



EMPLOYMENT TRIBUNALS

Claimant

Mrs Diana Bejan

v

Respondent

Anna Health and Beauty Limited

Heard at: Cambridge **On:** 20-22 February 2023

Before: Employment Judge R Wood; Mr D Snashall; Mr J Vaghela

Appearances

For the Claimant: Mr A Sadygov (Representative)

For the Respondent: Mr C Singh (Owner/Secretary)

JUDGMENT

1. The Claimant was not the subject of discrimination on the grounds of her pregnancy contrary section 18 of the Equality Act 2010 (“the Act”) by the respondent.
2. The claimant was not automatically unfairly dismissed by the respondent pursuant to section 99 of the Employment Rights Act 1996. The claimant was not dismissed but resigned from her employment.
3. The claim for failure to pay the claimant notice pay is dismissed.
4. The claim for failure to provide the claimant with a statement of main terms and conditions pursuant to section 1 of the ERA is dismissed by consent.
5. The claim for failure to issue the claimant with a written statement of reasons for dismissal is dismissed.
6. The claim for failure to pay the claimant a statutory redundancy payment is dismissed by consent.

EXTEMPORE SUMMARY REASONS

1. This is a claim which primarily involves allegations of discrimination on the grounds of pregnancy, and automatic unfair dismissal on the same ground. There are other claim to which we will return.
2. Where there was an issue as to the justification of the Tribunal relating to time limits, the Tribunal has extended those time limits. In particular with regard to the pregnancy discrimination claim, the Tribunal judged that it was just and equitable to extend time as necessary. All of the claims were dealt with on their merits.
3. The first thing to say is that the Tribunal recognises that the period concerned in this case, namely March-June 2020, was a very challenging time. People were worried about their immediate personal safety and their financial security. It is appropriate to recognise this when making findings of fact about issues relevant to this claim. We also recognise that those involved in this case did not speak English as a first language. Accordingly, we have considered the possibility of misunderstanding between the parties. Furthermore, we accept that those who do not speak English as a first language, and who may have relatively recently arrived in the UK, may well face additional barriers to challenging authority figures and claiming what they feel they are entitled to. We have had regard to this issue in so far as was appropriate.
4. The primary issue for the Tribunal in this case is to decide whether the claimant resigned from her employment with the respondent, or whether she was dismissed. It is a key finding of fact. The claimant was employed in March/April 2019 as a nail/beauty technician. The contract under which she was employed is set out in the bundle. The claimant's case is that she was dismissed, and that her effective date of termination was 26 June 2020. The respondent asserts that the claimant, in effect, resigned on 13 April, and that her employment ended on 31 May 2020.
5. The claimant ceased to go into work from 16 March 2020. This was because of Covid and the dangers associated with it. There is no dispute about this. Subsequently, there was a discussion between the claimant and Mr Singh, the owner/manager of the company, as to how the government furlough scheme would apply to her. There was then a meeting on 13 April 2020. This had been requested by the claimant and her husband. They both attended the salon in Northampton to meet Mr Singh. There is a dispute about what was said at the meeting. Mr Singh states that the claimant, through her husband, expressed dissatisfaction with the prospect of receiving 80% of her normal salary and asked for her P45. Mr Singh understood that the claimant and her husband felt they could receive more money by claiming benefits, given their personal circumstances. Although it was not specifically mentioned that the claimant was resigning her employment, Mr Singh states that this was his understanding of what had been said. He explained that he passed the request on to his accountant, Mr Clements, who was the person who dealt with most, if not all, of the

company's

administration.

6. The claimant disputes this account of the meeting on 13 April. She states that she went to the meeting to insist that the respondent pay her the full 80% of her wages. She did not request a P45 and did not give Mr Singh any reason to believe she was resigning.
7. After careful consideration, the Tribunal prefers the respondent's account of this meeting. What happened subsequently appears to corroborate Mr Singh's account to a greater extent than that of the claimant. We would add that there is a surprising lack of correspondence from the parties relating to the ending of the claimant's employment. Regardless of how it came to an end, we would have expected both parties to have put more into writing. That being said, as the employer, the burden of expectation to record these matters falls more heavily on the respondent.
8. The Tribunal has not been impressed by Mr Singh's knowledge of employment practices. It is our view that he showed a repeated and worrying lack of knowledge about good employment practices, and relevant legislation. For example, in this context, the Tribunal is surprised not to see a note of the meeting on 13 April 2020, or any correspondence from the employer setting out that the employee had resigned, and that the resignation had been accepted. Neither was there any explanation to the claimant as to what she was to be paid in terms of notice, or when her employment was to come to an end. These are serious failures to which the Tribunal has had regard when making its findings.
9. However, the Tribunal finds that there is more helpful and informative evidence on the issue of whether there was a resignation. Firstly, we find the claimant's evidence as to the existence and content of a meeting on 13 April to be reticent and vague. She made no mention of it in her ET1. In response to the ET3, she set out in her witness statement that it was 'not true' that on 13 April she had said she wanted to leave her employment, and that she had refused furlough. It was not until she was cross-examined that she specifically denied requesting her P45, or that she had discussed furlough payments, at least in broad terms.
10. Secondly, the claimant was paid for March, April and May. This is consistent with her employment ending in May 2020, as opposed to on 26th June 2020. The only recorded communications between the claimant and the respondent (that we have seen) are in the form of WhatsApp messages between Mrs Bejan and Mr Singh. They are not complete, but they do provide some assistance. On 26 June 2020, Mr Singh told the claimant that she has been sent payslips and a P45, and also that she no longer worked for the respondent and had been told this in April. What is interesting about this message is that the reference to April is consistent with the respondent's case. Further, that there appears to have been no protest from the claimant when, according to her case, she is first told that she had been dismissed. The next WhatsApp message is three days later and makes no mention of any dismissal on 26 June, or the unexpected

arrival of a P45. There is no evidence from the claimant of phone calls, text messages or emails in which she raises any issue about her alleged unexpected dismissal.

11. Neither is there any apparent complaint about the lack of a wage slip relating to her employment in June (up to 26th). We do not have the WhatsApp messages for July, when the wage slip would have been expected. But it is the claimant who chose to provide the messages from her account up to 29 June 2020. She has not given any other evidence of her raising an issue of non-payment of June's wages. Indeed, in her ET1 she claimed to have been paid for June, which, by agreement between the parties, is not correct.
12. Finally, there is the document at PDF page 141 of the bundle, which Mr Singh said was a note from Mr Clement's, his accountant. This evidence was unchallenged. He could not recall when it was given to him. Nonetheless, the Tribunal was satisfied that it was a contemporaneous document, put together some time shortly after the end of May 2020, and which appears to be an explanation of what was by done by Mr Clements in terms of the claimant's end of employment arrangements. It confirms that notice was given by the claimant on 13 April 2020, and that there was to be a month's notice from that date, which was consistent with the contract of employment. The May salary is made up of 10 days of pay up to 13th, plus 5 accrued days of holiday, and some underpayment from April i.e. £788.16. We have not seen or heard any evidence that the claimant took issue with her wage slip for May 2020, correcting as it did the wage for April. It is consistent with someone's employment being brought to end, especially the reference to accrued holiday entitlement.
13. In short, it is the Tribunal's judgment that the weight of the objective documentary evidence supports the respondent's account, namely that the claimant resigned by asking for her P45, that it was accepted by Mr Singh, and that the claimant was treated as having given one month's notice (pursuant to her contract). We are satisfied that the intention of the claimant was to hand in her notice. It was clearly an important meeting for her. She had arranged the meeting, and taken the trouble to bring her husband, who spoke better English than her. In so doing, she was placing him into the position of being agent for the purposes of the meeting. We find that he requested the P45 and handed in her notice, whilst acting in that capacity. The request of the P45 was in the circumstances, clear and unambiguous language that she intended to resign. Mr Singh was entitled to accept her resignation, which he did. We are satisfied that, rightly or wrongly, the claimant and her husband had calculated that they would be better off on benefits than on furlough. That is the reason they called the meeting.
14. It follows from what we have said that the claimant's employment came to an end on 13 May 2020, and not 31 May, as suggested in the P45, and by Mr Singh at the hearing. It is the Tribunal's view that the corrected employment end date noted on the ET3 was 13 May 2020 and not 18 May 2020, as suggested by Mr Singh. We think the 13th was the correct date.

15. It follows that if the claimant resigned, and was not dismissed, then she cannot have been unfairly dismissed. The claim for unfair dismissal is therefore dismissed.
16. Neither can she have been treated less favourably by being dismissed, for the purposes of the Equality Act. This aspect of the discrimination claim is dismissed.
17. Further, the claimant cannot establish she is owed notice pay, or be entitled to a written statement of reasons for dismissal. Both of these claims are also dismissed.
18. This leaves the claim for less favourable treatment on the grounds of pregnancy based on her working conditions in January/February/March 2020. In particular, it is alleged that the respondent treated her less favourably by not carrying out a risk assessment when it knew she was pregnant, and by continuing to expect her to clean the toilets and/or to do pedicures when she was unfit to do so by reason of her pregnancy.
19. It is important to establish when the respondent, or more precisely Mr Singh, became aware that the claimant was expecting a baby. It seems to be common ground that the claimant enjoyed working there initially, and that there were no problems. Indeed, the claimant accepted that Mr Singh, extended her some latitude in terms of allowing her to work flexible hours in July 2019, and giving her extra time off at the end of a vacation in September 2019.
20. It is the claimant's case that her working environment changed markedly when she became pregnant. The claimant herself realised she was expecting her third child in or around December 2019. She told her colleagues, excluding Mr Singh, at a New Year's party in the same month. There is an issue as to when Mr Singh became aware of her pregnancy. The claimant says that he must have been aware, through general discussions within the workplace, in January/February 2020. She accepts that she did not actually tell him until the first few weeks of March 2020, when she spoke to him over the telephone about it. There is then a WhatsApp exchange on 17 March 2020 when she forwarded to him a link about the risks associated with Covid for pregnant employees. Mr Singh responded by telling her to stay at home on the grounds of safety.
21. Mr Singh's case was more confused on this issue. In the ET3, it was suggested that the respondent had not known she was pregnant 'whilst she worked there'. In his witness statement, he explained that he had been told verbally in the first few weeks of March, and had then been sent the message on 17 March. In essence, he seemed to agree with the claimant. Then, when asked questions by the Tribunal, he chose to claim that he had first known of the claimant's pregnancy when he got the message on 17 March. This was inconsistent and confusing.

22. Accordingly, the Tribunal was sure that Mr Singh did know about the claimant's pregnancy at the latest by the first few days of March 2020. It was further satisfied that it was likely that he was aware, as a result of mixing with the claimant and her colleagues, that he learned of the pregnancy in February 2020. It was a small salon. It was clear that the claimant had told her colleagues by at least the time of the photograph taken on 22 February, at the claimant's work birthday celebration. We think it unlikely that such information would or could have been kept from Mr Singh. It was common ground that there was much friendly gossip in the workplace.
23. This therefore leaves a period of between 4-6 weeks when Mr Singh was likely aware of the claimant's pregnancy, before she stopped work on 16 March 2020. However, we find the evidence that the claimant was treated less favourably during this period to be vague and unconvincing. Even if we are wrong about this, we find that there is insufficient evidence linking any detriment to the fact that she was pregnant.
24. If it is suggested that she was asked to clean toilets and/or do pedicures more often when she was pregnant then we have been directed to insufficient evidence by which this might be properly and objectively measured. All we have are vague generalisations as to an increase in the amount of times she was asked to do these jobs. In any event, both of these jobs were ones which she did previously, and was required to do under her contract of employment. Further, we accept the evidence of Mr Singh and Miss Kumar, that the cleaning jobs were assigned within the team themselves, and not by Mr Singh. There is limited evidence that they were used by Mr Singh as a way of treating anyone less favourably. Further, we find that there was insufficient evidence to suggest, if it be the suggestion, that the claimant was less able to carry out these tasks. It is not apparent without further explanation why the claimant was unable to carry on with cleaning tasks or pedicures, given the stage of her pregnancy. We were told by Mr Sadygov in submissions that the claimant had medical issues which meant that she had issues with bending and mobility. We were not told about this in the evidence. There was no medical evidence to this effect. We therefore could not take this into account.
25. In addition, the Tribunal notes that the claimant did not formally tell her employer she was pregnant until the early part of March 2020. It is therefore difficult in our view, to suggest that the employer should have been taking steps to carry out a risk assessment and/or adjust the work place to accommodate her pregnancy in January or February (if that be the argument). This is asking too much of an employer.
26. For all of the reasons set out, we find that the claimant was not subject to less favourable treatment as alleged, and that if such treatment did occur, that it was not on the grounds of her pregnancy. There was insufficient evidence in this case to suggest any link between her pregnancy and the

way in which jobs were allocated to the claimant within the salon.

27. In relation to the other causes of action, Mr Sadygov no longer pursues the claim for failure to issue a statement of main terms and conditions. This claim is dismissed.
28. Furthermore, there is no claim for arrears. These related to the period between 1 June and 26 June 2020. Due to our earlier findings, this claim does not arise and it is dismissed.
29. In summary, all of the claims are dismissed.

Employment Judge R Wood

Date: 22 February 2023.....

Sent to the parties on: 24 March 2023
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For the Tribunal Office