



EMPLOYMENT TRIBUNALS

Claimant: Mrs R Nalam
Respondent: Our Retail Limited
Heard at: East London Hearing Centre (by telephone)
On: 11th July 2023
Before: Employment Judge Howden-Evans

Representation

For the Claimant: Mrs A Colquhoun, solicitor
For the Respondent: No attendance

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

1. **Contrary to s39(2) and s18 Equality Act 2010 the Respondent has discriminated against the Claimant because of her pregnancy. The Claimant is awarded £35,179.54 compensation in respect of her past loss of earnings, future loss of earnings, injury to feelings and interest, as set out in the calculations attached to this judgment.**
2. **Contrary to s99 Employment Rights Act 1996, the Respondent has unfairly dismissed the Claimant. Losses arising from this dismissal have already been compensated in the discrimination compensatory award.**
3. **Contrary to s86 Employment Rights Act 1996, the Respondent has dismissed the Claimant without providing adequate notice. This loss has already been compensated in the discrimination compensatory award.**
4. **The Respondent has failed to pay the Claimant's holiday entitlement and is ordered to pay the claimant the sum of £242.00.**
5. **Contrary to s1 Employment Rights Act 1996, the Respondent had failed to provide the Claimant with a written statement of employment particulars and is ordered to pay the Claimant 4 weeks' gross pay totaling £1,075.40.**

6. **Contrary to s92 Employment Rights Act 1996, the Respondent had failed to provide the Claimant with a written reasons for her dismissal and is ordered to pay the Claimant 2 weeks' gross pay totaling £537.70.**
7. **The Respondent is ordered to pay the Claimant's costs of £950.40 which were incurred as a result of the Respondent's unreasonable conduct.**
8. **In total the Respondent is liable to pay the Claimant the sum of £37,985.04. Interest will accrue at a rate of 8% per annum on any amount of this award that remains unpaid 14 days after the date of this Judgment: see Employment Tribunal (Interest) Order 1990 and s17 Judgments Act 1838. This means if the whole amount remains unpaid it will accrue interest at a rate of £8.33 per day.**
9. **The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 do not apply to this award.**

REASONS

1. The Respondent has not filed a Response to this claim. By letter of 15th May 2023 the Employment Tribunal wrote to the Respondent confirming that under Rule 21 of the Employment Tribunal Rules of Procedure 2013 a judgment may be issued and requiring the Respondent to email the Employment Tribunal by 30th May 2023 if it wished to defend the claim. This letter also reminded the Respondent that this hearing remained listed for today. There has been no communication received from the Respondent and no attendance by or on behalf of the Respondent at today's hearing.
2. Prior to today's hearing, the Claimant's representative had emailed a comprehensive Schedule of Loss to the Respondent and had indicated they would be seeking a costs order. Rule 47 Employment Tribunal Rules of Procedure 2013 explains that if a party has not attended (or been represented at) a hearing I may proceed in the absence of that party. I have considered the documents that are available to me, and the clerk has checked for any communications from the Respondent; there has been no last-minute correspondence from the Respondent.
3. I have decided to continue this hearing in the absence of the Respondent. Having considered all the available documents, I am satisfied that a determination can properly be made of the claim; I am satisfied there are no jurisdictional issues and it is appropriate to enter judgment under Rule 21:
 - a) The Grounds of Complaint make it clear that the Claimant's dismissal (the act of discrimination) was on 16th September 2022. The ACAS early conciliation commenced on 15th December 2022 and the Claim form was presented on 24th February 2023. The claim was presented within the requisite time limits.

- b) The Claimant only has 2 months' continuous employment with the Respondent, but section 108 Employment Rights Act 1996 explains the usual 2 years' service requirement does not apply to a claim of automatically unfair dismissal (brought under s99 Employment Rights Act 1996).
 - c) The Claimant's name on the claim form did not match the Claimant's name on the ACAS certificate. By email of 1st March 2023 the Claimant's solicitor had written to the Tribunal explaining this error. On 20th March 2023, Employment Judge Gilbert considered this error and determined the Claimant had made a minor error on the claim form and it was not in the interests of justice for the claim form to be rejected (per Rule 12 (2A) Employment Tribunal Rules 2013) and determined the claim form would be accepted by the Tribunal.
4. I went on to consider each item on the Claimant's schedule of loss and am satisfied that these losses flow from the act of discrimination. I note the Claimant is seeking an injury to feelings award in the lower band of Vento.
 5. The Claimant's representative applied for a costs order, asserting the Respondent had acted unreasonably in these proceedings. I accept the Respondent's conduct (in failing to respond to the claim and/or all communications from the Tribunal and Claimant's representative) has been unreasonable (per Rule 76(1)(a) Employment Tribunal Rules of Procedure 2013 and therefore I have a discretion as to whether to make a costs order or not. I went on to consider whether I should exercise this discretion. The Claimant's representative explained she had incurred an additional 4 hours' work preparing for and attending today's hearing, which might have been avoided, had the Respondent responded to these proceedings. She was only seeking a costs order in respect of this additional unnecessary work; she was not seeking a costs order for the costs associated with drafting the claim and grounds of claim. I determined it was appropriate for me to exercise my discretion in favour of awarding costs against the Respondent, to cover the 4 hours additional work that was necessary as a result of the Respondent's unreasonable conduct. The Claimant's representative's hourly rate is £198 & VAT, so the Respondent is ordered to pay costs of £950.40 to the Claimant.
 6. If the Respondent wishes to apply for me to reconsider any part of this decision, they must write to the Claimant and Tribunal within 14 days of this Judgment being sent to them, explaining why it is in the interests of justice for me to reconsider this judgment.

Employment Judge Howden-Evans
Dated:11th July 2023

Calculations

Claimant's salary with Respondent:
 Gross pay: £1,165 per month; £268.85 per week
 Net pay: £260 per week.
 Employer's pension contributions: £19.35 per week

The Claimant's Effective Date of Termination/date of act of discrimination: 16th September 2022

Compensation for losses arising from discrimination

Compensatory Award (immediate loss)

Loss of Earnings EDT to Date of Calculation (16th September 2022 to 11th July 2023)

16th September 2022 to 31st March 2023 (start of maternity leave):

| | | |
|--|---------------|----------|
| | £ | £ |
| 28 weeks x £260 net pay | 7,280.00 | |
| 28 weeks x £19.35 employer's pension contributions | <u>541.80</u> | |
| | | 7,821.80 |

1st April 2023 to 11th July 2023 (date of calculation):

| | | |
|--------------------------|-----------------|-----------------|
| | £ | |
| Statutory maternity pay: | | |
| 6 weeks x 90% of £260 | 1,404.00 | |
| 8 weeks x £172.48 | <u>1,379.84</u> | |
| | | <u>2,783.84</u> |
| | | 10,605.64 |

plus Interest

(calculated at 8% per annum from the midpoint between the date of the act of discrimination and the calculation date)

| | | |
|--------------------------------------|--|---------------|
| £10,605.64 x 8% per annum x 150 days | | <u>348.69</u> |
|--------------------------------------|--|---------------|

Total Compensatory Award (immediate loss) £10,954.33

Compensatory Award (future loss)

Loss of Earnings

between Date of Calculation and end of maternity leave

| | | |
|--|------------------|--|
| | £ | |
| Statutory maternity pay: | | |
| 25 weeks x £172.48 | 4,312.00 | |
| Realistic time to find suitable new employment | | |
| 52 weeks x £260 | <u>13,520.00</u> | |

Total Compensatory Award (future loss) £17,832.00

Total Compensatory Award (immediate and future losses) £28,786.33

Injury to Feelings Award

£

Injury to Feelings Award 6,000.00

plus interest
(calculated at 8% per annum from date of act of discrimination)

£6,000 x 8% per annum x 299 days 393.21

£6,393.21

Total Compensation awarded for discrimination £35,179.54

Holiday Entitlement

At the time of dismissal the Claimant had accrued (but not taken) 2.8 days holiday.

2.8 x £86.66 (daily net pay) = £242