



EMPLOYMENT TRIBUNALS

Claimant: Ms. Felicity Khupe

Respondent: Comforting Hands Recruitment Limited

HELD AT: Leeds Employment Tribunal (By CVP) **ON:** 9 June 2023

BEFORE: Employment Judge Buckley

REPRESENTATION:

Claimant: In person

Respondent: In person (Mrs Norbury)

REMEDY JUDGMENT having been sent to the parties and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

WRITTEN REASONS – REMEDY ONLY

1. As no response was filed in time, a liability judgment was issued by Employment Judge Robertson under rule 21 and sent to the parties on 12 April 2023 and the matter listed for a remedy hearing.
2. The judgment was that the claimant's complaints of unfair dismissal within section 99 of the Employment Rights Act 1996 (pregnancy) and maternity discrimination contrary to sections 18 and 39 of the Equality Act 2010 in respect of her dismissal are well founded.
3. The respondent made an application for reconsideration by email dated 26 April 2023. This was refused by Employment Judge Robertson for the reasons set out

in the judgment on application for reconsideration sent to the parties on 15 May 2023. In that judgment Employment Judge Robertson stated as follows:

‘I remind the respondent that if it intends to make an application under rule 20 for an extension of time to respond to the claim, which if granted would, by rule 20(4) set aside the rule 21 judgment, rule 20(1) provides that the application must set out the reasons why the extension is sought and shall be accompanied by a draft of the proposed response or an explanation why this is not possible.’

4. No application for an extension of time to respond to the claim has been made. Mrs Norbury from the respondent attended the remedy hearing. I drew her attention to the paragraph set out above from the judgment and asked why no application for an extension of time had been made. She stated that she lost her husband in August last year and has been in poor health. She stated that she had ‘not got around to doing those things’.
5. I asked Mrs Norbury if she understood that without an application to extend time, the judgment remains in place and I would be unable to take account of anything she said in defence of the claim, except in relation to the amount of money to be awarded. She stated that she understood. She did not ask for the hearing to be postponed to allow her time to submit an application for an extension of time, nor did she make any such application orally, nor did she indicate that she intended to make such an application in writing.
6. I informed Mrs Norbury that she would be permitted to take part in the remedy hearing and ask questions and make submissions on behalf of the respondent in relation to the amount of money that should be awarded.
7. I heard evidence from the claimant under oath. I found the claimant to be a consistent and convincing witness. She remained polite and calm even when Mrs Norbury cross-examined her on the basis that the claimant had volunteered to be lifted in the hoist training in an attempt to induce a miscarriage so she could sue the respondent and make money. I accepted her evidence.
8. I took account of documentary evidence in the remedy bundle.
9. I heard submissions from the claimant and from Mrs Norbury.

Findings of fact

10. The facts which formed the basis of the liability decision are set out in the ET1 as follows:

Friday 1 July 2022

I arrived in Leeds from Zimbabwe to start working for Comforting Hands Recruitment. The company was providing me with accommodation and they have promised to provide me with the accommodation for the first two months of arriving in the UK. We arrived as a group of 6 ladies and each had their own room in the house.

Sunday 3.7.22

I partook in the mandatory training which we were offered by the director of the company Tina and the care coordinator Tari. Later on the evening we were given uniforms and backpacks with PPE as a group.

Later on Sunday evening, the care coordinator (Tari) said that's when we are supposed to fill in a health questionnaire. The questionnaire was on Tari's laptop so she was asking some medical questions and she would record it on the laptop. As we continue with the assessment she then asked me to if I was pregnant and I said yes I am six months pregnant and that's when she said it was a bit tricky and she needed to talk to the director about it.

Monday 4.7.22

The director came around 10am to our accommodation which was also our training venue and she asked to talk to me in private and we went to my room. She told me that unfortunately because I am pregnant, I could not continue working for her and she was cancelling her Course of Sponsorship so I have to go to back to Zimbabwe and I have to do it as soon as possible as I would be given 30 days by the Home Office after which my visa would be cancelled.

She asked if I would want to stay in my room or I would joined in the training and I opted to join in the training. She announced to the rest of the group that I am pregnant and I will not be working there anymore.

Later other colleagues were given work phones and more uniforms and I was told I can't get them.

Tuesday 5.7.22

During the day colleagues were given the chance to talk to a insurance broker but again I was denied the opportunity to talk to him.

At 11pm while I was sleeping, I was woken up by Tari to bring back all the company staff I had including the house keys and told that my mom should come get me.

Thursday 6.7.22

Tari came and Venkai came around 10pm and woke me up and read out a risk assessment for me and I refused to sign it.

Friday 7.7.22

I was handed the letter to withdraw sponsorship and end work contract.

Saturday 8.7.22

I left the company accommodation.

11. I accept all those facts.
12. In relation to evidence given at the remedy hearing, I find as follows.
13. The clamant lost a job for which she had travelled from Africa with hopes of becoming what she termed 'a better version of herself'. The treatment by the

respondent led to her feeling isolated. She has lost her confidence. She is living with her mother and has no social life. She missed out on the excitement of becoming a new mother. She has been living in fear of being deported. She knows that she will probably have to go home, and she feels that her hopes of becoming a better version of herself in a first world country have collapsed.

14. I accept on the basis of the evidence in the bundle that the claimant has made reasonable efforts to mitigate her loss. I find that it is very difficult for her to find work because she needs an employer to provide her with sponsorship and employers are extremely unlikely to sponsor individuals already in the United Kingdom unless they already have at least 6 months experience working with the employer who brought them here.
15. The claimant would have taken 6 months unpaid maternity leave if she had remained working for the respondent between 11 October 2022 and 11 April 2023.
16. On 25 May 2023 she was informed by the Home Office that she can only remain legally in the country for another 60 days unless she finds work. On the basis of the claimant's experiences so far, I find that the claimant will have to return home on 10 August 2023.
17. The claimant states that she will not find work at home. That is the reason why she came to the United Kingdom. She thinks that she will not return to the United Kingdom. Mrs Norbury submitted that the claimant would be able to find another sponsorship opportunity reasonably easily.
18. Doing the best I can with limited evidence as to the claimant's prospects of finding work once she returns home, I estimate that it would take the claimant a further 3 months to find and start an equivalently remunerated sponsored role.
19. The claimant's earnings were £344.12 per week.

Decision

Compensation for discrimination

Injury to feelings

20. An injury to feelings award is not punitive but compensatory, intended to compensate for anger, distress and upset caused by the unlawful treatment. The focus is on the actual injury suffered by the claimant and not the gravity of the acts of the respondent.
21. The EAT in the case of **Prison Service v Johnson (1997) IRLR 162** set out the general principles to be applied when making an injury to feelings award are as follows:
 - (a) injury to feelings awards are compensatory and should be just to both parties; they should compensate fully without punishing the discriminator. Feelings of

indignation at the discriminator's conduct should not be allowed to inflate the award

(b) awards should not be too low that they would diminish respect for the policy of anti-discrimination legislation. Society has condemned discrimination and awards must ensure that it is seen to be wrong. On the other hand awards should be restrained as excessive awards could be seen as the way to untaxed riches.

(c) Awards should bear some broad general similarity to the range of awards in personal injury cases.

(d) Tribunals should take into account the value in everyday life of the sum they have in mind by reference to purchasing power or by reference to earnings

(e) Tribunals should bear in mind the need for public respect for the level of awards made.

22. In the case of **Vento** the Court of Appeal identified three broad bands of compensation for injury to feelings; this had been updated by the Presidential Guidance so that where claims are brought on or after 6 April 2022:

a **lower band of £990 to £9,900** (less serious cases);

a **middle band of £9,900 to £29,600** (cases that do not merit an award in the upper band);

and an **upper band of £29,600 to £49,300** (the most serious cases), with the most **exceptional cases capable of exceeding £49,300**.

23. The EAT stated in the case of **Base Childrenswear Limited v Otshudi (UKEAT/0267/18/505)** that the Vento bands are not prescriptive and cases are fact sensitive; the question for the Tribunal must always be what was the particular effect on this individual complainant.

24. Based on my factual findings above, I conclude that this is a case that falls within the middle band of **Vento** even though it is a one off act, on the basis of the particular aggravating features set out in paragraph 13. I find that it falls towards the lower end of that bracket, primarily because it did not consist of ongoing discrimination or harassment.

25. I have decided that an appropriate award for injury to feelings is **£10,000**.

26. I make an award of interest on the injury to feelings award of **£735.84**

Daily rate for injury to feelings at 8% = £2.19

Number of days – 48 weeks for the injury to feelings – 336 days 336 x £2.19 = £735.84

Past loss of earnings

27. I have concluded that the claimant has been making reasonable attempts to mitigate but that she would have taken 6 months unpaid maternity leave.

28. On that basis I award past losses of £7570.64:

14 weeks from dismissal to 11 October 2022 = 14 x £344.12 = £4817.68
No losses 11 October 2022 – 11 April 2023

8 weeks from 11 April to date of hearing = 8 x £344.12 = £2752.97

Total past losses = **£7570.64**

29. I award interest on loss of earnings of 8 percent in the sum of £277.20:

Daily rate for past losses = £1.65

168 days x 1.65 = **£277.20**

30. I have concluded that the claimant will have to leave the United Kingdom on 10 August 2023 (in 9 weeks time) and that she will suffer 3 months loss of earnings thereafter (12 weeks).

31. On that basis I award future losses of **£7226.52**

$(12 + 9) \times £344.12 = 7226.52$

Compensation for unfair dismissal

32. The claimant is not entitled to a basic award because of her length of service. It was not appropriate to make an award for loss of statutory rights because of her length of service. There is no compensatory award to avoid double recovery.

Overall amounts awarded:

33. The total compensation is **£25,810.20**. This is made up of:
- a. An award for injury to feelings of £10,000
 - b. An award of interest on the injury to feelings award of £735.84
 - c. An award of past loss of earnings of £7,570.64
 - d. An award of interest on past loss of earnings of £277.20
 - e. An award of future loss of earnings of £7226.52

Employment Judge Buckley

Date 28 June 2023