



EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant
MS N ADAMS**

AND

**Respondent
123 AP LTD**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: BRISTOL ON: 16TH AUGUST 2021

**EMPLOYMENT JUDGE MR P CADNEY
(SITTING ALONE)**

APPEARANCES:-

FOR THE CLAIMANT:- IN PERSON

FOR THE RESPONDENT:- NO ATTENDANCE

JUDGMENT

The judgment of the tribunal is that:-

1. The claimant's claims for:-
 - i) Automatic unfair dismissal (s103A ERA 1996);
 - ii) Public Interest disclosure Detriment (s47B ERA 1996)
 - iii) Unlawful deduction from wages and/or breach of contract;
 - iv) Unpaid holiday pay;

are well founded and are upheld.

2. The respondent is ordered to pay the claimant the following sums:-

- i) Unfair Dismissal- Compensatory award:£2,999;
- ii) Public Interest disclosure detriment- Injury to feelings £10,000;
- iii) Unpaid wages - £3,888.81.
- iv) £1137.51 in unpaid pension contributions;
- v) £14,400 in unpaid university fees;
- vi) Unpaid Holiday Pay - £1,218.75
- vii) Total - £33,637.03

3. The claimants claim for victimisation contrary to s27 Equality Act 2010 is not well founded and is dismissed.

Reasons

1. The claimant was employed by the respondent from 1st May 2020 to 18th September 2020. On 18th December 2020 she submitted a claim form claiming unfair dismissal; public interest disclosure detriment; unlawful deduction from wages/breach of contract; and unpaid holiday pay. No response has been entered by the respondent which has not attended today's hearing. As a result he reasons can be dealt with relatively briefly.
2. Unlawful Deduction from Wages / Breach of Contract – The claimant has given evidence which I accept that the following sums remain outstanding :- £3888.81 in unpaid salary/expenses; £1218.75 in unpaid holiday pay; unpaid pension contribution (£650.01 (employee) £487.50 (employer)); and £14,400 in unpaid university tuition fees which the respondent was contractually obliged to pay.
3. Interest- The claimant has claimed interest at 8% on the sums outstanding. However the tribunal has no jurisdiction to order interest on the sums outstanding to date. For the avoidance of doubt if the judgement is not met interest will begin to accrue.
4. Unfair dismissal – The claimant has less than two years continuous service and so cannot bring a claim for “ordinary” unfair dismissal. That leaves the question of automatic unfair dismissal for having made a public interest disclosure. In her submissions the claimant states “*Whistleblowing (Detriment and Constructive Dismissal) - During my employment I raised concerns and questioned financial practice on numerous occasions. As a result of this I was subjected to detrimental treatment and victimisation. As a result of questioning financial practice across the group I was subjected to punishment from Mr Palmer, my salary was withheld for five days. My line management was altered as Mr Palmer told me he was ‘was mad at*

me', I was subjected to numerous distressing conversations and advised that I should find a new job as I had children to feed. I was told to find another job by the Director of Operations as Mr Palmer would "never be nice to me again" and she had seen him treat other people 'really badly' when they questioned him. I sought alternative employment as a direct result of the detrimental treatment that I received which amounted to a repudiatory breach in the employment contract. I am therefore making a claim of detriment as a result of making a protected disclosure/whistleblowing and constructive, unfair dismissal. I am seeking compensation and damages for this in addition to loss of earnings and injury to feelings".

5. In the hearing the claimant has amplified those statements and has given evidence that I accept, that during her employment the claimant made disclosures relating to the unlawful withholding and failure to pay salaries; the unlawful failure to make employee or employer pension contributions; the cancellation of liability insurance amongst others. She made disclosures to other directors who internally bore responsibility for these areas and externally to the CQC and Pensions Regulator. In my judgement each of those is a disclosure of information which the claimant reasonably believed showed a breach falling within s43B (at least they encompass a legal obligation) and which she reasonably believed to be in the public interest. It follows that in my judgement they were protected disclosures and I also find that the claimant suffered the detriments set out above in consequence.
6. Those matters are all fundamental breaches of contract entitling her to resign. Accordingly she was dismissed, the dismissal falls within s103A and the claimant's case for automatic unfair dismissal is well founded. ..
7. Public Interest Disclosure Detriment -The basis of the constructive dismissal claim is that the claimant suffered detriments amounting to fundamental breaches of contract because she made public interest disclosures. As that claim has been upheld it follows that she has made out the claim for public interest disclosure detriment for the same reason.
8. In terms of injury to feelings in my judgement this case falls towards the lower end of the middle Vento band and I award £10,000.
9. Victimisation – The claimant has not brought a discrimination claim based on any protected characteristic, but does refer to a victimisation claim. In her submissions she describes a conversation with Mr Palmer of the respondent as being a protected act and contends that she has been victimised by him in the continuing failure to pay the sums outstanding because of this. The conversation took place on 2nd October 2020 and during it the claimant told Mr Palmer that she was going to contact ACAS and bring a tribunal claim to pursue the unpaid sums. The difficulty for the claimant is that there is no factual allegation that this conversation contained any assertion that would bring it within s27 of the Equality Act 2010, and it is therefore bound to fail.

Employment Judge Cadney
Date: 17 August 2021

Judgment sent to the Parties: 01 September 2021

FOR THE TRIBUNAL OFFICE