



EMPLOYMENT TRIBUNALS

Claimant: Miss S Coop

Respondent: Limited Edition Hair and Beauty Services

Heard at: Manchester

On: 18 November 2019

Before: Employment Judge Rice Birchall

REPRESENTATION:

Claimant: In person

Respondent: Mr P Goldring,

JUDGMENT having been sent to the parties on 20 November 2019 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. A Remedy Hearing was heard on 18 November 2019 following which there was a request for written reasons.

Evidence

2. The Tribunal heard oral evidence from the claimant.

Facts

3. The claimant had worked for her sister's salon until the termination of her employment on 30 October 2018. Prior to dismissal, the claimant was receiving pay of £119 per week plus a care allowance of £62 per week.
4. The claimant cares for her daughter Leah, who is autistic. When the claimant worked for the respondent, Leah was at college. The claimant worked around Leah's college hours and, as she had worked for her sister for many years, her sister was very accommodating and allowed the claimant to be flexible.

5. The claimant informed the Tribunal that she had been trying to find alternative work since the termination of her employment. The claimant explained that she had to find work around Leah's needs, and this had become more difficult since Leah had finished college. Having finished College, Leah attends a work club and spends time at home. The claimant explained that she was going to be doing a course with Leah, who wanted to work with exotic animals, so that they could potentially run a business together.
6. The claimant also confirmed that she worked for a brief period at a bakery but that was unpaid as she was supporting Leah who had been offered some work experience, which the claimant attended with her on a voluntary basis to support her. The claimant also confirmed that she does do her neighbour's hair and other friends and family but doesn't earn any money from it.
7. The claimant was convinced, and kept repeating, that she wouldn't get work because they could employ younger employees.
8. The claimant is also limited as to the number of hours she is able to work due to the benefits she receives. The Tribunal understood that, if the Claimant wishes to continue to receive certain benefits then she is only able to work a maximum of 16 hours per week. Nonetheless, the claimant confirmed that she was specifically able to work provided that she got the right hours.
9. The Respondent was based on Rochdale Road in Oldham. The claimant confirmed that she hadn't yet applied for any jobs in Oldham and felt that she wouldn't be successful because they would be looking for younger staff to whom they could pay less.
10. The claimant gave evidence to confirm that she had however applied for some hairdressing jobs in Royton and Rochdale because they were easier to get to. She had applied for a role at a salon called Paris, but they wanted a full-time hairdresser. The claimant gave evidence that she had telephoned five or six salons to enquire about work but said that when she had mentioned her responsibilities towards Leah and the need to only work sixteen hours they would say that they couldn't guarantee hours or days of work.
11. The claimant had also applied to a newsagent based in Royton, but again they said they couldn't guarantee days and so the claimant would be unable to fit the work around Leah.
12. There was no written evidence of any job applications, nor any receipts before the Tribunal for any sundries such as stamps, newspapers or petrol.
13. Since her dismissal, the claimant has been receiving Universal Credit of approximately £469.48 per calendar month. However, this figure fluctuates because there is a housing benefit pay back and so different amounts are deducted. The claimant has continued to receive the £62 care allowance per week.
14. The claimant claimed that when she was working she got further additional reductions, for example reductions from council tax that she was no longer

able to get. However, it transpired that that was really because Leah is now an adult and no longer in College or of school age.

Law

15. If a claim of unfair dismissal is well founded, the claimant may be awarded compensation under section 113(4) ERA. Such compensation comprises a basic award and a compensatory award, calculated in accordance with sections 119 to 126 ERA.
16. Where the Tribunal considers that any conduct of the claimant prior to dismissal was such that it would be just and equitable to reduce the amount of the basic award to any extent, it must reduce the amount accordingly (section 122(2) ERA). In this regard, the question is not whether the employer believed the claimant committed the conduct in question but whether the Tribunal so believes.
17. So far as the compensatory award is concerned, ERA provides that the amount of compensation shall be such amount as is just and equitable based on the loss arising out of the unfair dismissal. In **Polkey –v- A E Dayton Services Limited** 1987 ICR 142 the House of Lords stated that the compensatory award may be reduced or limited to reflect the chance that the claimant would have been fairly dismissed in any event had a fair procedure been followed.
18. Separately, if it appears to the Tribunal that either the employer or the employee has unreasonably failed to follow or comply with the ACAS Code referred to above, the Tribunal may increase or decrease any compensatory award by up to 25% if it considers just and equitable in all the circumstances to do so (s207A TULRCA).
19. Furthermore, where the Tribunal finds that dismissal was to any extent caused or contributed to by any action of the claimant, it must reduce the compensatory award by such proportion as it considers just and equitable having regard to that finding (s123(6) ERA). As with any reduction under s122(2), the question is not whether the employer believed the claimant committed the conduct in question but whether the Tribunal so believes.

Conclusion

20. The Tribunal's judgment on liability stated: "For the claimant to have caused or contributed to her dismissal, there must be some wrongdoing. I consider that the claimant did contribute to her dismissal. It was the claimant's conduct, the swearing and the refusing to leave, which is not acceptable conduct in the workplace, which were the events that led to the dismissal. That does not mean to say the dismissal was fair, rather that there was culpable or blameworthy behaviour from the claimant. So, although the decision to dismiss was not within the band of reasonable responses, I do find that the claimant contributed to her dismissal by 25%. The reason I have made that level of finding is because had the claimant, for example, left the building when asked, it could have calmed things down. However, given my findings

about the fact that altercations such as this were not uncommon, it would not be appropriate to decrease compensation by as much as 50%. It is a finding that acknowledges that the claimant had a part to play in the events that lead to her dismissal.”

21. The Tribunal concluded that it was just and equitable, by virtue of the claimant’s conduct, to reduce both her basic award and the compensatory award by 25%. As a result, her basic award reduced from £3,104.53 (agreed) to £2,328.40.
22. In respect of the compensatory award, the Tribunal awarded the claimant 26 weeks of pay from 31 October 2018 until 20 April 2019. The Tribunal concluded that the claimant could have found a comparable job within six months of the termination of her employment if she had really tried, even around her duties looking after Leah. The claimant had no evidence of any attempt to find work, and had she approached this task with some commitment, the Tribunal felt certain that some work could have been obtained within this period.
23. The compensatory award was based on the claimant’s net average weekly pay during her employment with the Respondent, of £119.41 per week. The sum awarded was £3,104.66 which, reduced by the 25% contributory fault amounted to £2,328.50.
24. The Tribunal explained the recoupment provisions to the parties. The prescribed element of the award is £2,328.50. The period of the prescribed element is from 31 October 2018 to 1 May 2019. The excess of the grand total over the prescribed element is £238.82.
25. The Tribunal also awarded the claimant two weeks’ pay for loss of the employment rights, which amounts to £238.82.
26. The claimant was also awarded two weeks’ pay in respect of the respondent’s failure to provide full and accurate written particulars of employment in the sum of £238.82.
27. The claimant was seeking to claim travel costs incurred in respect of petrol travelling to and from and driving around job centre for Universal Credit and interviews. She also claimed expenses for buying newspapers to look for jobs, for example The Chronicle and the Manchester Evening News. She said she had bought a couple of packets of stamps and envelopes, but said that she had had no replies.
28. The Tribunal did not make any award to the claimant in respect of travel costs, newspaper, postage costs and so on as there was no evidence of any purchases or any receipts, nor any evidence of any job applications.

Employment Judge Rice-Birchall

Date 4 April 2020

REASONS SENT TO THE PARTIES ON

7 April 2020

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