



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss N Jones

**Respondent:** Cam Pub Co Ltd

**HELD AT:** Remote Hearing by Telephone **ON:** 4 June 2020

**BEFORE:** Employment Judge JM Wade

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Mr Taylor

This hearing is a remote public hearing conducted by recorded telephone because of the present Covid 19 circumstances. The claimant was unable to take part in a visual hearing and Mr Taylor was unable to attend in person hearings for reasons of shielding. I did not hear evidence today.

## JUDGMENT ON RECONSIDERATION

1 The claimant's application to revoke a Judgment dismissing an unfair dismissal complaint for lack of two years' service, sent to the parties on 7 February 2020 is refused.

2 The claimant has withdrawn her complaint about underpaid wages before me today and these proceedings are at an end pursuant to Rule 51.

## REASONS

### Introduction

1. This case relates to a dismissal on 24 November 2019 from the claimant's job working part time at the respondent's then pub. She commenced that employment in September 2019 and was within her probationary period.
2. She commenced ACAS conciliation on 29 November, having spoken to ACAS previously, a certificate was issued on 29 December with the claim issued on 9 January 2020. The complaints discernible in the claim form were arrears of wages

and unfair dismissal. A judge directed there was no need respondent to respond to the unfair dismissal because the claimant had not identified an exception applied to her for the requirement for two years' service. The Judge also directed a case management hearing in March 2020. The claimant was also given the opportunity explain the exception that applied to her. She referred again to the general circumstances and a feeling that to be dismissed because her children were poorly was unfair.

3. I then struck out the unfair dismissal complaint and a Judgment to that effect was sent to the parties in February.
4. The claimant attended the case management hearing in March and made clear that her main complaint was one of dismissal. It was clarified that the complaint of arrears of wages related to £2.14. Today the claimant withdrew that complaint – it was not of concern to her she said, or words to that effect and I clarified that she wished to withdraw it.
5. She is concerned about a dismissal she perceives as wrong. On 16 March the Employment Judge explained to the claimant that she would need to apply to revoke the dismissal judgment by a reconsideration application identifying that her case was she was dismissed because she took time off to care for dependents. She then emailed the Tribunal and I directed this hearing.
6. Today it was not in dispute that on Saturday 23 November the claimant was due to work but notified she would be late and was late due to her twins being ill; the position changed during the course of the day but she did attend in the latter part of her shift.
7. On Sunday 24 November she notified she would not be attending work due to caring for her ill twins. She was later dismissed by a text saying, you have now let us down and been late on numerous occasions. As you are still in your probationary period I have no choice but say that you are not suitable for the job and your services are no longer required. There was then a heated exchange of texts in which the claimant suggested she had taken legal advice and would take this further.
8. Both the parties in this case are litigants in person. I explained I had to direct them to the right law. The exception to which the Employment Judge directed the claimant is the right in, Section 57A of the Employment Rights Act 1996, to take reasonable time off to provide assistance or make arrangements for dependents when they fall ill. This is supported by Section 99 (3)(d) of the Act and Regulation 20(3)(e)(iii) of the Maternity and Parental Leave Regulations 1999. Case law has established that the Tribunal has to ask a number of questions but critically in this case, it has to be satisfied that the time off taken was reasonable, and that the principal reason for dismissal was the taking of the time off.
9. In deciding whether to revoke an earlier Judgment and permit the claimant to pursue a claim relying on the Regulations above, I take into account a number of factors. Firstly on the undisputed facts the claimant has an arguable case. Secondly the case is important to her – she felt great in justice from the outset. Thirdly the respondent has an arguable response – the principal reason was suitability as demonstrated in a probationary period because of both lateness and time off and the circumstances are not black and white – reasonableness of time

off has to be looked at in context. The claimant's case cannot therefore be said to be one which is so strong that there would be manifold injustice if it is not heard.

10. I further take into account that the parties have not complied with the orders to exchange documents given in March, and that may be for very sensible Covid related reasons. The claimant has had her P45 she tells me, but otherwise no steps have been taken to address the wages dispute. I therefore take into account that the an orderly progress to a full hearings is unlikely.
11. I also take into account that an in person hearing is likely to be very delayed. Cross examination will be required in this case, the claimant cannot undertake video hearings, Mr Taylor is shielding and likely to remain so, and Sheffield will be unlikely to take live hearings until the autumn other than in exceptional cases.
12. I take into account the remedies available, and that it is not in dispute that the pub changed hands and all staff were stood down for a period of time; it is likely, therefore that any remedy for the claimant may appear to be a victory of little gain, and will involve disproportionate fact finding.
13. Finally, I take into account the need for finality and certainty in justice, and that where there is great injustice things must be put right.
14. Weighing all these matters in this case, and having heard from the parties today, I have concluded that I am against the claimant being permitted to run a case of automatic unfair dismissal - it is not in the interests of justice for my earlier judgment to be revoked.

Employment Judge Wade

4 June 2020

JUDGMENT SENT TO THE PARTIES ON