



EMPLOYMENT TRIBUNALS

Claimant: Ms M. Lewis

Respondent: Caerphilly County Borough Council

HELD AT/BY: Wrexham/CVP **on:** 3rd – 6th May 2022

BEFORE: Employment Judge T. Vincent Ryan
Ms K. Smith
Ms M. Humphries

REPRESENTATION:

Claimant: Ms N. Newbegin, Counsel

Respondent: Mr. H. Zovidavi, Counsel

JUDGMENT

The unanimous judgment of the Tribunal is:

1. The claimant's claim of Indirect Age Discrimination is dismissed upon withdrawal.

Jurisdictional Issue:

2. The claimant's claim that the respondent made unauthorised deductions from her wages as pleaded in her original claim numbered 160263/2021 was presented in time and the tribunal has jurisdiction to hear it.

Termination of the claimant's contract of employment:

3. The respondent's letter to the claimant dated 21st August 2019 did not operate to terminate the claimant's contract of employment with the respondent.
 - 3.1. The said letter did not give the three months' notice required by the claimant's contract to terminate it;
 - 3.2. the said purported notice was not effective and the claimant did not affirm the breach of contract.
 - 3.3. the respondent is not entitled to rely upon the claimant's communications with ACAS in this regard, which are inadmissible as evidence.

3.4. The effect of correspondence between the claimant and the respondent (in particular with the respondent's Head of Human Resources) in 2012 Regarding entitlement to 33 days annual leave being protected on a personal basis indefinitely gave rise to an implied term that the respondent would not exercise the right it would otherwise enjoy to give notice to terminate the contract of employment for the purposes of removing the claimant's entitlement to 33 days annual leave such that

3.5. the respondent's said letter to the claimant dated 21st August 2019 purporting to be notice of termination amounted to a breach of the claimant's contract of employment and

3.6. the said letter did not operate to terminate the claimant's contract of employment.

Declarations:

4. The claimant is entitled to a declaration pursuant to section 1 and section 11 Employment Rights act 1996 (ERA) that she is contractually entitled to 33 days' annual leave. It is so declared.
5. The claimant is entitled to a declaration pursuant to section 1 and section 11 ERA that the claimant's contract of employment contains an implied term that the respondent will not exercise the right it would otherwise enjoy to give notice to terminate such contract for the purposes of removing the claimant's entitlement to 33 days annual leave. It is so declared.

Unauthorised deduction from wages:

6. The claimant was paid her full annual wage in the years 2020 and 2021 but she was refused five days' annual leave to which she was entitled and the respondent did not compensate her for that; the respondent did not fail to pay to the claimant holiday pay for days taken as annual leave and it did not require her to be at work rather than being on leave save in respect of the said five days.

Regulations 13, 13A & 16 Working Time Regulations 1998 (WTR)

7. Each day of annual leave during employment by the respondent is treated as a composite amount that should be distributed evenly between each source, that is statutory and contractual holiday.
8. The respondent breached regulations 13 and 13A WTR by denying the claimant part of her annual leave entitlement in the years 2020 and 2021.

Detriment contrary to section 45A ERA:

9. The claimant was subjected to the four detriments claimed by her (failure to permit leave in 2020, and in 2021, to compensate her, and loss of congenial time away from work) but

9.1. In the light of the above judgment those detriments were not post termination detriments.

9.2. The claimant was not subjected to the said detriments on the grounds alleged to be contrary to section 45 ERA. The detriment claim fails and is dismissed.

Remedy

10. The Tribunal having found that the Respondent was in breach of Regulation 30 WTR but there being no order for compensation in respect of the same, the Respondent shall pay to the Claimant, pursuant to section 38 Employment Act 2002, £2,152.

11. The parties having reached an agreement as to remedy, save as at paragraph 10 above, it is hereby ordered, BY CONSENT, that:

11.1. The Claimant is entitled to a declaration pursuant to sections 1 and 11 Employment Rights Act 1996 that she is contractually entitled to 33 days annual leave, protected on a personal basis indefinitely. Annual leave protected on a personal basis indefinitely means leave which can only be varied by agreement and not unilaterally. Such leave is in addition to the Claimant's entitlement to statutory and extra statutory holidays.

11.2. The Claimant is entitled to a declaration pursuant to sections 1 and 11 Employment Rights Act 1996 that the Claimant's contract of employment contains an implied term that the Respondent will not exercise the right it would otherwise enjoy to give notice to terminate such contract for the purposes of removing the Claimant's above entitlement to 33 days annual leave, again being leave that is in addition to the Claimant's entitlement to statutory and extra statutory holidays.

11.3. As at 1 January 2022, the Claimant is entitled to 39 days annual leave, consisting of annual leave entitlement of 33 days for the year 2022 and 6 days of leave carried over from previous annual leave years, again such leave being in addition to the Claimant's entitlement to statutory and extra statutory holidays.

Employment Judge T.V. Ryan

Date: 06.05.22

JUDGMENT SENT TO THE PARTIES ON 10 May 2022

FOR THE TRIBUNAL OFFICE Mr N Roche

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing (and no such request was made) or a written request is presented by either party within 14 days of the sending of this written record of the decision.