



EMPLOYMENT TRIBUNALS

Claimant: Miss Sara Essa
Respondent: Concert Live Limited
Heard at: East London Hearing Centre
On: 11 March 2022
Before: Employment Judge Barrowclough
Members: Ms S Barlow
Ms A Smith

Representation

Claimant: In person
Respondent: No appearance or representation

JUDGMENT having been sent to the parties on 17 March 2022 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013.

REASONS

1 By her claim, presented to the Tribunal on 1 November 2020, the Claimant, Ms Sara Essa, put forward a number of complaints against the Respondent, Concert Live Ltd, by whom she was employed as Head of People at an annual salary of £72,000 between 18 May and 2 October 2020. Those complaints were (a) automatically unfair dismissal for making a protected disclosure (ss. 94 and 103A Employment Rights Act 1996); (b) being subjected to detriments during her employment because she made protected disclosures (ss. 47B and 48 Employment Rights Act 1996); (c) victimisation (s.27 Equality Act 2010); (d) breach of contract in failing to make a payment in lieu of notice; and (e) equal pay.

2 The Respondent failed to present an ET3 response within the prescribed period of 28 days from the date that a copy of the Claimant's ET1 claim form was sent to them by the Tribunal, namely 21 December 2020, or indeed at all. The Tribunal wrote to the Respondent on 19 March 2021 informing them that they would be notified of the Tribunal's hearings and decisions, but could only participate to the extent permitted by an Employment Judge.

3 A telephone preliminary hearing took place on 7 April 2021 before Employment Judge Crosfill at which the Claimant only attended. As is confirmed in the resulting Order, the learned judge was satisfied that the Claimant's claim had been correctly served on the Respondent, and concluded on the basis of what he was told by the Claimant that the Respondent was aware of the proceedings, but had elected not to take any part in them. EJ Crosfill went on to ascertain and identify the various complaints being brought by the Claimant. He considered whether he should simply enter judgment for the Claimant, but on balance decided not to do so, since he was concerned that he would be by default making serious findings against the Respondent without hearing sufficient evidence to satisfy himself that the Claimant ought to succeed. Accordingly, a short hearing at which the Claimant could give sworn evidence would be listed, and case management orders for the preparation of a hearing bundle and a witness statement were made.

4 The Claimant's claim was then listed for a final hearing before EJ Wilkinson on 30 September 2021, once again by way of a telephone hearing. It transpired that the Claimant had not received the directions and orders made by EJ Crosfill at the hearing on 7 April that year, and in any event a full Tribunal was required, so the case was adjourned once more, and further case management directions and orders were made.

5 The full merits hearing took place before us on 11 March 2022, the Claimant and the Tribunal members attending remotely via the Cloud Video Platform. Unfortunately, the documentation which had been submitted electronically by the Claimant in accordance with EJ Wilkinson's directions had not been supplied to the Tribunal members and could not be located within the Tribunal office systems, so there was a short delay to enable the Claimant, who was acting in person and anxious to proceed after such a protracted wait, to email the Tribunal the documentation she then had to hand, and for the Tribunal to read that material.

6 The documents then sent to the Tribunal consisted of the Claimant's two page witness statement and a schedule of loss, her contract of employment with the Respondent and subsequent form P45, email and SMS text correspondence between the parties from the period before the Claimant started working for the Respondent and relating to her draft employment contract, and the Respondent's letter of appointment to the Claimant dated 31 March 2020, identifying a desired start date of 30 April thereafter.

7 The Claimant gave evidence by way of affirmation in support of her claim. She agreed that her equal pay claim would not be addressed or dealt with at this hearing, but adjourned generally with liberty to restore. The Claimant's current address is 7 Caplan Court, 1, Grove Road, Richmond, Surrey. She identified and confirmed the documents sent to the Tribunal, and in answer to the Tribunal's questions, responded as follows.

8 The Claimant was employed by the Respondent as Head of People, starting work in that role on 18 May 2020. She had engaged in pre-contract correspondence with the Respondent for a few weeks before then, having agreed in principle to join them, as the documentation provided details. It was a permanent and open-ended appointment, rather than a fixed term contract, with a 6 month probationary period, the annual salary being £72,000 with no additional contractual benefits. The Claimant's employment was terminated with immediate effect on the morning of 7 September on her return from holiday. Her P45 states the Claimant's leaving date as being 2 October 2020, and the

Respondent's chief financial officer Mr Andy Whitehead had confirmed to her that she would be paid up until that date, but that did not happen and the Claimant claims one week's pay in lieu of unpaid notice. The Claimant accepts that her holiday pay entitlement was correctly calculated.

9 During August 2020, the Claimant had repeatedly raised concerns with the Respondent concerning two issues. The first related to the Respondent's requirement that members of staff should be asked to undertake work for the Respondent whilst being on the furlough scheme then in operation, which the Claimant had advised as being against the law. The second issue concerned gender discrimination, both in the wider sense that the Respondent was not adhering to good practice in recruitment and promotion, and also more specifically in relation to the Claimant herself, since she complained that she was being paid less than male comparators.

10 Focusing on the first such issue, the Claimant said that she had a number of phone conversations with both Mr Whitehead and Mr Harry Samuel, the chief operating officer, co-founder and proprietor of the business. Mr Samuel wanted the Claimant to get employees who were on furlough to work remotely, being assigned to different roles than those they usually undertook, in order that they would qualify as 'learning and development' activities. He wanted staff to generate income for the business, which the Claimant told him was forbidden and illegal, and that she was not prepared to sign off such a scheme. As an alternative, the Claimant had suggested that staff be requested to work part-time, if and when that became possible under the furlough scheme; and that since the company had just raised finance, the furlough scheme was in any event unnecessary. Mr Samuel was frustrated and unhappy, and wanted to go ahead; he and the Claimant disagreed and the matter was left there. The Claimant lists in her statement employees who she says undertook work whilst on furlough; and says that she was aware of similar concerns having been raised by a member of the Respondent's board called Nicole Slayton-Hogan, although she cannot provide confirmatory evidence since the Claimant's email access was terminated on her dismissal.

11 The Claimant had other conversations with Mr Whitehead, who was her line manager, and Mr Samuel concerning gender discrimination. The Claimant raised concerns about past recruitment of the Respondent's senior leadership team, that there was a bias towards male heads of department and senior employees, and that she was the only female head of the Respondent's 9 departments. Secondly, the Claimant alleged that women, including herself, were being paid less than men who were undertaking the same or similar roles. She says that Mr Whitehead understood that there were problems in both the areas which the Claimant had highlighted, but that he had only recently joined the Respondent, and didn't want to 'rock the boat'. Mr Samuel, on the other hand, owned the business and wanted to keep things as they were, he being very commercially driven. No changes were made by Mr Samuel as a result of the Claimant's representations, although the Claimant believes that the company's male employees in fact received a pay rise.

12 The Claimant said that her last conversations with Messrs Whitehead and Samuel about employees working whilst on furlough had taken place on about 27/28 August, and that about two weeks prior to that she had spoken to Ms Slayton-Hogan about that and the gender imbalances at the Respondent, that Ms Slayton-Hogan had expressed her concern, and that had been a continuing conversation between them thereafter. There

was also email correspondence concerning staff working whilst on furlough up until the end of August, when Mr Samuel 'shut down' the Claimant and Ms Slayton-Hogan, telling them that he had heard enough, that it was his company and that he would run it in the way he wanted.

13 There had also been a number of separate conversations between the Claimant and Mr Whitehead and Mr Samuel concerning her pay, commencing shortly after the Claimant started work on 18 May, continuing in July when she had produced a table showing the relevant comparisons, and the Claimant could recall one specific conversation taking place at the end of August 2020.

14 The Claimant was on holiday from 29 August until 7 September, and there was no correspondence or continuing conversation between her and the Respondent during that time, apart from her receiving a text from Mr Whitehead on 3 September. On returning to work on the morning of 7 September, the Claimant spoke to Mr Whitehead at about 9 am. He then told her that the Respondent had decided to terminate her employment because 'things weren't working out', and that the Claimant would be paid four weeks' pay in lieu of notice (although the Claimant says she only received three weeks' pay). It was a short conversation, and the Claimant says that she was shocked by what she was told. Subsequently, the Claimant asked the Respondent in an email for reasons for her dismissal, but the only response she received was confirmation of her dismissal. The Claimant repeated her request, but heard nothing further from the Respondent.

15 Finally, the Claimant said that because the Respondent had deducted £1722.42 from her salary on account of their laptop in her possession she had retained it before later trading it in, since she has a similar device of her own. In her witness statement, the Claimant says that she will give credit for the sums received.

16 We found the Claimant to be a truthful and reliable witness, whose evidence was broadly consistent with the documentation we have seen, and we accept her account and evidence. In our judgment, the Claimant made a number of protected disclosures in informing her employer the Respondent that it was illegal to ask or require staff to work whilst they were on furlough, secondly that their recruitment and promotion practice was gender discriminatory, and thirdly that they were discriminating against her because of her sex in paying her less than her male comparators (who are listed at paragraph 9 of EJ Crosfill's preliminary hearing Order) for like work, equivalent work or work of equal value; and that she suffered detriments as a result, those detriments being the Respondent's (a) telling her not to argue, (b) deciding to dismiss her, and (c) dismissing her. We are also satisfied that the reason or principal reason for the Claimant's dismissal was that the Claimant had made those disclosures, and that the Respondent victimised the Claimant in dismissing her for doing a protected act in alleging that it was guilty of sex discrimination. Finally, we accept that the Claimant was paid only three weeks' pay in lieu of notice, rather than the four weeks' which Mr Whitehead had told her she would receive. Accordingly, the Claimant's complaints succeed.

17 The Claimant sought compensation. Her evidence, which we accept, was that, following her dismissal by the Respondent, it had taken her a long time to find alternative employment. There were essentially two reasons for that. First, the continuing impact and effects of the Covid-19 pandemic. Secondly, her dismissal had severely dented her confidence and her desire or willingness to continue to work in HR, that she had

something of a meltdown and was signed off work from late September to mid-December 2020 with mental health issues, and had sought and obtained medical help. The Claimant was in receipt of universal credit from 15 November 2020 until 2 February 2022, when she commenced her current temporary role in project management work at £18 per hour. She had started looking for work in January 2021, and has a record of at least 73 job applications thereafter, resulting in about 25 interviews, as well as being registered with a number of agencies. The roles applied for included HR vacancies, were for a salary range of £35,000 upwards, working a 37.5 hour week in either permanent or temporary roles. Whilst employed by the Respondent, the Claimant had joined the government's 'Cycle to Work' scheme, but because she was dismissed additional sums on the purchase of her bike became payable.

18 We calculate the compensation payable to the Claimant hereafter.

19 The Respondent is ordered to pay the Claimant compensation as follows:-

(1)	9 months net loss of earnings (£4,262.29 pcm x 9)	£38,360.61
(2)	Interest on loss of earnings (26 June 2021-11 March 2022 @ 8%)	£2,155.19
(3)	Additional sum paid by Claimant on Cycle to Work scheme	£474.78
(4)	Additional sum paid by Claimant for 'Zinc' mental health programme	£1,500.00
(5)	Salary deduction in relation to Claimant's laptop	£1,722.42
(6)	One week's pay (gross) in lieu of notice	£1,384.61
(7)	Injury to feelings due to (a) victimisation and (b) detriments suffered during employment	£6,000.00
(8)	Interest on injury to feelings award from 11 October 2020 to 11 March 2022 at 8%	£680.00
(9)	SUBTOTAL	<hr/> £52,277.61
(10)	Grossing up at 20% on £22,277.61	£4,455.52
(11)	TOTAL SUM PAYABLE BY THE RESPONDENT	£56,733.13

20 The Recoupment Regulations apply. The prescribed period is from 1 November 2020 to 2 March 2022; the prescribed sum is £38,360.61.

Employment Judge Barrowclough
Date: 28 July 2022