



EMPLOYMENT TRIBUNALS

Claimant: Miss V Sharma

Respondent: Central Taxis (Warks) Ltd

RECORD OF A PRELIMINARY HEARING

Heard at: (in private) **On:** 31 October 2019

Before: Employment Judge Woffenden (sitting alone)

Appearances

For the claimant: In Person

For the respondent: Mr M Ximenez General Manager

JUDGMENT

1. The response is not struck out for non-compliance with the order of Employment Judge Camp sent to the parties on 5 July 2019.

Note: Reasons for the decision having been given orally at the hearing, written reasons will not be provided unless a written request is received from either party within 14 days of the sending of this record of the decision.

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 with Members at the Employment Tribunals, Midlands West, on **2 3 4 5 6 and 9 10 11 12 13 November 2020**, starting at 10 am or as soon as possible afterwards. The first day of the hearing will be for reading-in time for the Tribunal and for any preliminary matters to be dealt with. The parties and their representatives, but not necessarily any other witnesses, must attend by 9.30 am on that day. The time estimate for the hearing is 10 days, based on the claimant's intention to give evidence and call 3 further witnesses and the respondent's **current** intention to call 10 witnesses (in

the absence of up to date legal advice) , and on the following provisional timetable:

- (i) 1 day for reading in and any preliminary matters;
 - (ii) maximum 4.5 days for oral and other evidence on liability;
 - (iii) a maximum total of 3 hours (half each) for submissions on liability;
 - (iv) approximately 2 days for the Tribunal to determine the issues which it has to decide, reach its conclusions and prepare its reasons;
 - (v) ½ day for the Tribunal to give judgment, with reasons if possible;
 - (vi) 1 day for the Tribunal to deal with remedy, including hearing further evidence if appropriate, reaching conclusions and giving judgment, if the claimant succeeds in whole or part.
- (2) The claimant and the respondent **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.
 - (3) The claimant accepts that the schedule of loss she served on 5 August 2019 requires amendment .She accepts she has no claim for holiday pay, her injury to feelings award requires quantification and she has not identified the nature of her alleged psychiatric injury or when it was diagnosed or its causation. She will consider whether she needs to disclose medical evidence about this.
 - (4) The respondent's defence to the unfair dismissal claim is that the claimant was not an employee, but it was conceded by Mr Ximenez that if she was, she was dismissed by the respondent on 6 January 2019 by reason of redundancy. The issue of her employment status will have to be determined at the final hearing.
 - (5) The claimant says that in relation to her equal pay claim her comparators are her father and Akeel Khan (both alleged to be in the same job role as the claimant though Mr Khan may now have left) and in relation to her race discrimination claim her comparator in terms of pay is Barbara Sherrard (a white woman also alleged to be employed in the same role as the claimant).
 - (6) The claimant has already complained at the preliminary hearing on 3 July 2019 and in writing on 11 July and 21 August 2019 about alleged continuing pressure being put on her father by Mr Mahal and Mr Ximenez. She had drafted (but had not sent to the tribunal) another email which catalogues more such alleged conduct after 26 August 2019.She asked me to ask the respondent to stop this .Mr Ximenes denied any such conduct .I repeated the warning given by Employment Judge Camp in paragraph 22 of his order. The claimant sought and I decided there should be an Open Preliminary Hearing to determine whether the respondent's response be struck out under rule 37 (1) (b) Employment Tribunal Rules of Procedure 2013.The claimant's witness statement and that of her father to be prepared for the OPH should also deal with any alleged incidents post this hearing. The Open Preliminary Hearing has been listed to accommodate the claimant's absence abroad in January 2020.I have decided on reflection after today's hearing that it is in the interests of justice and in accordance with the overriding objective to simplify the preparations for the Open Preliminary Hearing as set out in paragraph 6 below.
 - (7) Mr Ximenez wants any future communication to be to him via email at m4cc468@gmail.com.

The issues

- (8) The issues between the parties which potentially fall to be determined by the Tribunal are as follows:

Time limits / limitation issues

- (i) Were all of the claimant's complaints presented within the time limits set out in sections 123(1)(a) & (b) of the Equality Act 2010 ("EQA")? Dealing with this issue may involve consideration of subsidiary issues including: whether there was [an act and/or conduct extending over a period, whether time should be extended on a "*just and equitable*" basis; when the treatment complained about occurred; etc.

Unfair dismissal

- (ii) Was the claimant an employee or a worker from 15 November 2011 to 2016?
- (iii) Was the claimant an employee or a worker from 2016 to 6 January 2019?
- (iv) If she was an employee from 2016 to 6 January 2019 what was the principal reason for her dismissal and was it a potentially fair one in accordance with sections 98(1) and (2) of the Employment Rights Act 1996 ("ERA")? The respondent asserts that it was because she was redundant.
- (v) If so, was the dismissal fair or unfair in accordance with ERA section 98(4), and, in particular, did the respondent in all respects act within the so-called 'band of reasonable responses'?

Remedy for unfair dismissal

- (vi) 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 in time anyway? See: Polkey v AE Dayton Services Ltd [1987] UKHL 8; paragraph 54 of Software 2000 Ltd v Andrews [2007] ICR 825; W Devis & Sons Ltd v Atkins [1977] 3 All ER 40; Crédit Agricole Corporate and Investment Bank v Wardle [2011] IRLR 604;
 - b. would it be just and equitable to reduce the amount of the claimant's basic award because of any blameworthy or culpable conduct before the dismissal, pursuant to ERA section 122(2); and if so to what extent?

- c. did the claimant, by blameworthy or culpable actions, cause or contribute to dismissal to any extent; and if so, by what proportion, if at all, would it be just and equitable to reduce the amount of any compensatory award, pursuant to ERA section 123(6)?

EQA, section 13: direct discrimination because of race or sex

- (vii) Has the respondent subjected the claimant to the following treatment:
 - a. as set out in the claimant's table of 7 complaints dated 2 August 2019;
 - b. dismissing the claimant?
- (viii) Was that treatment "*less favourable treatment*", i.e. did the respondent treat the claimant as alleged less favourably than it treated or would have treated others ("comparators") in not materially different circumstances? The claimant relies on hypothetical comparators.
- (ix) If so, was this because of the claimant's race /sex and/or because of the protected characteristic of race/sex more generally?

Equal Pay

- (x) Was the claimant's hourly rate less than that of male colleagues who were doing the same work?
- (xi) Can the respondent show this was because of a material factor (the respondent relies on job duties skill seniority and whether hours worked were on day or night shift?)

Remedy

- (xii) If the claimant succeeds, in whole or part, the Tribunal will be concerned with issues of remedy and in particular, if the claimant is awarded compensation and/or damages, will decide how much should be awarded. Specific remedy issues that may arise and that have not already been mentioned include:
 - a. if it is possible that the claimant would still have been dismissed at some relevant stage even if there had been no discrimination, what reduction, if any, should be made to any award as a result?
 - b. did the respondent 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 any compensatory award, 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")?

- c. did the claimant unreasonably fail to comply with a relevant ACAS Code of Practice, if so, would it be just and equitable in all the circumstances to decrease any compensatory award and if so, by what percentage (again up to a maximum of 25%), pursuant to section 207A?

Other matters

- (9) If at any hearing any party wants to rely on a recording of a conversation it will have to provide a copy and transcript to the other party and equipment to enable the recording to be heard at the hearing. If the claimant wants the tribunal to grant witness orders she will have to apply in writing and the witnesses must have been asked and refused to attend and have relevant evidence to the issues in dispute She will have to provide addresses for service. If granted she will not be permitted to cross-examine the witnesses who are the subject of such orders.
- (10) I urged the respondent (if it intends to do so) to obtain representation in good time. I explained to both parties how a hearing proceeds.
- (11) 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/. I drew the claimant's attention to the **EHRC Code of Practice on Employment (2011)**.
- (12) 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.**
- (13) 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.
- (14) The following case management orders were made by consent.

ORDERS

Made pursuant to the Employment Tribunal Rules of Procedure

1. Judicial mediation

- 1.1 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/. The claimant is interested in judicial mediation. **By 12 December 2019** the respondent will inform the claimant and the tribunal whether it is interested in an offer of judicial mediation and, if not, why.

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. Response

- 3.1 The respondent's letter to the tribunal dated **25 October 2019** will serve as its amended response.

4. Statement of remedy / schedule of loss

- 4.1 The claimant must provide to the respondent by **28 November 2019** 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.
- 4.2 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.

5. Open Preliminary Hearing

- 5.1 There will be an open preliminary hearing (“OPH”) on **25 February 2020** at 10 AM (time estimate one day) to determine whether the response be struck out on the ground that the manner in which the proceedings have been conducted by or on behalf of the respondent has been scandalous ,unreasonable or vexatious (“the preliminary issue”).

6. Preparation for the OPH

- 6.1 By **19 December 2020**, the claimant shall prepare and send to the respondent full written statements containing all the evidence she and her witnesses intend to give at the OPH. All documents relevant to the preliminary issue in chronological order and with page numbers must be attached to the claimant's witness statements. The witness statements must: have numbered paragraphs; be cross-referenced to the documents; contain only evidence relevant to the preliminary issue.
- 6.2 By **19 December 2020** the respondent shall prepare and send to the claimant full written statements containing all the evidence it and its witnesses intend to give at the OPH. All documents relevant to the preliminary issue in chronological order and with page numbers must be attached to the respondent's witness statements. The witness statements

must: have numbered paragraphs; be cross-referenced to the documents; contain only evidence relevant to the preliminary issue.

6.3 The parties must bring 2 spare copies to the OPH for the tribunal's use.

7. Documents for Final Hearing

7.1 On or before **9 January 2020** the claimant and the respondent shall send each other a list of all documents that they wish to refer to at the final hearing or which are relevant to any issue in the case, including the issue of remedy. They shall send each other a copy of any of these documents if requested to do so.

8. Final hearing bundle

8.1 By **6 February 2020**, the parties must agree which documents are going to be used at the final hearing. The claimant must paginate and index the documents, put them into one or more files ("bundle"), and provide the respondent 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.

9. Witness statements

9.1 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 **6 April 2020**. 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.

10. Final hearing preparation

- 10.1 **On the the first day of the final hearing** (but not before that day), by **9.30 am**, the following parties must lodge the following with the Tribunal:
- 10.1.1 four copies of the bundle(s), by the claimant;
 - 10.1.2 four hard copies of the witness statements (plus a further copy of each witness statement to be made available for inspection, if appropriate, in accordance with rule 44), by whichever party is relying on the witness statement in question;
 - 10.1.3 three hard copies of any written opening submissions / skeleton argument, by whichever party is relying on them / it;
 - 10.1.4 three hard copies of the following agreed if possible, by **26 October 2020**, by the respondent –a neutral chronology.

11. Other matters

- 11.1 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.
- 11.2 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.
- 11.3 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.
- 11.4 **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.
- 11.5 **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.**
- 11.6 **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.**

Signed by Employment Judge Woffenden

Date: 1 November 2019