



EMPLOYMENT TRIBUNALS

Claimant: Mrs J Ourique - Kirkham

Respondent: NDL Yorkshire Ltd (R1). Mr F Roberts (R2). Mr N. Moody (R3)

CERTIFICATE OF CORRECTION

Employment Tribunals Rules of Procedure 2013

Under the provisions of Rule 69, the Reserved Judgment sent to the parties on **29 June 2022**, is corrected as set out in Appendix 1 below and highlighted in red.

Employment Judge C O'Neill

13 August 2022

Appendix 1



EMPLOYMENT TRIBUNALS

Claimant: Mrs J Ourique - Kirkham

Respondent: NDL Yorkshire Ltd (R1) . Mr F Roberts (R2) , Mr N. Moody (R3)

Heard at: Leeds by CVP

On: 27th of June 2022

Before: Employment Judge O'Neill

Representation

Claimant: Mr D Finlay of Counsel

Respondent: Ms R. Twine of Counsel

RESERVED JUDGMENT

1. The following claims are dismissed on withdrawal by the claimant
 - victimisation
 - indirect discrimination
 - unauthorised deduction of wages relating to failure to pay sums properly payable in March 2020, failure to pay SMP properly payable and failure to pay expenses
 - any claim under section 44 of the Employment Rights Act
 - any claim under section 55 of the Employment Rights Act
 - **the harassment claim against Mr Moody relating to prostitutes and cocaine**
2. The respondent's application for strike the claims under the Equality Act for want of reasonable prospect of success and / or a deposit order on the grounds of little prospect of success is refused.

Reasons

1. A preliminary hearing took place on 27 June 2022, at which the claimant and the respondents were represented by counsel and the claims were helpfully clarified and agreed as being those matters set out in appendix 1 of the case management orders made that day.
2. The claimant was employed as a quantity surveyor. She began her employment on 1 April 2019. In 2020, she became pregnant. She says that she informed the respondent of her pregnancy on 10 March 2020. She commenced maternity leave on 1 September 2020. The baby was born on 20 October 2020. The claimant was due to return after maternity leave in early August 2021 but extended, her leave by adding accrued holiday. She remains in the employment of R1, but has not yet returned to work and has a grievance outstanding.
3. The claimant's principal complaints are that she has been discriminated against directly because of her sex and /or because of her pregnancy/maternity and has been subjected to a campaign of harassment and discrimination because of her sex and or because of her pregnancy/maternity.
4. In brief, the claimant's case is that the respondent failed to make proper provision for her as a woman and following the announcement of her pregnancy in March 2020 discriminated against her and harassed her as set out in summary in appendix 1. When redundancy consultation began in April 2021 the respondents adopted a process which discriminated against her and treated her male comparator is more favourably.
5. The original ET1 was lodged on 17 September 2021. R2 and R3 who are directors of R1 were joined by Judge Shulman on 22 March 2022. The ACAS early conciliation began on 9 July 2021 and the certificate was issued on 20 August 2021. Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 10th of April 2021 may not have been brought in time. R2 and R3 were not joined until 22nd of March 2022, they are company directors, however, the question arises as to whether the claims have been brought against them individually in time and if not whether the claimant should be granted an extension.
6. At the preliminary hearing the claimant confirmed through her Counsel, among other things that
 - 6.1.1 she is not making a claim of victimisation
 - 6.1.2 the claim of failure to do the health and safety risk assessment is brought as a claim of discrimination and not as a claim under section 44 of the employment rights act 1996.
 - 6.1.3 the claim of unlawful deduction (failure to pay sums properly payable in March 2020) is withdrawn as an unlawful deduction claim but is maintained as an example of harassment/discrimination
 - 6.1.4 the claim of unlawful deduction (failure to pay SMP properly payable in March 2020) is withdrawn as an unlawful deduction claim and is not pursued

under S55 ERA 1996 but is maintained as an example of harassment/discrimination.

6.1.5 she is not making an indirect discrimination claim.

6.1.6 she is not making a harassment claim against Mr Moody relating to prostitutes and cocaine (11(e))

7. The remaining claims of discrimination and harassment, according to the claimant arise from a campaign of harassment and discrimination against her following the announcement of her pregnancy in March 2020.
8. Such incidents, and examples as the claimant has identified could be found to be a course of continuing conduct extending over a period, and therefore in time. As such, it is more appropriate for the matter to be determined by a full Tribunal hearing the evidence.

Employment Judge O'Neill

Date: 29 June 2022

Important note to parties:

Any dates for the filing of appeals or reviews are not changed by this certificate of correction and corrected judgment. These time limits still run from the date of the original judgment, or original judgment with reasons, when appealing.