneration is £28,000 per annum payable monthly in arrears by credit transfer. It then says this "minimum required target is nine sales per month, priced as below". The products are described as desktop terminals, portable terminals, GPRS, PCIDSS, fee and analytics fee are prescribed and the contract term for these goods is designed to be 48 months.
5. So the Claimant was to achieve nine sales per month as a target. It is a cold calling business, that's the sales mechanism. I accept from Mr Uddin that the expectation is that something like 30 cold calls a day are made, that is something like 600 cold calls in a month and the target is nine sales, so on any view a low conversion rate was expected under this contract. Mr Uddin said his more experienced sales people do better than that. That maybe but the conversion rate under this contract was targeted at a very low conversion rate. So it is plainly understood by this model of sales that there will be a lot of unsuccessful calls. It seems that in her first month of May, the Claimant achieved something like three and in her second month she did a few more. She did not hit the target in either her first or second month and recriminations between the parties ensued.

6. The Claimant had some dealings with customers in Stratford Village on 29 June 2018. Each of the customers e-mailed in at a similar time in similar terms complaining about what had happened to one of their colleagues in Stratford Village. 'Ribs Kitchen' complained that it had taken 10 days for a payment to hit their account. It was presented to the Claimant that the company was untrustworthy and it seems that the Claimant agreed that because she herself had not been paid. It is absolutely crystal clear that by 29 June, the relationship had lost all mutual trust and confidence. I put it to the Claimant that perhaps she should have resigned by then. She did not really disagree with that.
7. That said, I am satisfied on the balance of probability that the Claimant has done work for the Respondent. I asked Mr Uddin what his position today was and his position was that he did not believe that she had done work in May or June, and certainly not in June, sufficient for him to be able to pay her. He is in a difficult position with that argument, Mr Uddin, because the contract was terminated when it was, it seems by mutual agreement, and certainly Mr Uddin wanted to terminate the agreement having received those e-mails from the customers. The Claimant did not object to that course. She indicated she was going to resign anyway, so plainly, at the end of June, it was unhappy.
8. But I am satisfied on the balance of probability that until that time, the Claimant had done work for the Respondent in June and I have to interpret how the contract works. Plainly, once it is terminated then there is no obligation to pay further. I accept that in this case, the Claimant was not entitled to notice because it seems to me likely that she was involved in the e-mails from the three customers and plainly at that point there was an irretrievable breakdown in the relationship. She could not in conscious claim to be paid after 29 June. She was on the balance of probability in repudiatory breach of contract, by being involved in those e-mails as she was. Mr Uddin, in effect, accepted that breach and sought the termination of the agreement, which the Claimant accepted also.
9. There is an explanation from the Claimant. She says she was not paid her expenses on time, she was not paid fully for May, the merchandise was being delivered late, the customers were complaining, and certainly in the case of Ribs Kitchen, there was a significant delay between the card payments of the customers and the money going into its account. She says she lost faith in the Respondent. As I say, by the end of this relationship, there was a mutual understanding that the relationship could not continue. However, although I find she is not entitled to a notice payment, she is entitled to be paid up until 29 June 2018. She is also entitled to her expenses. She did do work for the Respondent until then.
10. The Respondent has not issued a counter-claim in the Employment Tribunal, claiming for breach of contract, whereby it can set-off any amounts against the Claimant's salary.

11. Turning then to the calculation of the amount, I approach it on the basis of net payment, net pay per month is £1,850. I accept the claim for unpaid expenses as £815.70. On analysis the Claimant received a net salary for May, she did not receive any salary for June. The net salary I find is due is £1,757.50. She received no holiday pay, three days had accrued, three days at £92.50 per day is £277.50. The total payable is £2,850.70 and that must be paid within 14 days. By reason of the withdrawal of the other claims, this ends the proceedings before the Employment Tribunal.

Employment Judge Smail

Date: ...05.07.19.....

Sent to the parties on:12.07.19.....

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For the Tribunal Office