



EMPLOYMENT TRIBUNALS

Claimant: Ms S Howe

Respondent: Mr Keith Bellis and Mrs Gaye Bellis
(t/a Hawarden Post Office)

Heard at: Llandudno **On:** 14 November 2019

Before: Employment Judge S Jenkins (sitting alone)

Representation:

Claimant: Mr A Roberts (Employment Law Consultant)

Respondent: Mrs C Parkinson (Solicitor)

JUDGMENT having been sent to the parties on 17 November 2019 and reasons having been requested by the Claimant in accordance with Rule 62(3) of the Rules of Procedure 2013:

REASONS

Background

1. The hearing was to consider the Respondent's application to strike out the Claimant's claim of sex discrimination claim or, alternatively, for a deposit to be ordered as a condition of the Claimant continuing with that claim.
2. The background to the application was that the Claimant was employed by the Respondent as a Shop Assistant in a shop connected to a Post Office for a number of years up to her dismissal in April 2018. That dismissal arose following financial difficulties experienced by the Respondent, specifically within the Post Office, which led to the Respondent effectively giving up the Post Office work and focusing on the neighbouring shop. The Claimant was dismissed, ostensibly by reason of redundancy, at that time, in circumstances

where her duties, or at least some of them, were taken on by one of the co-owners and co-partners of the Respondent, Mr Bellis.

Factual background

3. As the hearing was a preliminary one, I did not hear evidence and drew my conclusions from the parties' submissions. However, there seemed to be very little dispute on the facts.
4. The Respondent accepted that the Claimant's dismissal was procedurally unfair, but contended that it was substantively fair, as there was a genuine reason for the dismissal, i.e. redundancy, and that dismissal for that reason was fair. It was nevertheless clear that the Claimant was dismissed, and that Mr Bellis did take over at least part of the Claimant's duties, and also the duties of another male student employee who had worked at weekends.
5. There was an indication that there would be evidence that a new employee started some time after the Claimant's dismissal. The Respondent apparently will contend that that new employee was only engaged very occasionally for short periods of cover, whereas the Claimant will say that the employee's engagement was more regular. However, that employee, regardless of how long or regularly she subsequently worked for the Respondent, was female and therefore her engagement had no bearing on the Claimant's contention that the act of dismissal of her was an act of sex discrimination.
6. In that regard, the Claimant's case was that the Respondent, in the form of Mr Bellis, decided, in light of the financial difficulties the business was facing, that Mr Bellis would take over the Claimant's role without considering any alternative and that, as he was male and the Claimant was female, that amounted to sex discrimination.

Issues and Law

7. Sex discrimination claims are predicated on there being the need to establish less favourable treatment of a claimant than a comparator of the opposite sex. I was also conscious that Section 136 of the Equality Act 2010 required me to consider, in the context of the burden of proof, whether there were prima facie facts from which, in the absence of an untainted explanation from the Respondent, an inference can be drawn of sex discrimination. This is sometimes viewed as assessing the "reason why" the treatment occurred.
8. The application to strike out the Claimant's sex discrimination claim was made under Rule 37(1) of the Employment Tribunals Rules of Procedure on the basis that it had no reasonable prospect of success. I noted the guidance in respect of that provided by the case law, particularly the case of Anyanwu

-v- London Southbank Students Union and others [2000] ICR 221, that strike outs of discrimination claims should only occur in the most obvious and plainest of cases. I also noted however, the direction provided by the Employment Appeal Tribunal, in the case of Community Law Clinic Solicitors Limited -v- Methuen (UKEAT/0024/11), that there is a need in discrimination cases for there to be more than the mere fact of the difference in the protected characteristic between the claimant and the comparator.

Conclusions

9. In this particular case I was satisfied that the reason for the Claimant's treatment, the "reason why", was the financial difficulties of the Respondent and its need to make financial savings. There was some dispute, as I have mentioned, regarding the later appointment of a female employee, but I did not see that that assisted the Claimant's case that her dismissal was an act of sex discrimination because that later recruit was female. It was also noteworthy that, at the same time that the Claimant was dismissed, a male employee, albeit one only working weekends, was dismissed. It seemed to me therefore that, in the financial circumstances experienced by the Respondents, it was an obvious, and certainly not an unreasonable, step for the owner to step in and work for no direct payment, presumably in the hope that there would be reward via increased profits of the business.
10. In my view the Claimant's claim of sex discrimination did not get beyond the fact that she was a woman being dismissed in circumstances where her duties were taken over by a man. However there appeared to me to be a clear rationale as to why those duties were taken over by one of the Respondents, who just so happened to be a man. There was nothing to suggest that, had the Claimant been male, she would have been treated any differently, and there was no comparable less favourable treatment of the Claimant. In the circumstances, I considered that it was plain and obvious that the Claimant's claim of sex discrimination had no reasonable prospect of success and that it was appropriate to strike out the claim.

Employment Judge S Jenkins
Dated: 30 December 2019

REASONS SENT TO THE PARTIES ON
31 December 2019

FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS