



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant and **Respondent**

Ms A Centala **Gin and Olive Bar Restaurants Limited**

Held at: Exeter, Paper Hearing **On: 25 February 2022**

Before: Employment Judge Smail

COSTS JUDGMENT

1. The Respondent's application for a preparation time order is refused.

REASONS

1. The Respondent makes application for a preparation time order following the withdrawal of the claim the claimant on or around the 4th of December 2021. The full merits hearing of the matter had been listed for 31 January, 1-3 February 2022 in Southampton. The parties have consented to this being a paper hearing. The Respondent's consent was accompanied by the statement that it did not want to waste more time on the matter.
2. By Rule 76(1) of the Employment Tribunal rules 2013, the Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that—
 - (a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; or
 - (b) any claim or response had no reasonable prospect of success.

3. The claimant issued a claim on the 3rd of September 2020. She was the general manager of the bar and restaurant between the 26th of June 2017 and on or around the 29th of September 2020. She brought a claim for pregnancy and maternity discrimination, sex discrimination, unfair dismissal and holiday pay.
4. There has not been an exercise of judicial fact finding but the parties' contentions in broad terms can be seen from the papers. The first Covid lockdown started on or around 20 March 2020. Mr. Anthony Ferreira, the Managing Director, came out of prison on or around the 9th of April 2020. His partner, Ruth Wallis, had been managing matters in his absence. According to the Respondent's case, upon his release they wanted to discuss the future operation of the business with the claimant. A series of meetings were held. The respondent complained of their perception of the claimant's attitude during these meetings. She was dismissed with effect from the 14th of June 2020 albeit with notice.
5. The claimant claims that she mentioned that she had become pregnant and needed a termination before she could engage fully with future planning. A Response with scant details was served on the 17th of October 2020 by the Respondent. It stated the claim was fabricated from start to finish. An Amended Response was served after the original preliminary hearing with Employment Judge Bax on the 14th of April 2021. The respondent agreed at that hearing that they needed to provide further details. The Amended Response made the point that the claimant got a new job in the notice period and as such the financial element to the claim was going to be a modest. The Amended Response further stated that the claimant was dismissed:
 - (a) for making pornographic images on the premises (these appear to relate to nude shots that contributed to a calendar);
 - (b) negligence towards equipment;
 - (c) refusal to cooperate with the owners, including a refusal to work with an Assistant Manager; and
 - (d) failing to use newly fitted air conditioning.
6. The claimant alleged that the respondent had given a negative reference to a potential employer of hers claiming she had been sacked for theft. That prompted an investigation at the new employer. The new employer was satisfied that they could nonetheless continue to employ the claimant.
7. A significant element of the procedural history of this case relates to the respondent's contention that the claimant had refused to provide written authorisation to Fullers who owned the premises where the claimant was

seeking employment to provide evidence in connection with this negative reference. In the event Fullers produced a witness statement to the effect that 'Anthony' had telephoned customer service number informing them that they should not continue to employ the claimant because she had recently been dismissed for theft. There is reason to assume that 'Anthony' is Mr Ferreira.

8. I am confused by the procedural wrangling in respect of this matter. Mr. Ferreira will have known what he said to Fullers and to that extent I struggle to understand why he needed confirmation of what he said. I am still further confused because the Claimant was not dismissed for theft by the Respondent. The Amended Response sets out the reasons for the dismissal. I have the impression then that it is possible that Mr. Ferreira simply smeared the claimant.
9. I have seen screenshots of communications from Mr Ferreira to the Claimant around her dismissal. Reference is made to breakages, cleanliness and difficulties with an Assistant Manager. No reference is made to the nude calendar pictures. Nothing to theft. The reference to these photos is likely to be, again, a smear.
10. Employment Judge Goraj on the 3rd of August, 2021 ordered a £500 deposit in respect of the argument that pregnancy had played any role in the history of the matter. That related to the pregnancy and sex discrimination claims and the claim of automatic unfair dismissal for a pregnancy-related reason. That did not effect the remaining claims of general unfair dismissal and holiday pay.
11. Whilst I understand the deposit was paid, the claimant withdrew proceedings resulting in the order for dismissal on the 4th of December 2021. In correspondence sent in following the withdrawal of the case, she maintained that she withdrew the case for the sake of her mental health. She stated she had not enjoyed the manner in which Mr. Ferreira had addressed her in the preliminary hearings. Furthermore, she noted that Mr. Ferreira had kept a watchful eye on her subsequent employment. She was effectively saying she was harassed. Mr. Ferreira makes the point that he needed to track her subsequent employment to question her schedule of loss. He potentially makes a fair point in that regard.
12. From what I can see the claim of general unfair dismissal was arguable. I have the impression that ACAS procedures – written invitation to meeting with advance notice of alleged misconduct – the opportunity to state a case – consideration of warnings - the offer of an appeal- were not followed.
13. Mr Ferreira claims he has spent 200 hours preparing for the final hearing. I reject that amount as proportionate. I would have allowed no more than 40 hours. He has not, of course, had to attend a final full merits hearing.

14. In short, the position seems to be this from what I can glean from the papers:-
- (a) The pregnancy discrimination claim was weak; Judge Goraj ordered a deposit on the grounds that it had little reasonable prospect of success; that said it was withdrawn (as were all claims) well before, by approximately 2 months, the full merits hearing.
 - (b) The Claimant had an arguable general unfair dismissal claim, the value of which may have been modest;
 - (c) There is a real possibility that the Respondent has smeared the Claimant in respect of (a) producing nude pictures (b) telling Fullers she was dismissed for theft when she had not been.
15. Approaching the issues from the papers, as I am asked to do, I am not satisfied that the Claimant has acted in such a way that founds the discretion to order a preparation time order. Even if, I was so satisfied I would exercise my discretion against making a preparation time order. I would refuse to exercise my discretion because -
- (a) The Claimant had an arguable general unfair dismissal claim even if the value of it may have been modest;
 - (b) There is a real possibility that the Respondent has smeared the Claimant in respect of (a) producing nude pictures (b) telling Fullers she was dismissed for theft when she had not been.

Employment Judge Smail
Date: 18 March 2022

Judgment sent to parties: 31 March 2022

FOR THE TRIBUNAL OFFICE