



EMPLOYMENT TRIBUNALS

Claimant

Mrs J Fletcher

v

Respondent

(1) Lookmeuk Limited
(2) Mr David Pattinson

Heard at: Watford

On: 16 January 2020

Before: Employment Judge Tuck

Appearances

For the Claimant: Mr Orlando Holloway, counsel.
For the First Respondent: No Appearance
For the Second Respondent: No appearance.

JUDGMENT

1. The stay of proceedings against the second respondent is lifted.
2. The claimant's claim of pregnancy discrimination against the Second respondent as set out in the claim form is declared to be well founded.
3. Any remedy to which the claimant is entitled will be determined at a hearing for which half a day has been allocated, on **12 June 2020** at Watford Employment Tribunal, 2nd Floor, Radius House, 51 Clarendon Road, Watford, WD17 1HP.
4. The claimant must prepare a schedule of the sums claimed and a bundle relating to any remedy claimed.

REASONS

1. By a claim form presented on 11 September 2017 the claimant brought claims of unfair dismissal, breach of contract, unlawful deductions from wages and pregnancy discrimination (automatically unfair dismissal).
2. On 20 June 2018, the time for presenting a response having expired as regards both respondents, a default judgment was issued by Employment Judge Manley. The remedy hearing was to take place on 11 July 2018.

3. Employment Judge Clarke QC on 11 July 2018 set aside the default judgment against the second respondent and stayed proceedings against both respondents to allow the claimant to take advice, in circumstances where he considered that the claims could only properly be against the first respondent, which had been dissolved.
4. An application for the stay to be lifted was made on 13 November 2018, and that came before me for determination today. The application was served on the second respondent – not the first respondent as it had by that time ceased to exist. By letter dated 18 July 2019 the Claimant’s solicitor confirmed that the preliminary hearing was to determine whether the Claimant was employed by the Second Respondent Mr Pattinson. That letter was copied to him- as was later correspondence from the Claimant and the ET applying to adjourn an earlier listed Preliminary hearing, and fixing the date of the hearing today.
5. It is appropriate that the stay against the second respondent is hereby lifted.
6. Whilst the claimant accepts that the claim against first respondent cannot proceed, it having been dissolved, she asserts that her claim for maternity discrimination can lie against the Second Respondent personally – whether he is her employer personally – or against him as an employee or agent of the first respondent during the period when she was employed by it.
7. Section 110 of the Equality Act 2010 provides for liability of employees and agents. Mr Bloom cites Timis v Osipov [2018] EWCA Civ 2321 (at paragraph 69) as confirming this – when considering a whistleblowing claim Underhill LJ remarked of the Equality Act 2010 as follows:

“... under the 2010 Act dismissal is simply another form of detriment for which both the employer and responsible co-workers are potentially liable: claims are commonly brought against individuals as well as employers, and occasionally it is the individual who ends up having to pay, either because the employer is insolvent or because it has established a reasonable steps defence.”
8. This is correct, and personal liability can attach in this case to the second respondent.
9. Mr Bloom submits that it is open to me to issue afresh a default Judgment as the circumstances of Rule 21(1) of the ET (Constitution and Rules of Procedure) continue to apply as no response has been received. He says judgment should therefore be issued under Rule 21(2). I am not convinced that such a course of action is open to me, Employment Judge Clarke QC having set aside a default judgment.
10. However, the second respondent has clearly been put on notice that today’s hearing would consider whether he should be liable for any discrimination which the claimant suffered. He has chosen not to attend the hearing. In these circumstances, I am satisfied that it is open to me to issue judgment in the claimant’s favour. The second Respondent is personally liable for the discrimination she suffered.

11. Alternatively, if he was not liable on the basis of section 110 EqA 2010, or such a finding was not open to me, I would have been satisfied, on the basis of the evidence provided to me in a witness statement from the claimant today, that the second respondent was liable as the claimant's employer.
12. The claimant will produce a schedule of loss, statement and evidence for a remedy hearing which will take place before a full tribunal on 12 June 2020.

Employment Judge Tuck

16 January 2020.

03 February 2020

.....
Sent to the parties on:

.....
For the Tribunal office: