



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

Ms Janine Tooze

v

SA Designer Parfums Limited

**Heard at:** Bury St Edmunds

**On:** 6 November 2023

**Before:** Employment Judge S Moore

## **Appearances**

**For the Claimant:** In person

**For the Respondent:** Mr Small, Counsel

## **RESERVED JUDGMENT**

- (1) The application to amend the claim is refused.
- (2) The claim for breach of contract in respect of failure to pay the Claimant money owed under a rental agreement is dismissed.
- (3) Since there are no other claims before the Tribunal, the claim is dismissed in its entirety.

## **REASONS**

### **Application to amend**

### **Background**

1. The Claimant was employed between 4 January 2021 and 16 December 2022 as Head of New Product Development, when she was dismissed with immediate effect and paid 3 months' salary in lieu of notice. Her salary before tax was £96,000 per year.
2. Following a period of Early Conciliation between 17 February and 21 March 2023, on 11 April 2023 she brought a claim for "other payments", claiming the "money owed to me for the rental agreement as promised by verbal contract with the COO of the company that hired and fired me. If possible, I would also like to file an unfair dismissal claim". In the details of her claim, setting out the basis of her claim for alleged breach of contract in relation to the rental agreement, the Claimant stated she felt she was unfairly dismissed and was astounded that she could not put in a claim for unfair dismissal as she was 2 weeks short of her 2 years' service. Notably she did not tick either of the boxes to say she was bringing a claim for race or sex discrimination or allege any factual instances of race or sex discrimination.
3. The Respondent subsequently lodged a response denying the claim for breach of contract and stating the Tribunal lacked jurisdiction to hear a claim for unfair dismissal.
4. On 24 July 2023 the Tribunal informed the parties the claim would be heard by video hearing on 6 November 2023 with a time estimate of 3 hrs. Case Management Orders were made, including that the Claimant was required to set out in writing what remedy the Tribunal was being asked to award by 7 August 2023.
5. On 7 August 2023 the Claimant sent her remedy document listing her claims as unfair dismissal, discrimination on grounds of race, discrimination on grounds of sex, direct discrimination, harassment and victimisation, breach of contract and breach of the Respondent's Equal Opportunities Policy. In that document the Claimant said the Respondent was owned by 3 brothers of Indian origin and she had evidence she had been discriminated against by being non-Indian and that she was racially and sexually discriminated against by a male member of the Leadership Team of Indian origin and received no support from her superior, a white male of Spanish origin. She stated she felt her employment was terminated on grounds of unfair treatment due to being a white female, details of which would be provided in the next stage of the Tribunal as raised in her grievance during her employment. However, the grievance documents provided as part of a Subject Access Request had been manipulated to remove comments on race and sex discrimination.
6. On 14 August 2023 the Respondent stated that the Claimant appeared to be seeking to bring a number of new claims and in the absence of any notification the Claimant had been allowed to amend her claim it would proceed on the basis of her original claim.
7. On 30 August 2023 the Respondent noted the Claimant had not made any application to amend her claim and it was still limited to a financial claim

for payment of rent only. Further the Claimant had not included evidence she had actually paid the amount of rent claimed, only evidence of one final payment.

8. On 31 August 2023 the Claimant emailed the Tribunal to see if there had been a decision on her request as it appears that on 18 August 2023 she had sent the following email to the Tribunal (though she hadn't copied in the Respondent):

"I am writing to request to be able to make an amendment my initial ET1 report that I filled in online to request an Employment Tribunal hearing.

It's not much of an amendment, but I have since received advice that I cannot add race and sex discrimination, I thought they would all fall under the unfair dismissal topic which I did mention on the ET1.

My ET1 was filed under the correct timing allowed.

I understand the first priority was for the rental reimbursement costs, and would like this still to be heard.

As it's only a small amendment could this be included as I won't be adding any further paperwork as it still comes under the unfair dismissal.

I apologise for the confusion and rest assured I am investing a lot of time into trying to follow the correct procedures and use the correct terminology. I genuinely believed the race and sex discrimination fell under the unfair dismissal.

I will still follow the dates and documents as advised by the Employment tribunal court and await your advice."

9. On 19 September 2023 the Respondent's solicitors wrote to the Claimant stating it was unclear what amendment she was seeking to make and that any application to amend would normally contain an amended version of the statements attached to the ET1. They asked that by return she confirmed the specific nature of the claims she was seeking to add and any amendments to the facts pleaded in the ET1 form on which they were based.
10. The Claimant responded the same date saying she noted the Respondent's concerns and would forward the necessary paperwork when the Tribunal accepted her amendment.
11. On 21 September 2023 the Respondent's solicitors wrote to the Tribunal stating, amongst other things, that "The Claimant's email of 18 August 2023 is confusing. She appears to request a small amendment but does not say what that amendment is. She seems to confirm she has been told she cannot add a sex or race discrimination claim but then refers to paperwork under an unfair dismissal claim, which has not been brought...We do not know what amendment the Claimant is seeking or

whether it is to include a new claim or merely to include additional documents.”

12. On 25 October 2023 the Tribunal wrote to the parties, apparently in response to several phone calls from the Claimant. The Tribunal stated that “as things stand” the only claim presented was a contractual one in respect of rental costs. The Claimant’s “remedies document” of 7 August 2023 appeared to raise the claim her dismissal might have been because of sex or race but before any judge could make a decision on it, the Claimant’s email of 18 August 2023 seemed to withdraw the application. If the Claimant was seeking to amend her claim she had to write to the Tribunal and the Respondent by 31 October 2023 setting out the requested amendment and why it was not presented sooner. If she did, the application would be considered at the hearing on 6 November 2023.
13. By letter dated 26 October 2023 the Claimant wrote stating the nature of the amendment sought was “unfair dismissal on grounds of race discrimination... and Loss of Earnings as per Breach of Contract receiving my performance related bonus”.
14. By email of 31 October 2023 the Respondent objected to the amendment.
15. At the hearing today, the Claimant stated that in fact she was seeking to amend her claim to bring claims of race and sex discrimination (not only race discrimination as stated in the letter of 26 October 2023) and a claim in respect of the fact that she wasn’t paid a performance related bonus.

### Conclusion

16. The nature of the amendments sought are still unclear. Indeed, the Claimant has been unclear as regards even the heads of claim she wishes to bring, still less has she provided a draft amendment of her ET1 or even details of the factual basis of the claims she now wishes to advance.
17. Secondly, the ET1 makes no mention of any claim for race or sex discrimination, or in respect of not being paid a performance related bonus, and it is evident that any such claims would rely on facts which are not pleaded in the ET1. They are therefore new claims which have been brought out of time.
18. Thirdly, the new proposed new claims appear to be broad in scope. They would require this hearing to be vacated, substantial clarification from the Claimant as regards the precise nature of the proposed claims and an opportunity for the Respondent to amend its response even before the issues could be identified and the matter set down for a multi-day hearing. The case would effectively have to start again and the hearing would not be listed until the latter half of 2024 at the earliest and may not be listed until 2025, so that the witnesses would be required to give evidence of matters that happened several years previously.

19. Fourthly, the Claimant's correspondence/applications to amend have been very confusing and she made no effort to engage with the Respondent's solicitors when they sought to clarify her proposed amendments. The Claimant says she has not been able to afford legal advice and initially believed that she could not bring a claim for sex discrimination or race discrimination because she did not have two years' service. However, it is clear from correspondence in the bundle that she was aware of the three-month time limit before she brought her claim, and with reasonable diligence the Claimant could have found out it was open to her to bring claims of race and sex discrimination without having two years' service. I find there is no good reason why the proposed new claims could not have been brought in time or, at the very least, a coherent application to amend made much more promptly.
20. Fifthly, the Claimant's claim for alleged breach of contract in respect of her rent, which she describes in her email of 18 August 2023 as "the first priority" can go ahead without any amendment to the claim and is able to be heard today.
21. I therefore consider that it would not be just and equitable to extend time so as to allow the Claimant's new claims to be brought out of time and/or that for all the reasons set out above allowing the amendments (or any of them) would cause greater injustice and hardship than refusing them (see Selkent Bus Company Ltd v Moore [1996] ICR 826).
22. The application to amend is therefore refused.

### **The claim for breach of contract**

#### **Evidence**

23. The Claimant's case is that prior to signing her contract with the Respondent she entered into an oral contract with Mr Santiago Alvarez on behalf of the Respondent that in the event she was dismissed the Respondent would pay her rent for the remainder of her rental period. The Claimant says she made this oral agreement with Mr Alvarez in December 2020 during a telephone conversation (prior to signing her contract) because, since she was relocating from Wales and would still be paying a mortgage in Wales, she didn't want to risk having to pay rent and her mortgage if she lost her job.
24. In the event the Claimant says she stayed in a long-term hotel when she first started work and didn't begin to lease a property until October 2022, when she says she took out a 12 month contract at a monthly rent of £1,300 through a letting agency called Open Rent. The Claimant says she told Mr Alvarez that she was moving into a rented property in October 2022, but that they didn't have any more conversations about the Respondent agreeing to pay her rent in the event she was dismissed. The Claimant said she relied on Mr Alvarez' promise prior to her starting work and didn't think she needed to revisit the matter.

25. Mr Alvarez agreed he had a conversation with the Claimant prior to the start of her employment during which she raised concerns about her rent liability in the event she was dismissed. He said he responded by saying he had been pleased with the interview process and was confident she would be successful, but didn't make any promise to pay her rent in the event she was dismissed.
26. It is common ground that when the Claimant's contract was terminated, she raised the matter of her rent and that the Respondent made some kind offer to pay it as part of a proposed settlement agreement.
27. The Respondent's case is that it offered to pay the Claimant's rent on a monthly basis directly to her landlord but she refused and stated she wanted to be paid the relevant amount (about £12,000) in a lump sum directly to herself.
28. The Claimant states the Respondent offered to pay the rent monthly to herself, but that she refused because the regular payments into her account would make it difficult for her to get Job Seeker's Allowance. She says she did not think of asking the Respondent to pay the money directly to the landlord instead because she was upset about losing her job and because her mother was terminally ill.
29. The Claimant says she moved out of the rental property at the end of January 2023 and made a payment to the landlord for the remainder of the rent on 1 February 2023 in the sum of £10996.36. There is a bank statement showing a payment of this amount to KB Rent Account on 1 February 2023. The Claimant said KB stood for "Kelly Bell". There is no evidence of any other payments being made to KB or to Open Rent (the letting agency).
30. The Claimant also stated that although she had asked the landlord for a reduction in the rent because she was vacating the property early, the landlord had held her to the obligation to pay the full amount. She said she didn't have evidence of the conversations with the landlord because they were conducted on WhatsApp – through calls rather than messages.

### Conclusion

31. For the Claimant's case to succeed it is necessary to show that in December 2020 the Respondent agreed that for the duration of the Claimant's employment, were the Claimant to be dismissed, it would be contractually liable to pay whatever amount of rent the Claimant had committed herself to pay under her rental agreement for the remainder of the relevant rental term and regardless of the reasons for the dismissal. That would be a very unusual and onerous obligation for the Respondent to undertake and I am not satisfied the Respondent entered into any such obligation.
32. The Claimant relies on notes of the termination meeting with Mr Alvarez on 13 December 2022. In that meeting she is recorded as saying "And when I

first took this role and I spoke to you and you said when I got the contract, you'll remember, there was nothing in there about covering me. And I said I'm not happy with this contract because if I come and I sign a six-month lease and you sack me after day 1, that leaves me with owing all the money. And you said, 'Take my word for it, Jan that won't happen'.

33. Even assuming the Claimant and Mr Alvarez had a conversation of the kind summarised by the Claimant in that meeting, this goes no further than, at its highest, Mr Alvarez assuring the Claimant she wouldn't be dismissed so soon after starting work. It falls considerably short of Mr Alvarez entering into a long-term legal commitment of the kind outlined in paragraph 31 above such as would make the Respondent liable to pay the Claimant's rent in respect of the rental agreement she says she entered into 22 months later in October 2022.
34. Further, and in any event, I am not satisfied that following her dismissal the Claimant was obliged to make the rental payment of £10996.36 she alleges she made, or any rental payment.
35. While the rental agreement in the bundle names the landlord as a Ms Kelly Bell, it transpires that the registered landlord of the property in question is in fact a Ms Tracy Skinner and that Ms Kelly Bell is a friend of the Claimant.
36. When this information was put to the Claimant (in correspondence from the Respondent prior to the hearing and again at the hearing) the Claimant said that she knew her landlord was really Ms Tracy Skinner and not Ms Kelly Bell, however Ms Skinner lived abroad and Ms Bell collected the rent on behalf of Ms Skinner. She further said she did not think it odd that she had entered into a tenancy agreement with someone who was not her landlord.
37. The upshot is that the Claimant has no evidence of any rental agreement with Ms Skinner, the registered landlord of the property, and has submitted no evidence of any payments to anyone other than her friend, Kelly Bell.
38. Further, there is no evidence before the Tribunal in respect of the Claimant's alleged discussions with Ms Skinner as regards the termination of the tenancy and I find it suspicious that all the discussions were apparently on WhatsApp and that there is no evidence at all in the form of messages or emails.
39. I also accept the Respondent's evidence, which is substantiated by contemporaneous written notes in the bundle, that the Respondent offered to pay the Claimant's rent in monthly intervals directly to the landlord, but that she declined the offer and wanted the money to be paid in a lump sum to her instead.
40. Finally, I note there is no evidence from Ms Bell or Ms Skinner to substantiate the Claimant's claims as regards the operation of the rental agreement.

41. It follows that I am not satisfied that following her dismissal the Claimant's obligations in respect of her rent were as she has claimed them to be and/or that the sum of £10996.36 paid to Ms Bell on 1 February 2023 was a payment made by the Claimant to discharge her liability under a rental agreement.
42. In the light of the above the claim is dismissed in its entirety.
43. For the sake of completeness, I note that Mr Small advanced an argument that the Tribunal had no jurisdiction to hear the claim because it was a claim in respect of a "term imposing an obligation on the employer or employee in connection with the provision of living accommodation" within the meaning of paragraph 5(b) of the Employment Tribunal's Extension of Jurisdiction (England & Wales) Order 1994.
44. I reject that argument because the claim is not in respect of a term imposing an obligation on the Respondent in respect of the provision of living accommodation. The alleged term does not relate to the provision of any accommodation, but rather to the Respondent's liability to pay any rent payable by the Claimant under the terms of her own private rental agreement in the event of her dismissal.

---

Employment Judge S Moore

Date: 7 November 2023

Sent to the parties on: 5 December 2023

For the Tribunal Office