



EMPLOYMENT TRIBUNALS

Claimant: Ms A Sy

Respondent: Louis Vuitton UK Limited

Heard at: London Central by CVP **On:** 6 October 2021

Before: Employment Judge N Walker

Representation

Claimant: in person

Respondent: Ms J Coyne of Counsel

JUDGMENT

The following allegations in the Claimant's claim were struck out.

- 1 an allegation of direct discrimination when the Claimant says she was not released from work when unwell;
- 2 an allegation of harassment when the Claimant says she was not released from work when unwell;
- 3 an allegation of direct discrimination when the Claimant says she was ignored when seeking authority for a refund;
- 4 an allegation of harassment when the Claimant says she was ignored when seeking authority for a refund.

REASONS

- 1 The Respondent applied to strike out the Claimant's claim. I was provided with detailed written submissions from the Respondent, and I heard submissions from both the Respondent and the Claimant. I had two bundles of documents. The first bundle was a bundle of pleadings. The second bundle was a bundle of contemporaneous documents.

- 2 The hearing took place by CVP. I was satisfied that it was appropriate in all the circumstances, and everyone could see and be seen. The Claimant's first language was not English, and she was not represented at this hearing, although I understand that from time to time, she has a representative who assists her. We took time to ensure that she understood the matter and I checked that she had received the Respondent's written submissions.
- 3 We took each heading and allegation within the claim and considered them into turn.

Allegation of non-payment of holiday pay

- 4 I understood from the Respondent that the Claimant described this matter differently at this hearing from the way she had described it at the Preliminary Hearing for case management. In her ET1, the assertion was very brief and there were no details. Before me today the Claimant acknowledged she had taken and being paid for approximately 9 days holiday. Her claim related to deductions made from her final pay in relation to holiday which had been taken in excess of her accrued entitlement.
- 5 The Respondent had sent two letters, one on 6 April 2020, and a second letter on 28 April 2020, which later letter specifically said those staff who remained on furlough beyond 15 May 2020 were required to take an additional 5 days holiday during the week commencing on 18 May 2020. It also specified that it was formal notice under Regulation 15 of the Working Time Regulations. The Claimant understood and accepted that she was required by the Respondent to take 5 days holiday during the furlough period in the week of 18 May 2020. The Respondent had deducted a further amount from the Claimant's pay of approximately 3 days holiday consistent with instructions it had given to staff in the earlier letter simply stating that employees were required to take their pro rata accrual of holiday during the period of furlough which will be deducted automatically from their annual leave allowance.
- 6 Having reviewed Regulation 15, it was far from clear to me that the Respondent was entitled to give a generalised instruction of that nature. The Tribunal will need to consider the letters in question, particularly letter of 6 April and whether it was sufficient to meet the requirements of the regulation. In those circumstances this matter must go before a full tribunal

Commission

- 7 The second assertion was the Claimant's claim that she was contractually entitled to commission. The Respondent asserted that it had a total discretion over the commission and had exercised it, thus the claim had no chance of success. However, the formula for calculating commission was clear. The discretion was, on the face of the documents, limited. The Respondent was entitled to withhold commission if the employee was not of good standing, which included where there was a Notice on File. In this case the Claimant had been issued a Notice on File. If the discretion had been exercised in a perverse manner, the Claimant would be entitled to her commission. The Notice on File was a form of sanction which the Respondent had applied to the Claimant for non-attendance when she was

legally required to remain at home on quarantine, having returned from her pre-booked holiday in France at a time when the UK government had applied a quarantine requirement. It would be perverse to sanction her for compliance with the law. It appeared the Respondent considered it reasonable to sanction her on the basis that the Claimant should, in their view, have returned to the UK early, once quarantine requirements were announced, in order to avoid the quarantine period. In the circumstances, there is a question for the tribunal to determine which is whether in the Claimant's situation, reliance on the Notice on File was a perverse, or irrational exercise of discretion.

Notice Pay

- 8 The next allegation was whether the Claimant's claim for contractual notice pay should be struck out. The Claimant argued that she believed that the Respondent agreed to let her submit her notice and be paid in lieu and she was therefore misled into giving notice. The backdrop is a dispute over a conversation between the Claimant and her manager. The Respondent says the circumstances are clear as no employer would agree to an employee not attending and being paid. However, there is a factual dispute over what was said in the conversation and while I have checked the contemporaneous document as urged to do by the Respondent, the matter is not so clear that I am prepared to say it meets the test for striking out.

Direct Discrimination – Signing of Note on File

- 9 The Claimant asserts that by her manager signing a document on her behalf (a Note on File) which she did not agree to, which referred to surrender of commission, there had been direct discrimination. The Respondent does not dispute that the manager signed the document but says there was no impact in doing so. In order to claim direct discrimination, there has to be less favourable treatment because of the Claimant's religion or race. There is no evidence of this. The Respondent says that there is evidence to the contrary in that others were treated similarly. There is, however, a factual backdrop to this matter such that it is not appropriate to strike it out.

Harassment – Signing of Note on File

- 10 The Claimant puts the same allegation forward as harassment and says that was harassment related to her race or religion. While it may have had the effect of creating a humiliating position for her, it is difficult to see that she could meet the requirements of the Equality Act in this regard, but it turns on the facts and I declined to strike it out.

Discrimination and harassment allegation regarding notice pay

- 11 The Claimant raises an allegation that the Respondent misled her regarding her notice pay and she says this was both direct discrimination and harassment. There is a factual matrix to these allegations and in the circumstances, I declined to strike them out.

Direct Discrimination – Sickness

- 12 The Claimant raises an allegation about sickness and says in her ET1 that she was asked to work when unwell. In the list of issues, the assertion is that the manager did not release the Claimant from work when she was ill after her colleague had asked the manager if she could get some medication for her. The list notes that the Claimant did not approach them manager directly because she was still ill. The list of issues is expanded to refer to comments made by the manager to the other employee about not being children. The Claimant accepts that she did not ask to be sent home. She thought her manager should have enquired of her and made an effort to go and check her and then sent her home.
- 13 The claim of direct discrimination means the Claimant would have to establish her treatment was less favourable due to her race or religion. There is here no suggestion of less favourable treatment. It would be a normal requirement for an employee to go to the employer to say I am too ill to work. The Claimant did not do so. In this case she asks for more favourable treatment in that she says the employer should have of its own initiative checked whether she was well enough at a time when she did not seek to be released personally. There is no connexion asserted with her race or religion. The manager in question was Muslim. In the circumstances there is no reasonable prospect of the Claimant succeeding and this matter should be struck out.

Harassment – Sickness

- 14 The Claimant raises the same matter as harassment. Such a claim means that she is asserting that it created an intimidating and hostile environment for her. As I have noted, there is nothing to show that the conduct complained of is related to her race or religion. The Claimant has no reasonable prospect of succeeding in this allegation and it should be struck out.

Direct Discrimination – Refund

- 15 The Claimant raises an allegation of discrimination by reference to a refund and she says in the ET1 that she was ignored when trying to complete work tasks. In the list of issues, the matter is expanded on and it says the store director ignored the Claimant when trying to get his consent to a refund. The Claimant confirmed today that several other employees complained about the store director including two white European employees. She also conceded the issue was not because she was because of her race or because of her religion but she thought it was because she was not Italian. The Claimant cannot show that she was treated less favourably than others because of her race or religion. On her own admission the store manager treated other employees who were not of her race or religion in an equally dismissive manner. This matter should be struck out.

Harassment – Refund

- 16 The Claimant raises the same matter as harassment. Again, there is nothing to show that Claimant could demonstrate that this conduct was in anyway related to her race or religion, because the manager in question

was by her own admission in the habit of treating others in an unpleasant manner. In all the circumstances this claim should be struck out.

E J N Walker

Employment Judge N Walker

7 October 2021

Date

JUDGMENT & REASONS SENT TO THE PARTIES ON

07/10/2021

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FOR THE TRIBUNAL OFFICE: OLu