



EMPLOYMENT TRIBUNALS

Claimant: Miss Louise Irvine

Respondent: (1) VRP and Sons Limited
(2) Mr Paras Vijay Patel

RULE 21 JUDGMENT

MADE PURSUANT TO RULE 21 OF THE EMPLOYMENT TRIBUNALS RULES OF
PROCEDURE 2013

The time limit for presenting a response having expired on 6 January 2020 and no response having been presented.

Employment Judge Gumbiti-Zimuto has decided on the available material that a determination can properly be made, and judgment given as follows:

1. The claimant's claim for damages for breach of contract (notice pay) succeeds. The respondents are ordered to pay to the claimant £587.25.
2. The respondents failed to pay the claimant for annual leave. The respondents are ordered to pay to the claimant the sum of £3288.60.
3. It is declared that the claimant was unfairly dismissed.
4. It is declared that the respondents discriminated against the claimant contrary to sections 18 and 39 Employment Act 2010.
5. The claimant is not entitled to a redundancy payment.
6. The determination of the remedy that the claimant is entitled to in respect of unfair dismissal and discrimination shall be determined without a hearing on the 15 June 2020, unless either party makes an application that a hearing should take place at which the parties attend.
7. The parties are to send to the employment tribunal and copy to each other any written representations they wish to make in respect of remedy to arrive at the employment tribunal and the other party by no later than the 8 June 2020.

REASONS

1. The claimant was employed by VRP and Sons Limited (the first respondent) as a shop assistant at 36 Bicester Road, Launton, Oxfordshire, OX26 5DQ from 8 December 2015 until 16 January 2019. The claimant was employed to work 25 hours a week and paid about £200 per week.
2. On 4 September 2019 an Employment Judge gave judgment to the claimant pursuant to rule 21 in the sum of £3,288.60 in respect of unpaid wages and £587.25 in respect of notice pay. The judgment was made against VRP and Sons Limited. The case was listed for hearing on 4 November 2019 to decide on any remedy for unfair dismissal, compensation for pregnancy or maternity discrimination, and to decide whether the claimant is entitled to a redundancy payment (and if so, how much).
3. At the hearing on the 4 November 2019 the claimant gave evidence, in a witness statement, that she had discovered, on 14 October 2019, that VRP and Sons Limited was to be dissolved on the 15 October 2019. The claimant contacted Companies House and was informed that it was too late to prevent the dissolution of the company. The claimant also discovered that she should have been informed that there had been an application made for dissolution of VRP and Sons Limited made by the directors of the company. The claimant had not been informed. The application for dissolution of the company had been made on 30 July 2019 by Mr Paras Vijay Patel and other directors of the respondent. Mr Paras Vijay Patel was the person to whom the claimant reported, he was in all practical terms her employer.
4. The claimant had presented her complaint against VRP and Sons Limited to the employment tribunal on the 5 June 2019. There was no response received to the claim in the time allowed for a response and a rule 21 judgment in the terms set out above was made. The application for dissolution of the company was made after the first respondent had been given notice of the proceedings brought by the claimant. The failure to give notice to the claimant of the application for dissolution of the first respondent may amount to a criminal offence by Mr Paras Vijay Patel and or the other directors of VRP and Sons Limited who made the application for dissolution under the provision of the Companies Act 2006.
5. The shop in which the claimant worked continued to trade as normal without any obvious change, Mr Paras Vijay Patel and his brother continued to work in the shop as had previously been the case.
6. Mr Paras Vijay Patel was added as a party to the proceedings at the hearing on the 4 November 2019. The proceedings were sent to Mr Paras Vijay Patel at three addresses, the shop, the registered address of the company and Mr Paras Vijay Patels home address. A response was required by 6 January 2020. Since the hearing on the 4 November 2019 the claimant has been into the shop and spoken to Mr Paras Vijay Patel

who confirmed that he had received the papers relating to the claimant's case from the employment tribunal. The claimant was also able see that during her conversation with him that Mr Paras Vijay Patel had in his possession papers which she believed to be relating to her employment tribunal claim.

7. Mr Para Vijay Patel has not responded to the claim. Rule 21(1) of the Employment Tribunals Rules of Procedure 2013 provides that where on the expiry of the time limit in rule 16 no response has been presented, or any response received has been rejected and no application for a reconsideration is outstanding, or where the respondent has stated that no part of the claim is contested, paragraphs (2) and (3) shall apply. Rule 21 (2) provides that an Employment Judge shall decide whether on the available material (which may include further information which the parties are required by a Judge to provide), a determination can properly be made of the claim, or part of it. To the extent that a determination can be made, the Judge shall issue a judgment accordingly. Otherwise, a hearing shall be fixed before a Judge alone. Rule 21 (3) provides that the respondent shall be entitled to notice of any hearings and decisions of the Tribunal but, unless and until an extension of time is granted, shall only be entitled to participate in any hearing to the extent permitted by the Judge.
8. I have considered the available material and I have come to the conclusion that the claimant is entitled to a judgment against the Mr Paras Vijay Patel and VRP and Sons Limited with those parties being jointly and severally liable for the remedy. My reasons for this conclusion are as follows:
 - (i) The claimant was employed by the first respondent which was the vehicle by which the second respondent operate the business in which the claimant was employed as a shop assistant. The second respondent was the director of the first respondent. It was the second respondent (and other directors of the first respondent) who made the application for dissolution of the first respondent.
 - (ii) The dissolution of the first respondent was carried out as a cynical attempt to defeat the claimant's entitlement to a remedy arising from the egregiously unlawful way in which the claimant was dismissed by the respondents.
 - (iii) The second respondent has failed, in my view deliberately, to give notice to the claimant that an application for a dissolution of the first respondent company was being made by the directors as is required by provisions of the Companies Act 2006 which require former employees to whom money is owed and creditors to be notified of the application. I am satisfied that this was a deliberate act because during the online process for making an application to strike out a company the applicant is informed that it is a criminal offence not to inform the categories of person mentioned.
9. I am further satisfied that the claimant was unfairly dismissed by reason of the provisions of section 99 of the Employment Rights Act 1996 and regulation 20 of the Maternity and Parental Leave etc. Regulations 1999 and that the respondents discriminated against the claimant contrary to the

provisions of section 18 Equality Act 2010 in dismissing the claimant. My reasons for this conclusion are as follows:

- (i) In April 2018 the claimant went on maternity leave and Mr Paras Vijay Patel refused to pay the claimant her statutory maternity pay. The claimant was required to resort to HMRC who enforced payment of the claimant's maternity pay, this took several months to achieve.
- (ii) The claimant attempted to return from maternity leave on 9 January 2019 and was sent away by Mr Paras Vijay Patel who told her to return the following week. On 16 January 2019 Mr Paras Vijay Patel informed the claimant she was dismissed. At the time of dismissing the claimant he informed her that he could no longer afford to pay her. The claimant was aware that someone had been employed to carry out work that she had carried prior to going on maternity leave, this person continued in employment.
- (iii) The reason for the actions of Mr Paras Vijay Patel were connected to the fact that the claimant had enforced her right to statutory maternity pay. Mr Paras Vijay Patel was acting in retaliation for the claimant's enforcement of her statutory rights.

10. The claimant is therefore entitled to the following judgment against the respondents jointly and severally.

- a. The respondents are ordered to pay to the claimant the sum of £3268.60 in respect of holiday pay.
- b. The respondents are ordered to pay to the claimant the sum of £527.37 in respect of the notice pay.
- c. It is declared that the respondents unfairly dismissed the claimant.
- d. It is declared that the respondents unlawfully discriminated against the claimant contrary to sections 18 and 39 Employment Rights Act 2010.

11. The determination of the remedy that the claimant is entitled to in respect of unfair dismissal and discrimination shall be determined without a hearing on the 15 June 2020, unless either party makes an application that a hearing should take place at a hearing which the parties attend.

12. The parties are to send to the tribunal and each other any written representations they wish to make in respect of remedy to arrive at the tribunal and the other party by no later than the 8 June 2020.

Employment Judge Gumbiti-Zimuto

Case Number: 3318823/2019

Date: 18 May 2020

Sent to the parties on:04.06.2020....

...GDJ.....
For the Tribunals Office