



EMPLOYMENT TRIBUNALS

Claimant: Alexandra Clay

Respondent: Norton Armouries Film Ltd.

Heard at: Birmingham by CVP

On: 24 August 2023

Before: Employment Judge S. Evans (sitting alone)

Appearances

For the claimant: In person

For the respondent: No appearance

WRITTEN REASONS

JUDGMENT on remedy having been sent to the parties on 25th August 2023 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.

Introduction

- 1 The request for written reasons came before the Employment Judge on 9 October 2023.
- 2 A judgment on liability, pursuant to Rule 21 Employment Tribunals Rules of Procedure 2013, was entered on 15 August 2023 and sent to the parties on 16 August 2023.
- 3 Paragraph 2 of the judgment of 15 August stated that the case management hearing listed for 24 August 2023 was cancelled and paragraph 3 stated that the case was relisted for a remedy hearing on 24 August 2023 and a notice of hearing was attached.
- 4 At the hearing on 24 August 2023, the Claimant attended and represented herself. There was no appearance by or on behalf of the Respondent.

- 5 The Claimant's evidence was taken and the Tribunal had sight of eight documents submitted by the Claimant who confirmed these were the only documents she relied on.

Findings of Fact

- 6 The Claimant was diagnosed with asthma in January 2023 after a period of ill-health and respiratory issues which began in October 2022.
- 7 The Claimant made a flexible working request by email to the Respondent on 25 November 2022 asking that she be permitted to work her contractual hours from home. The reason she gave was that her ill health and respiratory issues prevented her from "*being present in the office/ workshop.*"
- 8 The Claimant received an email response from Mr. Jon Peck, the owner of the Respondent company and the Claimant's boss, on 25 November 2023 stating:
*"I feel I need more time to make a decision on this.
I will get back to you as soon as possible. Hopefully early next week."*
- 9 The Claimant did not receive an invitation to attend a meeting to discuss her request and did not hear further from the Respondent or Mr Peck about her request until 2 March 2023.
- 10 On 2 March 2023, the Respondent sent an email to the Claimant, refusing her request. The email stated that the reason was:
"due to the nature of the work and communication being needed between all the teams in one place."
The email also requested that the Claimant complete an Occupational Health consent form and asked for other information.
- 11 On 13 March 2023, the Claimant replied by email, requesting further information relating to the consent form and asking the Respondent to:
"elaborate on your reasons for refusing my request?"
- 12 The Claimant received a response to her email on 21 March 2023 from Mr Peck in which he said:
"I would like to confirm that the reason I have refused your request for flexible working is due to the fast-paced working environment, with ever changing deadlines and working patterns I feel communication needs to be face to face as to not affect my other employees. I do not want existing workshop staff to be required to have constant access to devices whilst they are trying to complete their designated workload. You are aware of the environment your colleagues work in as they are not office based. Therefore removing PPE, stopping machines, drying times etc will all be affected should they need to stop work and answer a zoom call, answer to WhatsApp etc when information is required from them."
- 13 The Claimant replied on 22 March 2023 asking whether the Respondent had a flexible working policy and whether there was a right of appeal in any

such policy. She also asked if the Respondent would allow her the right to appeal the decision.

- 14 The Claimant received no response from the Respondent to her enquiry and on 3 April 2023 she issued her claim on the Employment Tribunal.
- 15 The Claimant remains employed by the Respondent. She has been off work due her ill-health and inability to return to the office. Her statutory sick pay has expired. Her contractual rate of pay is £16 per hour for 28.75 hours a week, totalling £460 gross per week.

The Law

- 16 Section 80G Employment Rights Act 1996 (“ERA”) sets out the employer’s duties in relation to a flexible working request made under section 80F. The duty is to deal with the application in a reasonable manner, to notify the employee of the decision on the application within the decision period and to only refuse the application because one or more of the stated grounds apply. The decision period is three months beginning with the date on which the application is made unless the employer and employee have agreed a longer period.
- 17 The ACAS Code of Practice “Handling in a reasonable manner requests to work flexibly (2014)” recommends that upon receiving a request, the employer should arrange to talk with the employee as soon as possible. The employer should allow the employee to be accompanied to the discussions (and any appeal). It recommends that there should be a right of appeal against refusal. The Tribunal acknowledges that these are points of good practice and not legal requirements imposed on the Respondent.
- 18 80I ERA provides that that where an employment tribunal finds a complaint under s 80H ERA well-founded it shall make a declaration to that effect and may make an award of compensation to be paid by the employer to the employee. The amount of any such compensation shall be such amount, not exceeding the permitted maximum, as the tribunal considers just and equitable in all the circumstances.
- 19 The permitted maximum is eight weeks’ gross pay.

Conclusions

- 20 The Tribunal took into account the evidence before it and applied the law in so far as it was relevant to the issue of remedy.
- 21 The Tribunal concluded that it was just and equitable to award the permitted maximum amount to the Claimant for the following reasons.
- 22 The Respondent did not deal with the request in a reasonable manner :

- it did not arrange a meeting nor provide any opportunity for the Claimant to discuss her request with her employer.
- it did not provide any evidence to show it had considered the matter carefully, looking at the benefits of the requested changes for the employee and the business and weighing these against any adverse business impact of implementing changes.
- it did not state that the refusal was for an identified permitted reason.
- it did not provide the Claimant with an opportunity to appeal the decision.
- It did not respond to the Claimant's subsequent request for information about a flexible working policy and the opportunity to appeal.

23 The Respondent also failed to comply with the statutory requirement to notify the Claimant of the decision on the application within the relevant decision period. This period expired on 25 February 2023 as no longer period had been agreed between the Claimant and Respondent. The decision was not notified until 2 March 2023.

24 The Claimant's gross pay was £460 per week so the amount awarded is £3680.

Employment Judge Evans

24 October 2023