



EMPLOYMENT TRIBUNALS

Claimant: Mrs T Redden

Respondent: Moorwand Limited

Heard remotely (London Central)

On: 18 July 2022

Before: Employment Judge Henderson
Mrs J Griffiths
Ms L Moreton

Representation

Claimant: In Person

Respondent: Mr G Anderson (Counsel)

REMEDY JUDGMENT AND REASONS

1. The claimant was awarded £8,500 for injury to feelings in respect of her successful claim for pregnancy and maternity discrimination (contrary to section 18 Equality Act 2010 -EQA) as regards (a) her dismissal on 24 April 2021 and (b) the respondent's failure to give her no forewarning /advance consultation of her dismissal. This sum is payable within 14 days of the decision. There is no award for interest.
2. The Tribunal made no award for financial loss.
3. The Tribunal gave its decision at the end of the hearing, but as there were internet connection problems it was agreed that the Reasons would be sent in writing (see below).

REASONS

Background

1. This was a remedy hearing to determine the amount of compensation payable by the respondent to the claimant as a result of the tribunal's Judgment dated 8 April 2022 (following the liability hearing held on 5-7 April 2022), in which the claimant succeeded in her claim for pregnancy and maternity discrimination (section 18 EQA) as regards a) her dismissal on 24 April 2021 and b) the respondent's failure to give advance warning/consultation of her dismissal.
2. The claimant was seeking compensation for injury to feelings of £30,000 (set at the lower end of the upper Vento band) and financial loss totaling £18,397.56.

Conduct of the Hearing

3. The hearing was conducted remotely using the Cloud Video Platform (CVP)., Unfortunately, the Employment Judge experienced severe connection problems throughout the hearing. As a result, at the conclusion of the hearing, the tribunal delivered its unanimous decision, but it was agreed that the reasons would not be delivered orally but would be put in writing. It was explained to the parties that such reasons would appear on the Tribunal online register of judgements.
4. The claimant had prepared a brief witness statement (of 8 paragraphs) which she adopted as her evidence in chief. The claimant had also prepared a schedule of loss dated 26 April 2022. There was a short Remedy Bundle of 25 pages and the tribunal were also referred to specific documents in the original Tribunal Bundle (310 pages). The tribunal was also assisted by a skeleton argument prepared by Mr Anderson and heard oral submissions from both parties.

Findings of Fact

5. The tribunal refers by way of background to its judgment and reasons given at the liability hearing in April 2022.

Financial loss

6. The claimant was given notice of her dismissal on 22 January 2021, when she was about 3 months pregnant; she was put on gardening leave and her employment ended on 24 April 2021. The claimant's daughter was born in early June 2021.
7. The claimant said in her evidence that if she had remained employed by

the respondent she would have commenced her maternity leave at the end of May 2021 (as late as possible) and so would have received a further 5 weeks' full pay after 24 April 2021. The claimant also said that if she had remained at the respondent she would have returned from maternity leave as soon as her SMP ended, which would have been in January 2022.

8. The claimant started a new role in a similar admin position on 24 February 2022. This role was part-time, being 4 days per week, whereas her role at the respondent had been full-time.
9. The claimant said she had not started looking for a new job in earnest until January 2022: she said she had been looking "casually" during November/December 2021. The tribunal notes that the claimant commenced her new role on 24 February 2022, which means that she was able to find new employment relatively quickly. The tribunal also notes that one of the issues in the liability hearing related to the fact that the claimant was able to secure a job offer during her notice period (January-April 2021) but was unable to start her new job because she was still working out her garden leave.
10. This demonstrates, to the claimant's credit, that she is able to find new employment relatively easily. The tribunal finds on a balance of probabilities that if the claimant had commenced her job search in earnest in November/December 2021 she would have been able to find another job to start in January 2022 and therefore there would be no financial loss attributable to her dismissal.
11. The claimant provided no documentary evidence at all relating to her job search over November/December 2021 /January 2022.
12. The claimant was asked to provide comparative net figures for her salary with the respondent and with her new employer. The claimant said that she earned £2031 per month net with the respondent and £1592 per month net in her new role. The claimant's net annual salary at the respondent was £24,372 and £19,104 per annum with her new employer. However, if one calculated her new salary on a Full Time Equivalent (bearing in mind she was working part-time) that salary would be £23,880 which was an annual shortfall of around £500 which is minimal.
13. The claimant was unclear as to whether she had started looking for full-time roles in November/December 2021 and as mentioned before the tribunal was presented with no documentary evidence of her job search. The claimant said in her oral evidence that she had been searching for full-time work "in the last few months" which suggests that she had not done so earlier. The claimant gave no reason as to why she had not appear to search for full-time roles earlier.
14. Based on the limited evidence presented to the tribunal, it finds that the claimant could have obtained full-time equivalent work sooner than 24 February 2022 and therefore did not suffer any financial loss with regard to a salary shortfall. The tribunal notes that the claimant's new employment provide similar benefits with regard to holiday pay and pensions.

15. The claimant also claimed 17.3 days' accrued holiday +8 bank holidays. On reviewing the claimant's contract of employment with the respondents (original Tribunal bundle page 68) the claimant was entitled to 33 days holiday including 8 bank holidays. This was an entitlement of 2.7 days per month and on the basis of a claim from 26 April 2021 2 - January 2022 (8 months) the claimant at its highest, would be 22 days in total.
16. However, bearing in mind the tribunal's findings of fact at the liability hearing, the claimant could not show that her employment would have continued beyond April
17. 2021 in any event. It was speculative for the claimant to say that she would have returned to employment at the end of her maternity leave and would have continued to receive her ongoing salary and other benefits. Therefore, the tribunal make no award for financial loss flowing from the claimant's dismissal on discriminatory grounds.

Injury to Feelings

18. The claimant's witness statement was very brief and she provided no medical evidence in support of that statement.
19. The claimant referred to her notice of dismissal in January 2021 and said this was when she was "heavily pregnant". The tribunal do not agree with this statement as the claimant was approximately 3 months into her pregnancy at that stage. The tribunal recognises that the claimant was concerned about her baby's health, but that would be the case for all mothers to be whatever their circumstances.
20. The claimant referred to significant stress on her body, but no medical evidence was presented to the tribunal, even though the claimant said that she had seen her midwife regularly during her pregnancy and postpartum.
21. The claimant said in her evidence that she did not seek medical advice, despite her stress anxiety and mental health issues, as she was too busy caring for her child. Again the tribunal recognises that newborn children take up much time and energy, however, the tribunal can only work with the evidence presented to it and the onus is on the claimant's to make her case on remedy.
22. The tribunal also notes that during her evidence, the claimant referred to many other factors which would place stress on her and her family which did not specifically relate to her dismissal by the respondent. These were the fact that the appellant's husband had 2 jobs and was therefore regularly absent from their home. Further, the claimant's husband had caring obligations for close members of his family; also a close family member who had been scheduled to provide childcare suffered serious debilitating illness. The claimant also referred to financial difficulties during and after her pregnancy. All of these factors would add to the stress and anxiety which the claimant described in her witness statement.

23. The tribunal finds that the claimant gave no clear evidence of any direct causal link between her dismissal and her later financial difficulties. The claimant's oral evidence suggested that her stress and anxiety were more links to the tribunal process itself and not necessarily to the respondent's discriminatory acts. The claimant referred to a lack of confidence, but this could also be attributable to being out of the workplace for several months and was not necessarily linked to the discriminatory acts.
24. Accordingly, the tribunal did not find that the claimant had presented sufficient evidence to link her reference to physical and emotional impact to the discriminatory acts. Further, the claimant presented no medical evidence whatsoever to support her witness statement.

Conclusions

Financial Loss

25. The tribunal find that the claimant could have obtained another job in January 2022, (which is to her credit), when she said she wished to return from maternity leave. The Tribunal also finds that the shortfall between her current part-time salary, when uplifted to a full-time equivalent and have salary at the respondent is minimal.
26. As regards the claimant's argument that she would have continued working from 24 April-30 May 2021 and so has lost 5 weeks salary, the tribunal finds that as evidenced in the liability hearing, the claimant could and did find another job within that timeframe and therefore could have commenced her new job on 25 April 2021 and suffered no financial loss.
27. The tribunal makes no award with regard to financial loss.

Injury to Feelings

28. The tribunal has found that the claimant has not sufficiently linked the severe stress anxiety and mental health issues she says she suffered (although no medical evidence was provided) to the discriminatory acts.
29. The claimant requested an award at the higher end of the upper Vento band. Mr Anderson conceded in his skeleton argument that the claimant would be entitled to an award at the lower end of the middle Vento band that is around £10,000.
30. However, despite the respondent's concession, the tribunal believes it must assess the award for injury to feelings for itself based on the evidence presented by the claimant.
31. Based on the tribunal's findings of fact in the liability decision, the discriminatory acts fall into the category of a one-off discriminatory act and not continuous minor acts or one very serious act or a sustained campaign. Therefore, the award would fall in the lower Vento band but,

given that the discrimination related to the claimant's pregnancy and maternity would probably fall in the higher end of that band.

32. The ET 1 was presented to the tribunal in February 2021 and accordingly the lower Vento band applicable is £900-£9000. The tribunal awards the claimant £8500 in respect of injury to feelings.

33. The claimant did not request interest and no interest award is made.

Employment Judge Henderson

Date 19 July 2022

JUDGMENT SENT TO THE PARTIES ON

19/07/2022

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