



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms N Alderson

**Respondent:** Seaham Care Limited

**Heard at:** Newcastle Upon Tyne  
Hearing Centre

**On:** 17 and 18 June 2021

**Before:** Employment Judge Johnson  
Ms S Donn  
Mr R Greg

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Mr T Muirhead - Consultant

# RESERVED JUDGMENT

The unanimous judgment of the Employment Tribunal is as follows:-

1. The claimant's complaint of unlawful sex discrimination is not well founded and is dismissed.
2. The claimant's complaint of unauthorised deduction from wages is dismissed upon withdrawal by the claimant.

# REASONS

1. The claimant conducted this hearing herself. The claimant gave evidence herself and also called her mother, Mrs Susan Alderson, to give evidence. The respondent was represented by Mr Muirhead, Employment Consultant who called to give evidence Ms Deborah Parkin (Care Home Manager) and Ms Pauline Jones (Home Manager). There was an agreed bundle of documents marked R1, containing 151 pages of documents and a supplemental bundle marked R2, containing a further 6 pages of documents. The claimant, her mother, Ms Parkin and Ms Jones had all prepared typed and signed witness statements. Those statements were taken "as read" by the Tribunal, subject to questions in cross examination and questions from the Tribunal.

2. By claim form presented on 13 November 2019, the claimant brought complaints of unlawful deduction from wages and unlawful sex discrimination. The respondent defended the claim. The allegations of unlawful sex discrimination are that the claimant was required contractually to work a shift pattern which involved weekends and that there were occasions when the claimant was unable to work weekends due to her childcare responsibilities. The claimant alleged that the requirement to work weekends amounted to indirect sex discrimination. The claimant alleges that she was refused permission to take leave over a weekend when her mother was unable to look after her children, because her mother was recovering from surgery. The claimant said she was forced to resign without notice. Because she did not give notice, the respondent withheld outstanding wages and holiday pay from her final salary.
3. The claimant accepted at the beginning of this hearing that she had now received payment in full for the outstanding wages and holiday pay and that she no longer wished to pursue those claims. Those claims were dismissed.
4. The allegation of unlawful sex discrimination is one of indirect sex discrimination, contrary to Section 19 of the Equality Act 2010. The issues to be decided by the Tribunal were identified as follows:-
  - (1) Did the respondent apply to the claimant a provision, criterion or practice which was discriminatory in relation to the claimant's sex?
  - (2) What was that provision, criterion or practice?
  - (3) Did that provision, criterion or practice put the claimant and other women at a particular disadvantage when compared with men?
  - (4) If so, did it put the claimant personally at a disadvantage?
  - (5) Is the respondent able to show that the provision, criterion or practice in all the circumstances was a proportionate means of achieving a legitimate aim?
5. The claimant is aged 30 years and is a qualified nurse. She has two young children, for whom she has primary caring responsibilities. The claimant is a single parent, but has the help of her mother with childcare arrangements when the claimant is at work.
6. The claimant had undertaken work for the respondent as an agency nurse. Whilst undertaking that work, the claimant became acquainted with Deborah Parkin, who worked for the respondent. The claimant enquired as to whether she could be engaged by the respondent as a permanent employee, rather than undertaking work on an agency basis. On 26 April 2019, the claimant signed a formal contract of employment which specifying a start date of 22 April 2019. A copy of the contract appears at page 55 in the bundle. It specifies that the claimant would have to work a three-month probationary period, that her rate of pay would be £15.50 an hour and that her normal hours of work would be, "24 hours Monday to Sunday in accordance with the

rota, alongside working alternate weekends. These normal hours of work may be varied to meet the needs of the business. You may be required to work a reasonable amount of overtime hours as directed by the company. This may include the need to work shifts, unsocial hours and weekends”.

7. It is clear from the documents in the bundle and was accepted by the claimant, that she worked both weekdays and some weekends. There were occasions when the claimant agreed to work weekend shifts when requested to do so by her colleagues or by management. Copies of the rotas worked by the claimant appear in the bundle and show that she worked on 13 of the 23 weekends when she was employed by the respondent.
8. The two witnesses for the respondent accepted that they were aware that the claimant had two young children and that the claimant was only able to work weekends when she could arrange for her mother or her partner to look after her children. It was accepted that the majority of the weekend childcare responsibilities fell upon the claimant’s mother when the claimant was undertaking a weekend shift.
9. The claimant’s evidence to the Tribunal was that, if she was on the rota to work a weekend, then she would not be permitted to decline the weekend shift, unless she was able to arrange for another member of staff to cover that shift. The claimant maintained that if she was unable to arrange a swap with another member of staff, then this would mean that she was likely to be disciplined for not attending work if she had to remain at home to look after her children.
10. The claimant was unable to provide any evidence of any weekend when she was unable to arrange cover via colleagues or management for a weekend when she was unable to work. It is clear from the text messages which appear in the bundle, that whenever the claimant asked to be released from a weekend shift, then she was released from that shift. The claimant would approach Deborah Parkin or Pauline Jones, who would either arrange to cover the shift themselves, arrange for other staff to do it or as a last resort, arrange for agency nurses to come in to do the work. On no occasion was the claimant refused permission not to attend work on a weekend if she had childcare responsibilities.
11. The claimant’s mother suffered from gallstones and was told that she would require surgery. Ms Parkin and Ms Jones accepted that the claimant had mentioned this in informal discussions at the care home. However, no specific date for that surgery was ever provided to the respondent.
12. The claimant attended an appointment at Sunderland Royal Hospital with her mother on 12 September 2019, at which the claimant’s mother was told that she would undergo surgery on 26 September. The Tribunal was satisfied that the claimant knew by 12 September that her mother would be undergoing surgery on 26 September. Ms Parkin and Ms Jones denied that the claimant ever informed them that her mother would be undergoing surgery on that date, until she attended a formal probationary review meeting on 26 September 2019. That meeting had been convened in a letter sent to the

claimant on 20 September, inviting her to the meeting to discuss the following allegations:-

- (1) Alleged poor timekeeping;
  - (2) Alleged failure to complete care plans as a registered nurse;
  - (3) Alleged unauthorised absence when rostered on duty;
  - (4) Allegedly using a swear word in a text message to one of the home managers.
13. Minutes of the meeting dated 26 September appear in the bundle at page 97. Nowhere in the minutes of that meeting does the claimant mention that her mother is to undergo surgery that day and that as a result the claimant would be unable to attend work the following weekend because she would have to remain at home to look after the children. The Tribunal accepted the evidence of Ms Parkin and Ms Jones, namely that the claimant did not make a request to be released from the shift that she was on the rota to undertake the following weekend. The only mention in the minutes of the claimant's childcare responsibility relates to her explanation that she was occasionally late for work when the children's nursery was late opening during the week. There is no mention of any difficulty that the claimant had encountered in having to work a weekend shift when there was no-one available to look after her children.
14. The version of the meeting given by Ms Parkin and Ms Jones was that the claimant lost her temper and indicated from the outset that she intended to resign. Both Ms Parkin and Ms Jones stated that the claimant had with her a letter which the claimant told them was "her resignation". The claimant insisted that she did not have any such letter with her, and that the document in the unopened envelope was confirmation of her mother's appointment to have surgery. Whatever was in the envelope, it was not opened.
15. The claimant accepted that she had become "annoyed" during the meeting and insisted that this was because Ms Parkin and Ms Jones "would not listen" when she tried to explain the difficulties she was encountering with childcare responsibilities. Ms Jones and Ms Parkin's version of the meeting was that the claimant had taken exception to the allegations which had been made against her, particularly the one relating to the unauthorised absence. What had happened on that occasion was that the claimant had taken two weeks leave, which had been approved in advance by the respondent. However, at the end of the two weeks, the claimant had informed the respondent that her partner had booked a surprise holiday for her and the children the following week and accordingly the claimant would not be attending work during that week. The respondent's response was that this would be categorised as unauthorised leave and that the claimant would not be paid any holiday pay in that regard. No formal complaint about that was raised by the claimant at the time.
16. The claimant's evidence to the Tribunal was that she believed she was to be dismissed at the meeting on 26 September. The evidence of Ms Jones and

Ms Parkin was that, if anything, the claimant may have had her probationary period further extended. The claimant would not have been dismissed, particularly because she is a skilled and qualified nurse and such staff are difficult to find at the present time and accordingly the respondent would have been reluctant to let the claimant go.

17. The Tribunal accepted the evidence of Ms Parkin and Ms Jones to the effect that the claimant did lose her temper and stormed out of the meeting, clearly indicating that it was her intention to resign. On 26 September at 16.17 pm the claimant by email submitting her resignation to the respondent in the following terms:-

“Dear Deborah and Pauline,

Please accept this email as notice of my resignation from the position of Staff Nurse at Dr Ashdowns, Stockton Lodge Nursing Home. Although my employment contracts states a required notice period, I would like to reduce this to immediate effect, completing my employment today on 26 September 2019. This is due to childcare issues, unfair rota system and issues within the home I no longer want to be part of. I hope we can come to an amicable agreement to grant this request”.

Later that day, Ms Parkin accepted the claimant’s resignation, stating “I am accepting your notice with immediate effect. I am sad it has come to this when a decision had not been made from the meeting today. We wish you every success with your future career”.

18. There is provision in the claimant’s contract of employment that she must provide a week’s notice. The contract goes on to state that if she does not do so and the respondent suffers financial losses because of that, then those financial losses may be recovered from the claimant and may be deducted from any wages or to her. The respondent had to engage agency staff to cover the shifts which the claimant was due to work that weekend. The cost of the agency staff exceeded the wages and holiday pay which then were owed to the claimant. When the deduction was made, the claimant wrote to Mr Andrew Ashdown, Director of Seeing Care Limited by letter dated 16 December 2019, a copy which appears at page 102. The relevant extracts are as follows:-

“I have sent you my notice email and also proof of my mam’s surgery letter and dates from the hospital as agreed. Going forward all I want is to be paid what I am owed. I worked 5 days before I felt I had no other option but to write my notice with immediate effect due to childcare issues and no support from management in regards to my childcare situation and rota. Considering my contract was only two days a week and I was available Monday – Friday as I had private nursery that I could pay for, surely this could have been facilitated whilst my mam was recovering. I understood that the other nurse who worked weekends is on long term sick but I feel it is totally unfair for just me to constantly put in for weekends but I was told it was part of my contract that I had to be flexible and to cover other people’s sick

when I only work there 2 days a week to start with. Surely that stands for all the nurses? I feel I have been bullied out of my job because I refused to work every weekend and couldn't due to childcare issues. I was put in the position that I felt I had no other choice but to leave with immediate effect as my shifts were again weekends, days that I couldn't work".

19. Nowhere did the claimant allege that she had been subjected to indirect sex discrimination because the requirement to work weekends meant she may be disciplined for missing a shift when she had to look after her children.
20. The Tribunal found that there were no occasions during her employment with the respondent when the claimant was refused permission to take a weekend off because she had childcare responsibilities. The Tribunal found that there were no occasions when the claimant was threatened with disciplinary action if she failed to attend for a weekend shift when the reason for her absence was childcare responsibilities. Of the 4 matters to be discussed at the probationary review meeting on 26 September, none were related to the claimant's childcare responsibilities. The Tribunal found that the reason why the claimant resigned was more likely to be that she took exception to those 4 matters being raised at a probationary review meeting. The principle reason for the claimant's grievance in these proceedings was the respondent's deduction of her wages to recoup their losses in covering the shift when they had to engage agency staff after the claimant resigned without notice.

### **The Law**

21. The claim is brought under Section 19 of the Equality Act 2010.
22. Section 19 refers to a protected characteristic. The protected characteristics are set out in Section 4 of the Equality Act 2010 and include "sex".
23. It is for the claimant to establish that the respondent applied a provision, criterion or practice (PCP) which was discriminatory in relation to the claimant's sex. The provision relied upon is that in the claimant's contract of employment at page 56 in the bundle under the heading "hours of work", which is set out above. The claimant's case is that this provision places women at a disadvantage when compared to men, as it is well known and accepted that women are more likely to have childcare responsibilities, which make it more difficult for them to work shift patterns which require arrangements to be made for children to be cared for.
24. Section 19(2)(c) also requires the claimant personally to be put at a disadvantage by the application of that PCP.
25. The Tribunal accepted that it is entitled to take judicial notice of the fact that women are more likely to have to undertake childcare responsibilities, than men. The Tribunal accepted that this means that it is far more difficult for women to work a shift rota or a shift pattern which requires attendance at work when children have to be cared for.

If for whatever reason, alternative childcare arrangements are unavailable or break down, then the woman will be required to look after the children, which

means that the woman will not be able to attend for work. Accordingly, the Tribunal was satisfied that the contractual provision was discriminatory in relation to the claimant's sex.

26. However, the Tribunal was not satisfied that the claimant herself was put to any disadvantage whatsoever as a result of this provision. The Tribunal found that the practice of the respondent was that whenever the claimant requested to be released from a weekend shift, then those arrangements were made. That is clear from the exchange of text messages in the bundle. The claimant accepted that throughout her employment, whenever she requested to be released from a weekend shift, she was so released. The respondent arranged for management to cover the shift, or other staff, or agency staff.
27. The Tribunal find that the respondent did not refuse to release the claimant from the shifts she was due to work on the weekend following the meeting on 26 September. The claimant did not make any formal or informal request to be released from that weekend shift. The Tribunal found that the claimant did not inform the respondent that her mother was due to undergo surgery until the meeting on 26 September. The Tribunal accepted the evidence of Ms Parkin and Ms Jones to the effect that, had the claimant asked to be released from that weekend shift, then they would have agreed to it. They would have covered the shift themselves, or arranged for other staff to do it, or arranged for agency work to do so.
28. The Tribunal found that the claimant did not resign because she had been refused permission to be released from that weekend shift. The Tribunal found it more likely that the claimant resigned in temper because she took exception to the respondent requiring her to attend a probationary review meeting to discuss the 4 allegations referred to above.
29. The Tribunal found that the claimant was not put to any disadvantage by the contractual provision referred to above, as there were no occasions when the claimant was required to attend a weekend shift when she was unable to arrange childcare cover.
30. For those reasons, the claimant's complaint of unlawful indirect sex discrimination is not well founded and is dismissed.

Authorised by Employment Judge Johnson

25 June 2021

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