



EMPLOYMENT TRIBUNALS

Claimant: Miss J Thorp

Respondents: Graham Lovegrove (R1); and
Louise Saywell (R2)

RECORD OF A PRELIMINARY HEARING

Heard: in private by telephone **On:** 8 January 2021

Before: Employment Judge Ayre (sitting alone)

Appearances

For the claimant: Ms S Hubbard, solicitor

For the respondent: Ms N Thomson, solicitor

JUDGMENT

The respondents failed to provide the claimant with a written statement of her employment particulars contrary to section 1 of the Employment Rights Act 1996.

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, **The Magistrates Courts, 358 High Street, Lincoln, LN5 7QA** on **Monday 21 March 2022, Wednesday 23 March 2022 and Thursday 24 March 2022**, starting at 10 am or as soon as possible afterwards. 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 3 witnesses, and on the following provisional timetable:

- (i) 2 hours for reading in and any preliminary matters;
- (ii) maximum 1 day for oral and other evidence on liability;
- (iii) a maximum total of 1.5 hour (half each) for submissions on liability;

- (iv) approximately 3 hours for the Tribunal to determine the issues which it has to decide, reach its conclusions and prepare its reasons;
 - (v) 1 hour for the Tribunal to give judgment, with reasons if possible;
 - (vi) 2 hours 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 respondents **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

- (3) The claimant was employed by the respondents who own Grange Farm and operate a livery yard providing stables and care for horses, as a groom, from 22 June 2020 to 11 October 2020. By a claim form presented on 12 October 2020, following a period of early conciliation from 12 October 2020 to 12 October 2020 the claimant brought complaints of unfair dismissal and age discrimination.
- (4) On 21 December the claimant began a further period of early conciliation against each individual respondent. That period of early conciliation concluded on 22 December. On 23 December the claimant applied to amend her claim.
- (5) The claim is essentially about the claimant's dismissal by the respondent, and the payments that the respondent made to the claimant during her employment and in respect of holiday pay on termination.
- (6) During the hearing today, the respondents conceded that they had failed to provide the claimant with a written statement of her employment particulars contrary to section 1 of the Employment Rights Act 1996. Accordingly, judgment in favour of the claimant is issued in relation to that element of the claim. The question of remedy shall be determined at the final hearing.

The issues

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

Unfair dismissal

- (i) What was the principal reason for dismissal? The claimant alleges that she was dismissed because she asked to be paid the National Minimum Wage and that the dismissal was automatically unfair contrary to section 104A of the Employment Rights Act 1996 ("ERA")? The respondent asserts that the claimant's dismissal was by reason of redundancy and / or some other substantial reason, namely that the respondent could no longer afford to retain all of its staff.

Remedy for unfair dismissal

- (ii) 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 age

- (iii) Has the respondent subjected the claimant to the following treatment:

Giving the claimant notice of termination of her employment with a view to employing someone younger and cheaper.

- (iv) 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 a hypothetical comparator.
- (v) If so, was this because of the claimant's age and/or because of the protected characteristic of age more generally?
- (vi) If so, has the respondent shown that the treatment was a proportionate means of achieving a legitimate aim?

Unauthorised deductions

- (vii) Did the respondent make unauthorised deductions from the claimant's wages in accordance with ERA section 13 by :-

- a. Underpaying the claimant by £189.34 gross in respect of her normal working hours;
- b. Not paying the claimant overtime in the sum of £889.44; and / or
- c. Underpaying the claimant by £148.24 in respect of holiday pay?

Detriment under section 23 of the National Minimum Wage Act 1998

- (viii) Has the respondent subjected the claimant to the following treatment:

Giving the claimant notice of termination of her employment with a view to employing someone younger and cheaper.

- (ix) If so, was this done on one of the grounds set out in section 23(1) of the National Minimum Wage Act 1998?

Remedy

- (x) 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.

Other matters

- (8) 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/
- (9) 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.**
- (10) 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.
- (11) The following case management orders were uncontentious and effectively made by consent.

ORDERS

Made pursuant to the Employment Tribunal Rules of Procedure

1. Amendment

- 1.1 By consent the respondent's name is amended to:-

Graham Lovegrove (First Respondent); and

Louise Saywell (Second Respondent).

2. Applications

- 2.1 By consent, the claimant's application dated 23 December 2020 to amend the claim is granted.
- 2.2 The respondent has leave to serve an amended response to the claim on or before **29 January 2021**.

3. Judicial mediation

- 3.1 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 respondent is interested in judicial mediation, the claimant is not. If the claimant changes her mind, she must inform the respondents and the tribunal of this as soon as possible.

4. Complaints and issues

- 4.1 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.

5. Statement of remedy / schedule of loss

- 5.1 The claimant must provide to the respondent by **28 February 2022** an updated 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 amounts have been calculated.
- 5.2 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.
- 5.3 The parties are referred to: the Presidential Guidance on pension loss at www.judiciary.gov.uk/wp-content/uploads/2013/08/presidential-guidance-pension-loss-20170810.pdf;
If the claimant is claiming for loss of pension, the Schedule of Loss must include precisely how much is being claimed and on what factual and arithmetical basis.

6. Documents

- 6.1 On or before **26 February 2021** 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, together with a copy of those documents.

7. Final hearing bundle

- 7.1 By **19 March 2021**, 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.

8. Witness statements

- 8.1 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 **20 May 2021**. 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; 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.

9. Final hearing preparation

- 9.1 ***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:

- 9.1.1 four copies of the bundle, by the respondent;
- 9.1.2 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. Other matters

- 10.1 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.
- 10.2 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.
- 10.3 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.
- 10.4 **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.
- 10.5 **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.**
- 10.6 **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 Ayre

8 January 2021

Sent to the parties on:

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For the Tribunal:

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