



EMPLOYMENT TRIBUNALS

BETWEEN

CLAIMANT

RESPONDENT

MS J WILLIAMS

V

SINCLAIRSLAW LTD

HELD AT CARDIFF ON: 18TH SEPTEMBER 2023

BEFORE: TRIBUNAL JUDGE MCLEESE SITTING AS AN
EMPLOYMENT JUDGE, MRS M HUMPHRIES AND
MRS Y NEVES

REPRESENTATION:

FOR THE CLAIMANT:

MR P O'CALLAGHAN (COUNSEL)

FOR THE RESPONDENT:

MR J ALLSOP (COUNSEL)

JUDGMENT

1. The claim of direct discrimination on the ground of age is not well founded and is dismissed.
2. The claim of direct discrimination on the ground of sex is not well founded and is dismissed.

REASONS

3. This is a claim by Ms Williams who was, and is, although not currently practising, a solicitor specialising in family law.
4. She joined the Respondent in 2010.
5. Judge Jenkins determined at a previous hearing that the Claimant was not an employee within the meaning of Section 230 of the Employment Rights Act 1996 but that she was for the purposes of Section 83 of the Equality Act 2010.

The Hearing

6. In the course of the hearing, we heard from the Claimant and Mr Gregory S Evans on behalf of the Respondent.
7. In reaching our decision, we had regard to the written evidence we were provided with and the evidence we heard during the hearing. We had a bundle containing 318 pages and witness statements from Ms Willaims and Mr Evans. We had regard to the law and briefly set out the relevant parts in respect of these claims.

The Relevant Law

Direct Discrimination on the Grounds of Sex / Age

8. Section 13 of the Equality Act set out that A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.
9. That is, because of a protected characteristic which in this instance is age or sex.
10. There are two routes by which it can be sought to demonstrate this.
11. By using an actual comparator. In other words, by showing that the person was treated less favourably than their colleague was actually treated.
12. By using a hypothetical comparator. By demonstrating the employee was treated less favourably than they would have been treated if they did not have the protected characteristic.
13. Section 23 of the Equality Act sets out that the circumstances of a comparator must be the same as those of the Claimant or not materially different.
14. The crucial question which we had to determine was, what is the reason why the Claimant was treated as she was? Further, was it because of the protected characteristic?

Burden of Proof:

15. Section 136 of the Equality Act 2010 states that,
 - 2) If there are facts from which the (tribunal) could decide, in the absence of any other explanation, that the person (A) contravened the provision concerned, the (tribunal) must hold that the contravention occurred.
 - 3) But subsection 2) does not apply if A shows that A did not contravene that provision....

16. There are two stages:

The Tribunal must be satisfied there are facts from which the Tribunal could decide, in the absence of any other explanation that discrimination took place.

17. The Tribunal considered *Madarassy v Nomura International PLC* (2007) EWCA Civ 33 which is authority for the premise that facts are sufficient to shift the burden if “a reasonable tribunal could properly conclude” on the balance of probabilities that there was discrimination.
18. At this initial stage of consideration the burden of proof is on the Claimant (*Ayodele v Citylink Ltd and Anor*) 2017 EWCA Civ 1913.
19. Explanations provided by the Respondent are discarded at this stage.
20. It is not sufficient for the employee merely to prove a difference in protected characteristic and a difference in treatment. Something more is required.
21. Of note in this claim is that unfair or unreasonable treatment on its own is not enough (*Glasgow City Council v. Zafar* (1998) IRLR 36 HL).
22. The second stage for us to consider is the Respondent employer’s explanation and whether the employer has proved on the balance of probabilities that the treatment was not for the proscribed reason?
23. Guidance is provided in the case of *Igen v. Wong* (2005) IRLR 258.
24. The employer must prove the treatment was in no sense whatsoever because of the protected characteristic and because the evidence in support of the explanation will usually be in the possession of the employer tribunals should expect “cogent evidence” for the employer’s burden to be discharged.
25. However, the employer only has to prove that it was not the forbidden reason. There is no necessity for them to prove that they acted fairly or reasonably.

The Issues

26. There was a single claim left before the Tribunal which is set out in full below. Other claims made had been dealt with by Judge Jenkins in his previous judgment which could be found at page 113 of the bundle.
27. “After formally writing to the Respondent Practice, namely to Mr Evans on the 23rd March 2022 seeking formal confirmation of my employment status and asking for a copy of all relevant documentation from my personnel file, I have never received an any answer or indeed any response at all. The Respondents have not contacted me but admit in their response my request was not answered or indeed addressed. I

have made further requests during these proceedings for clarification of my employment status which were again ignored. Formal clarification was only obtained at the formal hearing by Respondent's counsel on the 23rd August, when the Judge made clear he needed to understand what the position of the Respondent's actually was. These are matters set out in Paragraph 49-51 of my claim."

Findings of Fact

28. The Respondent is a firm of solicitors operating with offices in Cardiff, Penarth and London.
29. The Claimant was, and is, although not currently practising, a solicitor specialising in family law. She qualified in 1985, and, in the period leading up to 2010, was in partnership in a solicitors' firm as an equity partner.
30. She joined the Respondent firm in 2010.
31. In late 2021, the Respondent's Family Legal Aid Contract expired and was not renewed.
32. On the 23rd March 2022 the Claimant wrote to the Respondent seeking HR documentation and clarification of her position with the Respondent and highlighting that she had not been able to carry out some billing due to a lack of secretarial support. She sent a further email on the 24th March 2023.
33. She did not receive a response.
34. The inability to bill claims she had outstanding meant the Claimant had not been paid for three months.
35. It also meant however that the Respondent company would not receive 63% of the monies to be billed. The Claimant contends she was unable to bill what would have been between £30 and £40,000 worth of income for her.
36. This would also have meant in excess of £50,000 for the Respondent firm if those figures are correct.
37. Mr Evans did not reply. He either skimmed the email and did not action it or intended to go back to it and did not.
38. He accepted this in his evidence and the Tribunal found his evidence credible and human in admitting a significant omission on his part.
39. The Tribunal find that commercially Mr Evans actions were detrimental to the Respondent.

40. The Claimant was offered support by the Respondent in relation to these matters at the end of April, prior, on her own admission, to when the Respondent company would have known about her filing an ET1.
41. The Tribunal find as a fact that Mr Evans' actions were not motivated by the Claimant's sex or age.
42. The suggestion which Mr Evans was aware of, by way of hearsay, that the Claimant was "winding down" was nothing to do with the failure to reply to the email of the 23rd March or the mail of the 24th March.
43. There is no evidence before the Tribunal and certainly none that this Tribunal finds points to the Claimant's sex or age having had anything at all to do with the way in which the email was dealt with or the inaction after its receipt.

Submissions

44. The submissions on behalf of the parties may be summarised as follows.
45. The Claimant contends that she was ignored as the Respondent thought she may have been winding down towards retirement and/or because she was a woman.
46. The Claimant's counsel submitted that the allegations previously dismissed by Judge Jenkins point to this matter being motivated by the Claimant's age or sex, that there was gossip and a suggestion she was winding down that motivated the treatment, there were older men in the Cardiff office but no women. This appeared to be linked to the somewhat strange suggestion that the firm was discriminating on grounds of sex in Cardiff but not their Twickenham office.
47. Further that two emails sent by younger men would have received a response and finally that the firm would have retained the Claimant's money due by ignoring the email. The last two on this list of submissions were sensibly withdrawn.
48. The Respondent's skeleton I do not rehearse fully here but in essence the Respondent suggests that the Claimant's claim is ill founded and that this is a case of straight inadvertence. The emails were wrongly ignored or that there was a presumption they were being dealt with by other staff members.

Conclusions:

49. There was no actual comparator in this case and the parties did not propose a hypothetical comparator with any force.
50. If there was one it would be to suggest someone younger or male would have been treated differently.

51. We do not find the evidence supports either contention in any event.
52. There were extraneous matters of evidence given and cross examined upon. We do not rehearse them here because the issue and relevant evidence in this claim is in fact very narrow.
53. We heard on more than one occasion about the Claimant's view, for example of Ms Emma Monteiro, who was the Head of Human Resources but did not find this to be germane to the matter we had to decide.
54. We focus on the question, why was the Claimant treated as she was?
55. We unanimously favour the Respondent's position. We accept that the way the Claimant was treated in having her emails ignored in the way they were would have been extremely annoying and probably upsetting for her.
56. We remind ourselves that unfair or unreasonable treatment on its own is not enough
57. We further find that ignoring the emails was commercially nonsensical as it was costing the firm a considerable amount of money but it was not because of the Claimant's age or sex.
58. The Tribunal found Mr Evans a credible witness. He admitted human error and was candid about his failings in relation to this matter.
59. The Claimant clearly feels strongly about certain matter relating to the Respondent, many of which have been dismissed already but we found her evidence less cogent.
60. For example, as a very experienced family solicitor she would be aware of the importance of accuracy of witness statements made in proceedings, particularly when concerning serious allegations such as these. Where we do not rehearse the detail here she accepted there were inaccuracies in her witness statement.
61. Her explanations that she had always been reliant on secretarial support and that she had had no professional training was not credible as an explanation for the errors. She accepted she has had to approve drafts of witness statements before and that it is important that they are accurate.
62. She also did not answer some questions directly. We find that to be because of deficiencies in her case.
63. For example, when asked about the allegations of sex and age discrimination in the final question of cross examination her answer gave absolutely no mention of age or sex discrimination or any suggestion as

to why she contended Mr Evans lack of response was linked to the same.

64. In contrast, the Tribunal, as stated elsewhere, found Mr Evans explanation to be straightforward and credible and all the more so because it involved his acceptance of his own error.
65. The Claimant's position also meant, if it were found to be correct, that Mr Evans deliberately spurned 63% of fees that were due to the Respondent company. The Claimant contends 37% of the fees due amounted to between £30 and £40,000. The Claimant contends Mr Evans directly discriminated against her because of her age and sex and in so doing chose not to enable the Respondent company to receive significant amounts of money due to it.
66. The Tribunal find this position to be inherently unlikely and incredible in the circumstances of this case.
67. The actions of Mr Evans were detrimental to both the Respondent and the Claimant but were not in any way motivated by the Claimant's age or sex.
68. As such, the claims of direct discrimination based on sex and based on age are not well founded and are dismissed.

**Tribunal Judge DS McLeese Sitting as an
Employment Judge**

Dated: 20th October 2023

Order posted to the parties on
27 October 2023

For Secretary of the Tribunals
Mr N Roche