EMPLOYMENT TRIBUNALS

Claimant:		**Respondents:**
Miss H Wells	**v**	Secundo 2015 Limited (1) Costcutter (2) Steven Rees (3) (no responses entered)

Heard at: Reading (by CVP) **On:** 1 April 2021

Before: Employment Judge Anstis

Appearances:
For the Claimant: Mr S Woodman (solicitor)
For the 1st & 3rd Respondent: Mr S Rees
For the 2nd Respondent: No attendance or representation

REASONS

1. These written reasons for the tribunal's decision dated 1 April 2021 are provided pursuant to an application from the third respondent dated 17 November 2021. This application was referred to me on 20 December 2021. While such an application would normally be too late for such reasons to be provided, it was accompanied by a copy of a letter from the first and third respondents' solicitor dated 12 May 2021, apparently addressed to the tribunal, requesting written reasons. Such an application (though not found on the tribunal file) would be within time, and according I have provided these reasons.

2. The claimant's claim was originally submitted on 20 May 2020 and sent to the respondents on 10 June 2020. On 12 September 2020 an application to amend the particulars of claim was accepted by the tribunal. There was no response from any respondent. On 9 October 2020 Employment Judge Vowles issued a rule 21 judgment on liability only for each of the claimant's claims and listed a remedy hearing to determine what remedy the claimant was entitled to. This contained the usual provision that the respondents would only be entitled to participate in any future hearings to the extent permitted by a judge. That judgment was the subject of a separate request for written reasons from the third respondent, which were provided to the parties on 13 January 2021. The remedy hearing was listed for 1 April 2021.

3. On 31 March 2021 the third respondent made an application to adjourn that hearing on the following basis:

> *"I am requesting that this hearing is adjourned until normal situations are in some where normal situations.*

My witnesses are not available due to issues with Corona virus.

Our work load has been amplified over the last year and we had only one weeks notice. My staff have been amazing but I need time to represent."

4. My first decision at the hearing was to refuse this application for an adjournment. This was for the following reasons:

   4.1. It was not copied to the claimant, as required by the tribunal rules.

   4.2. The respondents had been notified of the hearing by a notice of hearing dated 11 November 2020 and had provided no explanation why the application to adjourn was made so late.

   4.3. It was not explained what witnesses were not available, or what the relevance of their evidence was. That is particularly significant given that the hearing was to determine remedy only so it was not clear what, if anything, witnesses called by the respondents may have to say that was relevant.

   4.4. There was no explanation as to why Covid-19 meant that the relevant witnesses were not able to attend a 3-hour hearing that was due to take place by CVP.

   4.5. The respondents would require permission for any witnesses to be heard. That had not been sought and was unlikely to be granted in circumstances where no response form had been submitted and the purpose of their evidence was not clear.

5. While the third respondent indicated during the course of the hearing that he had applied for reconsideration or appealed the original liability judgment there was nothing on the tribunal file to that effect and he was not able to demonstrate in the hearing that any such applications had been made.

6. I permitted the third respondent to participate in the remedy hearing, but as no respondent had submitted any evidence for the hearing the best that he could do was to make representations and question the claimant on her evidence.

7. £10,000 was claimed as an award for injury to feelings. This was based on the finding of the rule 21 judgment that the claimant had been discriminated against as she described. I considered that to be the appropriate award, given the Vento bands and the nature of the discrimination. Similarly I awarded the amount claimed for lost earnings arising out of the (constructive) dismissal established by the previous rule 21 judgment. Since this was claimed as a matter of discrimination, it could and should be awarded against both her employer and the individual responsible for the discrimination – that is, the first and third respondents.

8. An uplift of 25% was sought for what was said to be the failure of the respondents to address the claimant's grievance. Having heard the evidence I concluded that while there was a failure to address the grievance it had not been completely ignored, and therefore an uplift of only 10% was appropriate.

9. The liability judgment had established that the first respondent was in breach of the obligation to provide written particulars of employment. No excuse or other reason had been given for that so it appeared to me to be appropriate to make the maximum award of 4 weeks pay for that failure.

10. I considered that both the uplift and the award for failure to provided written particulars of employment could only be made against the claimant's employer – that is, the first respondent.

11. The third respondent has also made a request for "all correspondence from and to all parties". I have made a separate direction for tribunal staff to provide him with all previous correspondence that has been addressed to him.

Employment Judge Anstis
10 January 2022

Sent to the parties on: ..8 Feb 2022...

.....GDJ.....
For the Tribunal Office