



EMPLOYMENT TRIBUNALS

Claimant

Miss B Jakab

Respondent

- v 1. Cocktail Clothing Company Limited
2. Achilleas Constantinou
3. Ariella Fashion Limited

RECORD OF AN OPEN PRELIMINARY HEARING

Heard at: Watford

On: 4 September 2019

Before: Employment Judge Alliott

Appearances:

For the Claimant: Mr Kevin Harris (Counsel)

For the Respondent: Ms Sally Robertson (Counsel)

JUDGMENT

1. The claimant is given permission to amend the claim form as follows:

“Redundancy protective award

24. The Respondent (Ariella) has failed to comply with the requirements of section 188 as set out at paragraph 16 above and is entitled to a protected award under section 189 TULCRA”

2. The claimant is not given permission to amend the claim form to add a claim for indirect discrimination as applied for in its letters dated 21 March 2019.

REASONS

1. The claimant has made an application to amend the claim form to include a specific claim for a redundancy protective award. The complaint that the respondents failed to consult about redundancy is made in paragraph 16 of the original claim form. Accordingly, in my judgment, this amendment is no more than a labelling exercise and I grant consent.

2. As regards the application to amend to include a claim for indirect discrimination, I refuse that application.
3. In the exercise of my discretion I have considered the balance of hardship and injustice.
4. I have considered the nature of the amendment and it is acknowledged that this is a new claim that does not arise out of the original claim form. From the IDS Handbook Employment Tribunal Practice and Procedure at 8.27, I note the following:

“Following the approach indicated by Abercrombie Tribunals should when considering applications to amend that arguably raise new causes of action, focus “not on questions of formal classification but on the extent to which the new pleading is likely to involve substantially different areas of enquiry than the old. The greater the difference between the factual and legal issues raised by the new claim and by the old the less likely it is that it will be permitted.”

5. In the context of this claim I note that the Full Merits Hearing is currently scheduled for 18 to 22 November 2019, two and a half months away. The proposed amendment involves an allegation concerning recruitment and an allegation that that a PCP puts women at a particular disadvantage. I accept the submissions of Ms Robertson that that is likely to involve enquiries about the workforce that was taken on by the First Respondent in June and the following months. That will involve significant work and broadening of the issues to be determined at the hearing. In my judgment the respondent will be prejudiced in having to prepare at this late stage.
6. Secondly, I take in to account the applicability of time limits. Obviously enough this claim was issued on 28 September 2018 and the application to amend was only made on 21 March 2019. That is considerably after the period for presenting a claim.
7. Thirdly, the timing and manner of the application. Whilst the application was made in March against the hearing date in November, the fact of the matter is that due to listing it is only being heard some two and a half months before the hearing. The very last thing I will contemplate is the hearing date being put in any form of jeopardy. Consequently, in the exercise of my discretion, I decline to allow this amendment to be made.

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. **Amended response/Further information**
 - 1.1 The claimant has permission to amend her claim to include the claim for a redundancy protective award. The First and Second Respondents have permission to file an amended response (not necessarily in the form of a response form (a single sheet of paper will suffice) if so advised by **4pm, 20 September 2019.**

2. The correct name for the First Respondent is Cocktail Clothing Company Limited and accordingly I amend the name as follows.
3. **Extension of time**
 - 3.1 The First, Second and Third Respondents are granted an extension of time for the filing of their formal ET3 responses.
 - 3.2 The claimant's claims in relation to statutory maternity pay, deduction from wages and breach of contract in relation to maternity pay are dismissed upon withdrawal.
4. **Disclosure of documents**
 - 4.1 The respondent is to send to the claimant on or before **4pm, 25 September 2019**, a list of the following documents:
 - 4.1.1 Any design request from C&A to the First/Second or Third respondents between 1 May 2018 and 1 November 2018.
 - 4.1.2 All contracts and correspondence between the First and Second Respondents, their employees or agents and any other party regarding the purchase, sale or disposal of the assets of the Third Respondent and an inventory of those assets and orders.
 - 4.1.3 All contracts and correspondence between the First and Second Respondent, their employees or agents and Carlont Trading Limited regarding the sale, purchase or disposal of any trade mark relating to "Ariella".
 - 4.1.4 A print out from the payroll software used by the First Respondent of all of those on their payroll in the months of May, June, July, August, September and October 2018 (redacted as appropriate).
 - 4.1.5 P45 and first pay statements of all employees taken on between May and October 2018.
 - 4.1.6 All documentation in relation to the recruitment of Ms Dilani, included but not limited to emails and correspondence about her recruitment, her offer letter and contract of employment with the First Respondent.
 - 4.1.7 The respondent shall send to the claimant copies of these documents if requested to do so within **7 days** of such request.
5. **Amended schedule of loss**
 - 5.1 The claimant must provide to the respondent by **4pm, 25 September 2019**, an updated schedule of loss to include the claim for a redundancy protective award and details of all redundancy payments received by the claimant from whatever source.
6. **Final hearing bundle**

6.1 By **4pm, 7 October 2019**, the parties must agree which documents are going to be used at the final hearing. The respondent must paginate and index the documents, put them into one or more files (“bundle”), and provide the claimant with a ‘hard’ and an electronic copy of the bundle by the same date. The bundle should only include documents relevant to any disputed issue in the case [that won’t be in the remedy bundle referred to below] and should only include the following documents:

- the Claim Form, the Response Form, any amendments to the grounds of complaint or response, any additional / further information and/or further particulars of the claim or of the response, this written record of a preliminary hearing and any other case management orders that are relevant. These must be put right at the start of the bundle, in chronological order, with all the other documents after them;
- documents that will be referred to at the final hearing and/or that the Tribunal will be asked to take into account.

In preparing the bundle the following rules must be observed:

- unless there is good reason to do so (e.g. there are different versions of one document in existence and the difference is relevant to the case or authenticity is disputed) only one copy of each document (including documents in email streams) is to be included in the bundle
- the documents in the bundle must follow a logical sequence which should normally be simple chronological order.

7. **Witness statements**

7.1 The claimant and the respondent shall prepare full written statements containing all of the evidence they and their witnesses intend to give at the final hearing and must provide copies of their written statements to each other on or before **4pm, 21 October 2019**. No additional witness evidence will be allowed at the final hearing without the Tribunal’s permission. The written statements must: have numbered paragraphs; be cross-referenced to the bundle(s); contain only evidence relevant to issues in the case. The claimant’s witness statement must include a statement of the amount of compensation or damages they are claiming, together with an explanation of how it has been calculated.

8. **Final hearing preparation**

8.1 On the first day of the hearing the following parties must lodge the following with the Tribunal:

8.1.1 four copies of the bundle(s), by the respondent;

8.1.2 four copies of the witness statements by whichever party is relying on the witness statement in question;

9. **Other matters**

- 9.1 The above orders were made and explained to the parties at the preliminary hearing. All orders must be complied with even if this written record of the hearing is received after the date for compliance has passed.
- 9.2 Anyone affected by any of these orders may apply for it to be varied, suspended or set aside. Any further applications should be made on receipt of these orders or as soon as possible.
- 9.3 The parties may by agreement vary the dates specified in any order by up to 14 days without the tribunal's permission except that no variation may be agreed where that might affect the hearing date. The tribunal must be told about any agreed variation before it comes into effect.
- 9.4 **Public access to employment tribunal decisions**
All judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.
- 9.5 **Any person who without reasonable excuse fails to comply with a Tribunal Order for the disclosure of documents commits a criminal offence and is liable, if convicted in the Magistrates Court, to a fine of up to £1,000.00.**
- 9.6 **Under rule 6, if any of the above orders is not complied with, the Tribunal may take such action as it considers just which may include: (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.**

CONSEQUENCES OF NON-COMPLIANCE

1. Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.
2. The tribunal may also make a further order (an "unless order") providing that unless it is complied with, the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice or hold a preliminary hearing or a hearing.
3. An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative.

Employment Judge Allott

16 September 2019

Sent to the parties on

25 September 2019

For the Tribunal:

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