



EMPLOYMENT TRIBUNALS

Claimant: Miss N Beech

Respondent: Slicks Sports & Bars Ltd (In Voluntary Liquidation)

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Heard by: Video (VHS)

On: 18 May 2023

Before: Employment Judge Gray

And Members: R Goddard and MJ Cronin

Appearances

For the Claimant: Mr T Beech (Claimant's father)

For the Respondent: Did not attend and was not represented

JUDGMENT ON REMEDY ONLY

The unanimous judgment of the tribunal is that:

- For the first, second and fourth allegations of discrimination under section 18 of the Equality Act the Claimant is awarded, and the Respondent is ordered to pay, the sum of **£6,076** made up as follows:
 - 17 June 2020 matter (first and second allegations) injury to feelings of £1,500 together with interest at 8% being £348 (1,065 days = 2.9 x 8% = £348)
 - 15 October 2020 matter (fourth allegation) injury to feelings of £3,500 together with interest at 8% being £728 (945 days = 2.6 x 8% = £728)
- The Claimant has already proven that the claimed wages, being furlough pay from the 6 July 2020 to the start of her maternity period (which she says would be the 30 November 2020) and her maternity pay (for the period the Claimant took as maternity leave), were properly payable to her and have been deducted without authorisation. The Respondent is

therefore ordered to pay the Claimant the total sum of £10,450.01 gross, calculated as follows:

- 21 March 2020 – 30 November 2020 - £192 x 36 weeks = £6,912.00, less amount of furlough received from Respondent of £2,773.00 = £4,139.00
- £6,311.01 (£216 x 6 weeks = £1,296.00 plus £151.97 x 33 weeks = £5,015.01)

REASONS

1. This hearing was listed to determine remedy following a liability hearing on the 27 to 30 June 2022 which gave the unanimous judgment on liability as follows:
 - a. The first, second and fourth allegations of discrimination under section 18 of the Equality Act, succeed.
 - b. The third, fifth and sixth allegations of discrimination under section 18 of the Equality Act fail and are dismissed.
 - c. The complaints of harassment for pregnancy and maternity were not pursued, being outside of the statutory definition and are therefore dismissed.
 - d. The Claimant has proven that the claimed wages, being furlough pay from the 6 July 2020 to the start of her maternity period (which she says would be the 30 November 2020) and her maternity pay (for the period the Claimant took as maternity leave), were properly payable to her and have been deducted without authorisation.
2. The Respondent did not attend this remedy hearing and was not represented.
3. The Tribunal was aware that the Respondent's representative came off record by correspondence dated the 16 March 2023.
4. Notice of this remedy hearing had been sent to the parties on the 17 March 2023, the remedy hearing having been postponed from the 20 March 2023, due to a lack of judicial resources.
5. Further, it was confirmed at this remedy hearing that on Companies House it is recorded that the Respondent entered creditors voluntary liquidation on the 27 March 2023.

6. In accordance with rule 47 of the Employment Tribunal Rules of Procedure it was therefore determined to proceed with the hearing in the absence of the Respondent.
7. After oral remedy judgment was given the Claimant's representative requested written reasons and these are now also provided.
8. The Claimant had submitted a schedule of loss in advance of this remedy hearing. It included the wages owed (as recorded in our judgment) and for an amount of £25,000 for injury to feelings plus interest at 8%.
9. In support of that injury to feelings amount the schedule of loss referred to how due to the ... "loss of Furlough, Wages and Maternity Pay, Natasha was very stressed and anxious during her pregnancy.". It did not refer to the impact of the specific allegations of discrimination that we had found.
10. The Claimant was reminded of our judgment in that we had found in respect of the first and second allegations that she was subjected to discrimination under section 18 of the Equality Act, in that there was a call between the Claimant and Mr Connor on or around the 17th June 2020 at which Mr Connor said to the Claimant she was no longer going to receive any payments from the Respondent, and he was also claiming that the only reason the Claimant wanted to return to work was to claim maternity pay from the company. Mr Connor agreed that the maternity question was asked of the Claimant because she was pregnant.
11. Then in respect of the fourth allegation we found that she was subjected to discrimination under section 18 of the Equality Act in that the Claimant was told on the 15th October 2020 that there were not the hours she was requesting, they had taken on new staff, and she could not come back. Further, we found that the Claimant was told any return would realistically be after the baby so from this it can be said the Respondent did not want the Claimant working for them while pregnant.
12. A short adjournment was taken for the Claimant to focus her evidence and submissions on the two matters, 17 June 2020, and 15 October 2020.
13. The Claimant then presented oral evidence under affirmation confirming her upset after both matters, but how especially after the matter in October 2020 (when she was 7 to 7.5 months pregnant) she had to get additional hospital checks (she thought 4 or 5) because she was worried about her baby. The Claimant said in October 2020 she had been hoping to return to work.
14. The Claimant submitted that she sought awards for injury to feelings of £6,000 for the 17 June matter and £6,000 for the 15 October matter.

RELEVANT LAW

15. The remedies available to the Tribunal for well-founded discrimination complaints are to be found in section 124 of the Equality Act 2010. The tribunal may make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate; may order the respondent to pay compensation to the complainant (on a tortious measure, including injury to feelings); and make an appropriate recommendation. In addition, the tribunal may also award interest on any award pursuant to section 139 of the Equality Act.
16. In respect of claims presented on or after 6 April 2020 and before 6 April 2021, the Vento bands are as follows (based on the Presidential Guidance Third Addendum dated 27 March 2020): a lower band of £900 to £9,000 (less serious cases); a middle band of £9,000 to £27,000 (cases that do not merit an award in the upper band); and an upper band of £27,000 to £45,000 (the most serious cases), with the most exceptional cases capable of exceeding £45,000.
17. The interest payable on discrimination awards is to be calculated in accordance with the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996:
 - a. Under regulation 2 the tribunal shall consider whether to award interest, and if it chooses to do so then under regulation 3 the interest is to be calculated as simple interest accruing from day to day.
 - b. Under regulation 6 the interest on an award for injury to feelings is to be from the period beginning on the date of the act of discrimination complained of and ending on the day of calculation.
 - c. All other sums are to be calculated for a period beginning with a mid-point date between the act of discrimination and ending on the day of calculation.
 - d. Following the Employment Tribunals (Interest on Awards in Discrimination Cases) (Amendment) Regulations 2013 the rate of interest payable is 8%.
18. Any award of remedy is discretionary, and a finding of discrimination does not automatically mean that an award of compensation must be made. Determination as to whether to make an award must be considered on the facts of the individual cases.
19. If the Tribunal decides to exercise their discretion to make an award, sections 124(6) and 119(2) of the Equality Act confirm that determination of the award ought to follow tortious principles. Of relevance to the determination in this case

is the causation of any purported losses; the Claimant must satisfy the tribunal that they would not have sustained the alleged loss but for the discrimination.

20. As to the deductions from wages, these were not found to be discriminatory (that not being claimed) and we accept the Claimant's calculations, having already determined that unauthorised deductions were made.

THE DECISION

21. The unanimous judgment of the tribunal is that:

22. For the first, second and fourth allegations of discrimination under section 18 of the Equality Act the Claimant is awarded the sum of £6,076 made up as follows:

- a. 17 June 2020 matter (first and second allegations) injury to feelings of £1,500 together with interest at 8% being £348 ($1,065 \text{ days} = 2.9 \times 8\% = £348$)
- b. 15 October 2020 matter (fourth allegation) injury to feelings of £3,500 together with interest at 8% being £728 ($945 \text{ days} = 2.6 \times 8\% = £728$)

23. The Tribunal is satisfied that it is appropriate to award injury to feelings in those amounts as we accept that the Claimant was upset by both matters, and that the second matter (in October 2020) caused greater upset as before that the Claimant had still wanted to return to work.

24. The Claimant has already proven that the claimed wages, being furlough pay from the 6 July 2020 to the start of her maternity period (which she says would be the 30 November 2020) and her maternity pay (for the period the Claimant took as maternity leave), were properly payable to her and have been deducted without authorisation.

25. The Respondent is therefore ordered to pay the Claimant the amounts as set out in her schedule of loss which total £10,450.01 gross, calculated as follows:

- a. 21 March 2020 – 30 November 2020 - $£192 \times 36 \text{ weeks} = £6,912.00$, less amount of furlough received from Respondent of $£2,773.00 = £4,139.00$
- b. $£6,311.01$ ($£216 \times 6 \text{ weeks} = £1,296.00$ plus $£151.97 \times 33 \text{ weeks} = £5,015.01$).

Case Numbers: 1405866/2020

Employment Judge Gray
Dated 18 May 2023

Judgment sent to Parties on 02 June 2023

For the Tribunal Office