



EMPLOYMENT TRIBUNALS

Claimant: Mrs H Richards

Respondent: Stanmore College

RECORD OF A PRELIMINARY HEARING

Heard: By telephone

On: 27 March 2020

Before: Employment Judge Finlay (sitting alone)

Appearances

For the claimant: In person

For the respondent: Ms L Timmins (solicitor)

CASE MANAGEMENT SUMMARY

Final hearing

- (1) All issues in the case, including remedy, will be determined at a final hearing before an Employment Judge sitting alone at the **Employment Tribunals, Radius House, 51 Clarendon Road, Watford, WD17 1HP** on **11 and 12 January 2021**, starting at **10.00am** or as soon as possible afterwards.
- (2) The time estimate is two days. The claimant and the respondent **must** inform the Tribunal as soon as possible if either thinks there is a significant risk of the time estimate being insufficient and/or of the case not being ready for the final hearing.

The claim

- (3) The claim was presented in October 2018 and was initially listed for hearing in May 2019. The claimant had brought a complaint of breach of contract seeking compensation for the failure by the respondent to give notice of termination of employment. The respondent had elected to pay in lieu of notice, but the claimant asserted that it did not have the contractual right to do so and that in consequence, she had suffered losses including an additional year's redundancy payment and holiday pay. The respondent has now paid those sums and the claimant withdrew the complaint of breach of contract (which will now be dismissed by consent).

- (4) The claimant brings and maintains a complaint of (ordinary) unfair dismissal pursuant to section 94 and 98 of the Employment Rights Act 1996 (ERA). The respondent had questioned whether or not the claimant was seeking to bring further complaints relating to alleged protected disclosures (whether under section 47B or 103A ERA) but the claimant confirmed today that her only remaining complaint is that of (ordinary) unfair dismissal.

The issues

- (5) The issues between the parties which potentially fall to be determined by the Tribunal are as follows:
- (i) It is agreed that the reason for the claimant's dismissal is redundancy, a potentially fair reason in accordance with sections 98(2)(c) ERA.
 - (ii) The question for the Tribunal to determine is whether that dismissal was fair or unfair in accordance with ERA section 98(4), and, in particular, whether the respondent in all respects acted within the so-called 'band of reasonable responses'
 - (iii) The claimant's dismissal occurred at a time when she had just lost her son. She feels that the respondent treated her without compassion. The specific allegations of unfairness on which she relies are:
 - a. A failure by the respondent to notify her that her job was at risk;
 - b. Failure to carry out adequate or meaningful consultation. She acknowledges that it was not easy to arrange discussions with her at this time, but says that it was unreasonable of the respondent not to consult with her union on her behalf after she had given permission for this;
 - c. A failure to provide evidence of a fair selection process regarding the restructure undertaken by the respondent. The claimant points to the appointment of an Assistant Principal without a proper application/recruitment process and argues that this role would have been a natural progression for her;
 - d. A failure to offer alternative employment. She was offered a role of Learning Support Manager but it attracted a considerably lower salary. This is linked to b. above in that the claimant argues that if there had been proper consultation, she could have discussed salary protection on the basis that this had been offered to staff before; and
 - e. The respondent dismissing her without giving her contractual notice of termination of employment.

The respondent denies the allegations.

- (iv) If the claimant was unfairly dismissed and the remedy is compensation:
- a. if the dismissal was procedurally unfair, what adjustment, if any, should be made to any compensatory award to reflect the possibility that the claimant would still have been dismissed had a fair and reasonable procedure been followed / have been dismissed at a later point in time anyway? (as explained in Polkey v AE Dayton Services Ltd [1987] UKHL 8?
 - b. did either party unreasonably fail to comply with a relevant ACAS Code of Practice? If so, would it be just and equitable in all the circumstances to increase or reduce compensation and if so, by what percentage, up to a maximum of 25%, pursuant to section 207A of the Trade Union & Labour Relations (Consolidation) Act 1992 ("section 207A")? This issue relates to appeal against dismissal. The claimant argues that she was not afforded a proper opportunity to appeal whereas the respondent argues that the claimant failed to exercise her right to appeal.

Other matters

- (6) The attention of the parties is drawn to the Presidential Guidance on 'General Case Management', which can be found at:
www.judiciary.gov.uk/publications/employment-rules-and-legislation-practice-directions/
- (7) The parties are reminded of rule 92: "*Where a party sends a communication to the Tribunal (except an application under rule 32) it shall send a copy to all other parties, and state that it has done so (by use of "cc" or otherwise)...*". If, when writing to the tribunal, a party does not comply with this rule, the tribunal may decide not to consider what it has written.
- (8) The parties are also reminded of their obligation under rule 2 to assist the Tribunal to further the overriding objective and in particular to co-operate generally with other parties and with the Tribunal.
- (9) The following case management orders were made by consent / largely made by consent.

ORDERS

Made pursuant to the Employment Tribunal Rules of Procedure

1. Judicial mediation

- 1.1 Both parties are potentially interested in judicial mediation. In view of the current restrictions and the need for judicial mediations to take place by telephone, they will attempt in the first instance to negotiate with the

assistance of ACAS. However, if they change their minds and wish to have judicial mediation they will advise the Tribunal as soon as possible and the case file will be passed to the Regional Employment Judge for a decision as to whether to offer them judicial mediation. Although this claim does not precisely meet the usual criteria for judicial mediation it may be considered appropriate in view of the length of time to the final hearing and the claimant's desire for a resolution following the death of her son.

- 1.2 The parties are referred to the "*Judicial Mediation*" section of the Presidential Guidance on 'General Case Management', which can be found at: www.judiciary.gov.uk/publications/employment-rules-and-legislation-practice-directions/.

2. Complaints and issues

- 2.1 The parties must inform each other and the Tribunal in writing **within 14 days of the date this is sent to them**, providing full details, if what is set out in the Case Management Summary section about the case and the issues that arise is inaccurate and/or incomplete in any important way.

3. Statement of remedy / schedule of loss

- 3.1 The claimant has provided a Schedule of Loss but it is now out of date. On or before **10 April 2020**, the claimant shall provide to the respondent an updated Schedule of Loss, setting out what remedy is being sought and how much in compensation and/or damages the tribunal will be asked to award the claimant at the final hearing in relation to each of the claimant's complaints and how the amounts have been calculated.
- 3.2 If any part of the claimant's claim relates to dismissal and includes a claim for earnings lost because of dismissal, the Schedule of Loss must include the following information: whether the claimant has obtained alternative employment and if so when and what; how much money the claimant has earned since dismissal and how it was earned; full details of social security benefits received as a result of dismissal.
- 6.3 If the claimant is claiming for loss of pension, the Schedule of Loss must set out precisely how much is being claimed and on what factual and arithmetical basis.

The parties are referred to: the Presidential Guidance on pension loss at www.judiciary.gov.uk/wp-content/uploads/2013/08/presidential-guidance-pension-loss-20170810.pdf

4. Final hearing bundle

- 4.1 The parties have exchanged lists of documents and copy documents. On or before **26 June 2020**, the respondent shall produce a paginated and indexed bundle of documents for the final hearing 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 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.

5. Witness statements

5.1 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 **18 September 2020**. No additional witness evidence will be allowed at the final hearing without the Tribunal's permission. The written statements must:

- 5.1.1 have numbered paragraphs;
- 5.1.2 be cross-referenced to the bundle; and
- 5.1.3 contain only evidence relevant to issues in the case.

6. Final hearing preparation

6.1 **By 9.30am on the first day of the final hearing**, the respondent shall lodge the following with the Tribunal:

- 6.1.1 Two copies of the bundle; and
- 6.1.2 Two hard copies of the witness statements (plus a further copy of each witness statement to be made available for inspection in accordance with rule 44).

7. Other matters

7.1 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.

- 7.2 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.
- 7.3 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.
- 7.4 **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 and respondent in a case.
- 7.5 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.
- 7.6 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.

Employment Judge Finlay

Date: 27 March 2020

Sent to the parties on:

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For the Tribunal Office