



EMPLOYMENT TRIBUNALS

Claimant: Mrs N Lax

Respondent: Proactiv Card Ltd

RECORD OF A PRELIMINARY HEARING

Heard at: in private; **On:** 25 September 2019

Before: Employment Judge Rostant (sitting alone)

Appearances

For the claimant: Mrs K Swift (sister-in-law)

For the respondent: No appearance or attendance

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, Sheffield on 4 November, starting at 10 am or as soon as possible afterwards.

The claim

- (2) The claimant was employed by the respondent, from 22 May 2018 until her resignation on 17 January 2019. By a claim form presented on 2 May 2019, following a period of early conciliation from 2 to 28 February, the claimant brought complaints of sex discrimination, failure to pay accrued holiday pay and unauthorised deduction from wages.

The issues

- (3) The issues between the parties which potentially fall to be determined by the Tribunal are as follows:

EQA, section 13: direct discrimination because of sex-pursued as an alternative to the harassment claim set out below

- (i) Has the respondent subjected the claimant to the following treatment:
 - a. Those matters set out in the bullet points in the claim form
- (ii) Was that treatment “*less favourable treatment*”, i.e. did the respondent treat the claimant as alleged less favourably than it treated or would have treated others (“comparators”) in not materially different circumstances? The claimant relies on a hypothetical comparators namely a man of her age and position in the company hypothetical comparators.
- (iii) If so, was this because of the claimant’s sex?

EQA, section 26: harassment related to sex.

- (iv) Did the respondent engage in conduct as follows:
 - a. That conduct described in the bullet points of the claim form?
- (v) If so was that conduct unwanted?
- (vi) If so, did it relate to the protected characteristic of sex?
- (vii) Did the conduct have the purpose or (taking into account the claimant’s perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) the effect of violating the claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

Unpaid annual leave – Working Time Regulations

- (viii) When the claimant’s employment came to an end, was s/he paid all of the compensation s/he was entitled to under regulation 14 of the Working Time Regulations 1998?

Unauthorised deductions

- (ix) Did the respondent make unauthorised deductions from the claimant’s wages in accordance with ERA section 13 by paying the claimant at minimum wage rate for her final 11 days of employment as opposed to her contractual rate of £19,000p.a?

Other matters

- (4)** The following case management orders were made

ORDERS

Made pursuant to the Employment Tribunal Rules of Procedure

1. Statement of remedy / schedule of loss

- 1.1 The claimant must provide to the respondent by 14 October 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 amounts have been calculated.
- 1.2 If any part of the claimant’s claim relates to dismissal or resignation caused by discrimination 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.

2. Final hearing file

- 2.1 By 14 October, the claimant must decide which documents are going to be used at the final hearing. The claimant must paginate and index the documents, put them into one or more files (“file”), and provide the respondent with a copy of the by the same date. The file should only include documents relevant to any disputed issue in the case 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 file, 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.
 - The file should include the schedule of loss.

In preparing the file, 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 file
- the documents in the file must follow a logical sequence which should normally be simple chronological order.

3. Witness statements

- 3.1 The claimant shall prepare a full written statement containing all of the evidence she intends to give at the final hearing. If she intends to rely on evidence from others then they too must prepare statements even if they do not intend to attend the hearing. The claimant must provide the respondent with a copies of all statements on or before 28 October. The written statements must: have numbered paragraphs; be cross-referenced to the file; 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.

4. Final hearing preparation

- 4.1 By not later than 9:30 on the day of the hearing, the claimant must lodge the following with the Tribunal:
- 4.1.1 Four copies of the file;
 - 4.1.2 Four 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;

5. Other matters

- 5.1 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.
- 5.2 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.
- 5.3 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.
- 5.4 **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 shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.
- 5.5 **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.**

- 5.6 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.**

Employment Judge ROSTANT

Dated: 25 September 2019.