



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4103660/2019

Held in Glasgow on 3 July 2019

Employment Judge: Rory McPherson

Miss Brooke Shanks

**Claimant
In Person**

Heat Source Solutions Ltd

**Respondent
No appearance and
No representation**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that:

- (1) the respondent is ordered to pay damages in breach of contract to the claimant in the sum of **Two Thousand and Two Pounds and Fifty Pence (£2,002.50)**; and
- (2) the respondent is ordered to pay the claimant the award for injury to feelings in respect of age discrimination in the sum of **One Thousand Pounds (£1,000.00)**; and
- (3) both those sums are payable immediately to the claimant.

REASONS

Introduction

Preliminary Procedure

1. This claimant brought a complaint for age discrimination and breach of contract in respect that the respondent had failed to pay outstanding wages, not made

employer pension contributions and further had failed to pay outstanding holiday entitlement. The respondent had not submitted an ET3, and their participation at the Final Hearing would only have been to the extent permitted by the Judge who heard the case. The ET1 and notice of this hearing had been issued to the correct address for the respondents and, in particular, to their registered address. The respondent did not appear and was not represented. The respondent had not sent any communication to the Tribunal regarding this claim.

2. The claimant who was accompanied by her mother the claimant represented herself in this Final Hearing.

Evidence

3. The Tribunal heard evidence from the claimant.

Findings in fact

4. The claimant was employed by the respondent from 26 February 2018 to 9 February 2019 as the Design Technician at the respondent's premises which was operated by the respondent under the name Clerwood Kitchens and Bathrooms (the "Clerwood showroom").
5. The respondent Heat Source Solutions Ltd operates from and have their registered office at Unit 2, Inchcross Business Park, Whitburn Road Bathgate EH48 2HR.
6. The claimant had been appointed by the respondent as the sole individual with responsibility for the operation of the respondent's Clerwood showroom, including all aspects of managerial responsibility and customer sales.
7. The respondent issued no written terms and conditions in relation to the claimant's employment. The claimant had not been given any documentation from which she was able to have formally identified the correct legal designation of the respondent in the ET1. In those circumstances the claimant identified the respondent as Heatsource Solutions Bathgate, Unit 2, Inchcross Business Park, Whitburn Road Bathgate EH48 2HR, being in effect the trading name of the respondent.

8. The respondent failed to offer a pension scheme or otherwise make employer pension contributions throughout the period of the claimant's employment.
9. Throughout the period of the claimant's employment the claimant was not issued with any wage slips.
10. The respondent's managing director had undertaken verbally that the claimant would be paid on the last Friday of each calendar month and that she would be the sole person in charge of the premises.
11. Throughout the period the claimant's employment, and despite the verbal promise, the respondent failed to ensure the claimant was paid on the last Friday of each month. In particular, the respondent was late in making the monthly payments; for March 2018 which payment was due Friday 30 March and was not received till Tuesday 3 April 2019 2018; for May 2018 which payment was due Friday 25 May and was not received till Saturday 1 June 2018; for October 2018 which payment was due by Friday 26 October 2018 and was not received till Wednesday 31 October; for January 2019 which payment was due Friday 25 January 2019 and was not received till 31 January 2019 and February 2019 in respect of which month no payment has been made.
12. Until December 2018 the respondent had given no feedback, positive or negative, to the claimant regarding her operation of the Clerwood showroom.
13. In early December 2018, the claimant's Line Manager advised that the respondents were recruiting a Showroom Supervisor to be based at the Clerwood showroom to operate a bridge between the claimant and the respondent that person would take on managerial roles in respect of the showroom. The reason, given to the claimant for this change, was that the claimant was "*only 21*" and the job "*was too much responsibility*" for someone of the claimant's age.
14. The claimant was upset by this statement, which the claimant regarded as being age discriminatory. Having reflected on the statement and the delays in payment being made the claimant felt that she had no option than to look for alternate job opportunities.

15. Having secured an alternate post the claimant advised the respondent that she was resigning with immediate effect on 9 February 2019. The respondent accepted the resignation.
16. The claimant was not paid outstanding pay for that part of the month of February 2019. The respondent's holiday year is January to December and as at the date of resignation the claimant had accrued 3 days holiday, for which she has not been paid.

Submission

17. The claimant provided oral submissions, seeking payment against the respondent for breach of contract and injury to feelings in relation to the respondent's act of age discrimination which resulted in the claimant resigning.

Relevant Law and Decision

Designation of the respondent

18. I am satisfied that there was a minor error in the designation of the respondent as Heatsource Solutions Bathgate, operating from Unit 2, Inchcross Business Park, Bathgate EH48 2HR. The correct designation of the respondent is Heat Source Solutions Ltd which has its registered office at Unit 2, Inchcross Business Park, Bathgate EH48 2HR. In particular I consider that this was a minor error falling within rule 12(2A) and 34 of the 2013 Rules and that Heat Source Solutions Ltd should be substituted as the correct respondent. I am satisfied that that ET1 and other relevant communication from the Tribunal was sent to the registered address of Heat Source Solutions Ltd and it is in the interests of justice that the designation of the respondent be corrected to identify the correct respondent.

Relevant Law

Provision of Terms and Conditions and Provision of Itemised Pay Statement.

19. In terms of s1 of ERA 1996 each employee is entitled to receive from his employer not later than two months after the beginning of the employee's employment, a written statement of the major terms upon which he is employed.

The Employment Act 2002 (EA 2002) provides at s38 that where the matter is before the Tribunal, it is required to increase an award by at least 2 weeks' pay and the Tribunal may if it is just and equitable increase that award to 4 weeks' pay.

20. Section 8(1) of ERA 1996 provides that:

(1) [A worker] has the right to be given by his employer, at or before the time at which any payment of wages or salary is made to him, a written itemised pay statement.

21. There is however no provision for any award or uplift in respect of a failure to provide the required itemised pay statements at or before the time at which any payment of wages or salary is made. The role of the Tribunal would have been restricted, in terms of s11 of ERA 1996 to ascertaining what information ought to have been included.

Discussion and Decision

Provision of Terms and Conditions and Provision of Itemised Pay Statement.

22. The respondents had not complied with their obligations to provide written terms and condition under s11 of ERA 1996 to provide itemised pay statements at least through 2018. There is, however, no provision for any compensation payment for such failure.

Discussion and Decision

Provision of terms and conditions

23. The claimant was not provided with written statement of the terms of her employment. The present statutory basis for such written terms is provided in the ERA 1996. The claimant would be entitled to 2 weeks' pay. However, and in all the circumstances it is considered just and equitable to increase that to 4 weeks' pay being **£1,246.00**

Relevant Law & Discussion and Decision

Unlawful deduction of wages contributions.

24. In terms of s23 of the Employment Rights Act 1996 an employee may bring a claim that an employer has made unlawful deductions of wages.
25. The claimant is entitled to her outstanding pay which amounts to 7 days being **£311.50**

Relevant Law & Discussion and Decision

Failure to offer a pension scheme and or made the required contributions.

26. In terms of section 3 of the Pensions Act 2008, since April 2017 the respondent were required, unless an employee elected to opt out, to make minimum statutory contribution by the employer equivalent to 1% of the claimants earning until 6 April 2018 to 5 April 2019 when the required contribution would have increased to 2% and thereafter until the date of termination the required contribution would have amounted to 3%. The failure to make those payments amounted to a breach of contract which was continuing as at the date of termination of employment and falls within the meaning of Reg 3 and 4 of the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994 SI 1994/1624.
27. The claimant is entitled to payment for breach of contract reflecting the respondent's failure to make the required pension contributions and is calculated reference to the 4th edition (August 2017) of the Principles for Compensating Pension Loss is calculated at (£311.50 x 0.02 x 50 weeks) **£311.50.**

Holiday Pay

28. The claimant is entitled to holiday pay accrued in terms of the reg 30 of the Working Time Regulations 1998. The claimant is entitled to accrued holiday pay equating to 3 days untaken accrued holidays equating to **£133.50.**

Conclusion in respect of breach of Contract.

29. The claimant is entitled to be paid the cumulative sums in relation to the elements of breach of contract as set out above (£133.50, £311.50, £311.50 and £1,246.00) the **2,002.50**; and

Age Discrimination

Injury to Feelings

30. I am satisfied that the claimant's claim for discrimination on grounds of age in terms of s13 of the Equality Act should succeed. The respondent treated the claimant by advising her, without any previous efforts to offer feedback, that her role was to be in effect demoted by the introduction of a more senior member of staff and the reason for the treatment was less favourable treatment than the respondent would have applied to a comparable member of staff who was older than the claimant. The respondent's treatment was because of the claimant's protected characteristic, being her age, there was no evidence that the respondent's treatment was a proportionate means of achieving a legitimate aim.

31. The claimant is entitled to compensation for injury to feelings, and having regard to *Vento v Chief Constable of West Yorkshire Police (no2)* [203] IRLR 102 (**Vento**) and subsequent Presidential guidance: Employment Tribunal Awards for Injury to Feelings as updated I consider that an award of **£1,000.00** is appropriate.

Conclusion

32. The claimant is awarded the sums set out above.

Employment Judge: Rory McPherson
Date of Judgment: 10 July 2019
Date sent to parties: 15 July 2019