



EMPLOYMENT TRIBUNAL  
England and Wales  
London Central Region

Heard by CVP on 11/2/21

Claimant: Miss E Meese  
Respondent: Artoc Group For Investment and Development  
Before: Tribunal judge: Mr J S Burns;  
Members Ms G Carpenter and Ms S Plummer  
Representation  
Claimant: in person  
Respondent: Mr T Gillie (Counsel)

JUDGMENT

1. Paragraph 2 of the Order dated 22/10/20 is reconsidered and revised so J Burns can sit as judge on the FMH.
2. The Respondent's Counterclaim is dismissed on withdrawal.
3. The Claimant's claims of unfair dismissal and for holiday pay are dismissed on withdrawal
4. The claims of direct religion discrimination and harassment related to religion are dismissed.
5. The claim for wrongful dismissal succeeds
6. The claim for unauthorised deduction from earnings succeeds
7. The Respondent must pay the Claimant £4875.27 as arrear pay including notice pay.
8. The Claimant on receipt of the above sum is to account to the Inland Revenue for any tax and NI contributions due on the above amount
9. The Respondent shall pay the Claimant £3460 under section 38 Employment Act 2002 for failing to provide the Claimant with a statement of employment particulars within 2 months or at all.
10. The total amount payable by the Respondent to the Claimant is £8335.27 and this is payable by 25/2/2021

REASONS

1. We heard evidence from the Claimant and Ms Emma Johansen and we read statements from Marilyn Redfern (Claimant's mother) Richard Daly (employment consultant) and Amany Farid. The documents were in an agreed bundle.
2. At the outset the Respondent conceded that the claims were within the territorial jurisdiction of the tribunal. We find that the oral employment contract entered into between the parties was subject to English law and the obligations in the Employment Rights Act 1996. The Claimant was recruited in London, started work as a PA on 21/10/2019 and was paid in pounds sterling, and worked most of the time in London from an office or establishment of the Respondent's at 35 Portman Square London, W1H 6LR.

3. The Claimant claimed direct discrimination (section 13 EA 2010) and/or harassment (section 26 EA 2010) because of or related to religion. The Claimant is a Christian. She says that in November 2019 she was mocked and belittled by a work-colleague Emma Johansen because the Claimant was wearing conservative attire (including a vest under the top of her dress which vest covered the Claimant's neck and arms). Emma allegedly asked the Claimant "*Are you religious, why are you wearing this – you look like a Muslim?*"
4. The Claimant had not mentioned this at all in her original ET1 and she mentioned it for the first time at a case management hearing in October 2020. Ms Johansen denied making the comment. The parties were agreed that there had been some discussions about attire. We are not satisfied on a balance of probabilities that the Claimant has proved this comment was made as she now describes it. Furthermore, even if we had accepted that the comment was made as claimed, we would not find that it passed the threshold of seriousness required for a finding of liability under the Equality Act.
5. The Claimant became increasingly unhappy at work and the relationship with her colleagues broke down. She left the London Office on 23/12/2019 telling her colleagues that she was going to work remotely from home until the problem had been resolved. She also contacted her boss Mr Shafik Gabr (CEO of the Respondent and the person whom the Claimant worked for as PA) by Whatsapp and informed him of the situation. She continued working at home and also took a few days holiday which she had pre-arranged. On 29/12/2019 Mr Gabr sent the Claimant a message instructing her to finish off her work tasks and return her work laptop to the office. On 30/12/2019 the Claimant returned to the Office and returned the laptop. She asked a senior manager Ms Weare whether she (the Claimant) was dismissed. Ms Weare told the Claimant to "*stop being childish*" and then told her "*that will be all*" – indicating the door. The Claimant reasonably inferred from this that she had been dismissed by the Respondent with immediate effect.
6. As there were no grounds for dismissing the Claimant summarily she was entitled to one week's statutory notice pay.
7. The Claimant's evidence about the shortfall in her salary payments (which we accept) was unchallenged by any evidence from the Respondent. She was employed at a gross salary of £45000 per year. As an employee should have been paid monthly in arrears net of tax and national insurance contributions having been deducted by the Respondent and paid over to HMRC. The Respondent failed to provide the Claimant with any payslip at any time and made ad hoc payments to her, namely one payment of £1125 on 5/11/2019 and a further payment of £3750 (which appears to have been intended as a payment for one month's salary gross) in December 2019. The Claimant asked Mr Shafik Gabr for clarification of her pay and how it was calculated but never received any substantive reply.
8. There is no evidence before the Tribunal that the Respondent has been or is performing its legal obligations in this regard and in the circumstances of this case the Tribunal has no confidence that if the award for arrear pay to the Claimant was made net of tax and NI contributions, that the Respondent would then pay the deducted sums to HMRC. For this reason, the tribunal awards the arrear pay and notice pay gross of tax and national insurance contributions, on the basis that on receipt the Claimant shall be obliged to account to HMRC for any sums due by her.
9. The gross salary which the Claimant should have received was £3750 per month, and £865 per week.
10. The gross salary which the Claimant should have received for the period of her employment 21/10/2019 to 30/12/2019 was  $2.33 \times £3750 = £8737.50$
11. The gross notice pay she should have received was £865

12. In addition she incurred personal expenses which the Respondent was obliged to re-imburse her for in the sum of £147.77.
13. The total gross amount she should have been paid was £9750.27. The Respondent paid her a total of £4875. The balance due is £4875.27.
14. The Respondent failed to provide the Claimant with an employment contract or a statement of employment particulars within 2 months or at all. The Claimant asked for a contract on several occasions but was fobbed off. This caused her doubt about the identity of her employer and left her in ignorance about important matters such as when and how she would be paid. The Respondent subsequently tried to take unscrupulous advantage of this by seeking to advance at an earlier stage of these proceedings an argument (since abandoned) that the Claimant's employment was subject to Egyptian law and that she could not claim the protection of the Employment Tribunal of England and Wales. The failure to provide a statement of employment particulars was part of a wider pattern of flagrant disregard and probable attempted evasion of basic employer obligations, and exploitation of vulnerable employees.
15. The only appropriate award is 4 week's pay namely  $4 \times £865 = £3460$ . This is not taxable.
16. The Respondent failed to provide payslips to the Claimant but the last unnotified deduction would have been in excess of 13 weeks prior to the presentation of the ET1 on 8/4/20 so the Tribunal is unable to make any award to the Claimant under section 12(4) ERA 1996.
17. In view of the findings in these reasons the tribunal has informed HMRC about this matter.

Date 11/2/2021  
J S Burns Employment Judge  
London Central  
For Secretary of the Tribunals

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Date sent to the Parties: 08/06/2021