



EMPLOYMENT TRIBUNALS

Claimant: Ms R Stowe
Respondent: Stobart Air Ltd

Heard at: East London Hearing Centre
On: 13 October 2021

Before: Employment Judge Burgher
Members: Ms S Jeary
Mr P Quinn

Appearances

For the Claimant: Did not attend
For the Respondent: Did not attend

JUDGMENT

1. The Claimant's claim succeeds.
2. The Respondent is ordered to pay the Claimant the sum of £25,670.81

REASONS

1. The Claimant brought her first claim to the Tribunal on the 24 March 2020 claiming unfair constructive dismissal, pregnancy and maternity discrimination and sex discrimination. She asserted that date of dismissal was 19 February 2020.

2. The Claimant presented her second claim to the tribunal on 20 May 2020. This claim was professionally drafted. The Claimant claimed unfair constructive dismissal, sex discrimination. Breach of Regulation 16 of the Management of Health and Safety at Work Regulations 1999; breach of section 67 of the Employment Rights Act 1996 and breach of Regulation 25(4) of the Workplace (health and safety and welfare) Regulations 1992.

3. The Respondent responded to both of the claims, denying them, by ET3 responses dated 15 July 2020 and 5 October 2020 respectively.

4. A carefully assessed preliminary hearing was undertaken by Employment Judge Lewis on the 14 September 2020 where the claims are combined and case management orders made an agreed list of issues was specified.

5. On 2 July 2021 the Respondent entered into Voluntary liquidation. Technical Restructuring Ltd appointed individuals as joint liquidators of the company. The joint liquidators wrote a letter dated 22 July 2021 to the Employment Tribunal stating that as all matters brought before the Employment Tribunal relate to actions of the Respondent prior to the appointment of the joint liquidator it was not possible for any for any specific comments to be made on the claims being made by the Claimant.

6. On 24 August 2021 the joint liquidators confirmed that the Respondent would not be represented at the Employment Tribunal hearing. Consequently, on 27 August 2021, the Claimant's representatives wrote to the Tribunal requesting a default judgment against the respondent on the basis that they are no longer defending the claim and that the liquidators have confirmed they will not defending the claim and do not plan to attend. The Claimant's representative stated that the default judgment order is just and as per the overriding objective and invited the Tribunal to consider remedy in accordance with the Claimant's attached schedule of loss.

7. By letter dated 3 September 2021 the Claimant's representative was informed that Regional Employment Judge Taylor had concluded that the case will proceed to final hearing at which the Tribunal would considered the Claimant's application for remedy. It was stated that if the Claimant does not attend the hearing the Tribunal would consider the pleadings, the email dated 27 August 2021 and any relevant correspondence on the Tribunal file in arriving at its decision.

8. The hearing commenced before us and neither party attended. The Tribunal considered what the most appropriate way to proceed would be in view of the correspondence. It was clear to the Tribunal that a default judgment is inappropriate given that the ET3 clearly defends the claim. We are not aware of the liquidators expressing that they are no longer defending the claim, they stated that they are not going to attend the Tribunal to represent the Respondent.

9. In view of the contents of the ET3 defending the claim we do not to issue a Default Judgment.

10. However due to correspondence we have had regard to rule 47 of the 2012 Employment Tribunal rules which states:

"Non-attendance

47. If a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider

any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence."

11. It is evident that the Respondent was not in attendance and would not be represented at the hearing. The Claimant was given an indication by the Tribunal that her absence may mean the Tribunal will consider matters based on pleadings, email and other relevant correspondence. In the circumstances the Tribunal concluded the matter in the absence of the Respondent and concludes that the Claimant's claims are well founded. In particular:

11.1 The Claimant resigned on the 19 February 2020;

11.2 The Claimant succeeds in a claim for unfair constructive dismissal;

11.3 The Claimant was subject to indirect sex discrimination;

11.4 The Claimant's claims under the Health and Safety at Work Regulations 1999 are well founded;

11.5 The Respondent failed to offer the Claimant suitable alternative work country to section 67 of Employment Rights Act 1996;

11.6 The Respondent failed to provide the claimant with alternative work pursuant section 70(4) of the Employment Rights Act 1996; and

11.7 The Respondent failed to carry out a risk assessment contrary to Regulation 61 of the Management and Health and Safety at Work Regulations 1999.

12. The Tribunal then considered remedy.

13. The Tribunal award the Claimant her loss to the 2 July 2021 only, the date when the Respondent went into voluntary liquidation.

14. The Tribunal award the Claimant loss of statutory rights in the sum of £500.

15. The Tribunal award the Claimant the sum of £18,000 for injury to feelings. We set this is the mid band in the Vento guidance. The Claimant was driven to resign as a result of not being accommodated having just given birth.

16. Interest is awarded on the relevant sums.

17. The Respondent is therefore ordered to pay the Claimant the total sum of **£25,670.81** in respect of her claims.

18. The compensation calculation below sets out the relevant figures.

COMPENSATION CALCULATION

1. Details

Date of birth of claimant	10/12/1998
Date started employment	20/05/2017
Effective Date of Termination	19/02/2020
Period of continuous service (years)	2
Age at Effective Date of Termination	21
Date new equivalent job started or expected to start	02/07/2021
Remedy hearing date	13/10/2021
Date by which employer should no longer be liable	02/07/2021
Statutory notice period (weeks)	2
Net weekly pay at EDT	369.23
Gross weekly pay at EDT	415.38
Gross annual pay at EDT	21,599.76

2. Basic award

Basic award	415.38
Number of qualifying weeks (1) x Gross weekly pay (415.38)	
Total basic award	415.38

3. Compensatory award (immediate loss)

Loss of net earnings	26,326.10
Number of weeks (71.3) x Net weekly pay (369.23)	
Plus loss of statutory rights	500.00
Less payment in lieu	-6,671.82
Less sums obtained, or should have been obtained, through mitigation	-15,575.91
Earnings	15,575.91
New employment (07/07/2020 to 02/07/2021)	15,575.91
Total compensatory award (immediate loss)	4,578.37

4. Adjustments to total compensatory award

Plus interest (compensation award) @ 8% for 301 days	302.05
Compensatory award before adjustments	4,578.37
Total adjustments to the compensatory award	302.05

Compensatory award after adjustments	4,880.42
5. Non financial losses	
Injury to feelings	18,000.00
Plus interest @ 8% for 602 days	2,375.01
Total non-financial award	20,375.01
6. Summary totals	
Basic award	415.38
Compensation award including statutory rights	4,880.42
Non-financial loss	20,375.01
Total	25,670.81

Employment Judge Burgher
Date: 27 October 2021