



EMPLOYMENT TRIBUNALS

Claimant: Miss V Whitehouse

Respondent: Asda Stores Limited

RECORD OF AN OPEN PRELIMINARY HEARING

Heard: By CVP **On:** 9 September 2020

Before: Employment Judge Cookson (sitting alone)

Appearances

For the claimant: In person

For the respondent: Miss Duane (counsel)

Issues to be determined at the open hearing

- (1) Having heard evidence from the claimant and submissions from both parties and for the reasons given orally at the time, I determined that:
- (i) It was reasonably practicable for the claimant to have brought her complaints of unlawful deduction from wages relating to:
 - a. non-payment of statutory maternity pay for the period March to July 2018; and
 - b. in relation to an unlawful deduction of wages in February 2019; within the statutory time limits. She did not do so and the employment tribunal does not have jurisdiction to consider these claims. I have issued a judgment to that effect.
 - (ii) In relation to the claimant's complaints of unlawful pregnancy or maternity discrimination contrary to s18 of the Equality Act 2010 (EqA):
 - a. Relating to the non-payment of statutory maternity pay for March to July 2018 was not brought within the statutory time limit in s123(1) of the EqA nor was it brought within a period which I found to be just and equitable. The tribunal does not have jurisdiction to consider that claim;
 - b. Relating to the unlawful deduction in February 2019 and the failure to carry out any risk assessment before her maternity leave

began in April 2019 was not brought within the statutory time limit but it was brought within a period which I found to be just and equitable and that claim will be considered.

- (iii) For the avoidance of doubt the claimant's complaints relating to non-payment of maternity pay in August 2019 were brought in time.
- (2) Having heard submissions from the claimant and the respondent and for the reasons given orally at the time I determined that it could not be said that the claimant's claims had no or little reasonable prospect and the respondent's application to strike out the claimant's claims is refused.
- (3) I then converted the hearing to a private preliminary hearing to determine case management.

Final hearing

- (4) All issues in the case, including remedy, will be determined at a final hearing before an Employment Judge sitting with Members at the Employment Tribunals, Midlands West, 13th Floor Centre City Tower, 5-7 Hill Street, Birmingham B5 4UU in Birmingham on 6 to 8 July 2021.
- (5) The case is listed in person but may be converted to a remote video hearing, that is to be heard by CVP.
- (6) The hearing will start at 10 am or as soon as possible afterwards unless otherwise directed by the tribunal. The parties must attend by 9.30 am on that day. The time estimate for the hearing is 3 days, based on the claimant's intention to give evidence and the respondent's to call 2 witnesses, and on the following provisional timetable:
 - (i) ½ day for reading in and any preliminary matters;
 - (ii) maximum 1 days for oral and other evidence on liability and submissions on liability;
 - (iii) approximately 1 ½ days for the Tribunal to determine the issues which it has to decide, reach its conclusions and prepare its reasons; give judgment, with reasons if possible and to deal with remedy, including hearing further evidence if appropriate, reaching conclusions and giving judgment, if the claimant succeeds in whole or part.
- (7) The claimant(s) and the respondent(s) **must** inform the Tribunal as soon as possible if they think 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

- (8) The claim and the background to it are summarised in the case management summary prepared by Employment Judge Hindmarch following the hearing on 22 June 2020 and it is not necessary to repeat that information here.

Other matters

- (9) I have reiterated to the claimant that she will find helpful to seek legal advice on her claims generally if he can. I have also explained how a hearing proceeds and encouraged the claimant to sit in on some other case in advance. The parties may wish to note that a list of all public ET cases with details of who to contact to gain access to the hearing is available at <https://www.courtserve.net/>. That website is free to access but requires a log in.
- (10) 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/.
- (11) 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, the parties don't comply with this rule, the tribunal may decide not to consider what they have written.**
- (12) 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.
- (13) The following case management orders were uncontentional and effectively made by consent. Insofar as they are not made by consent, reasons, to the extent not set out below, were given at the time and written reasons will not be provided unless they are asked for by a written request presented by any party within 14 days of the sending of this written record of the decision.

ORDERS

Made pursuant to the Employment Tribunal Rules of Procedure

1. Judicial Mediation

- 1.1 If the parties are interested in judicial mediation they should inform the tribunal as soon possible within 14 days from the date of this summary.

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 above 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 must provide to the respondent by **9 December 2020** a document – a “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 amount(s) have been calculated.

4. Documents

- 4.1 On or before **30 September 2020** the respondent must send the claimant copies of all documents they wish to refer to at the final hearing or which are relevant to any issue in the case, including the issue of remedy.
- 4.2 On or before **14 October 2020** the claimant must send the respondent:
- 4.2.1 copies of all documents they wish to refer to at the final hearing or which are relevant to any issue in the case, including the issue of remedy, that the respondent didn’t provide them with when complying with any case management order made above;
 - 4.2.2 a list of all documents that are not within their possession or control, that the respondent didn’t provide them with when complying with any case management order made above, that they wish to refer to at the final hearing or which are relevant to any issue in the case, and that they believe are within the respondent’s possession and/or control.

5. Final hearing bundle

- 5.1 By **28 October 2020**, 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 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.

6. Witness statements

- 6.1 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 **9 December 2020**.

7. Confirmation of Compliance

- 7.1 By no later than **1 February 2021** the parties shall jointly confirm that the orders above have been complied with and the case is ready for hearing. If the case is not ready they must explain why.

8. Final hearing preparation

- 8.1 **On the working day immediately before the first day of the final hearing** (but not before that day), by **12 noon** the following parties must lodge the following with the Tribunal:
- 8.1.1 four copies of the bundle(s), by the respondent which should include the list of issues endorsed by EJ Hindmarch on 22 June 2019;
 - 8.1.2 five hard copies of the witness statements (one being a copy of each witness statement which must be made available for inspection, if appropriate, in accordance with rule 44), by whichever party is relying on the witness statement in question;
 - 8.1.3 three hard copies of any written opening submissions / skeleton argument, by whichever party is relying on them / it;
 - 8.1.4 three hard copies of the following, agreed if possible, by the respondent – a neutral chronology, a ‘cast list’, a reading list, if the parties believe these will assist the tribunal.

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.

Employment Judge Cookson

25 September 2020