



EMPLOYMENT TRIBUNALS

Claimant: Miss I Nichifor
Respondent: Baxi Hearing UK Ltd

CERTIFICATE OF CORRECTION

Heard at: by CVP On: 6 December 2023

Before: Employment Judge Hughes

Appearances

For the claimant: In person

For the respondent: Mrs C Reed, HR Director and Mrs C Lloyd, Senior HR Business Partner

JUDGMENT

The Judgment made on 15 December 2023 is amended as follows: The claimant's indirect discrimination claim, the complaint for discrimination because of matrimony and/or civil partnership, and the "ordinary" unfair dismissal claim are dismissed on withdrawal. This does not affect the remaining claims.

REASONS

- 1 I made a judgment signed on 15 December dismissing claims which could not be pursued or were withdrawn. This did not affect the remaining claims.
- 2 The reasoning was set out in my Case Management Order made on the same date. The claimant requested written reasons. On reviewing the judgment I realised that I had dismissed a claim the claimant had not sought to bring i.e. pregnancy and maternity discrimination. Instead I should have dismissed the complaint for discrimination because of matrimony and/or civil partnership. I am therefore issuing the above certificate of correction.
- 3 The following reasons are reproduced from the Case Management Order.
- 4 Paragraph 30: "The claim form had the following boxes ticked: unfair dismissal; age discrimination; race discrimination; matrimonial and civil partnership discrimination; holiday pay and other payments. The discrimination claims were described as indirect and direct."

- 5 Paragraph 33: "After I explained the relevant legal concepts to her, the claimant accepted she is not claiming discrimination because of marriage or civil partnership (she is neither married nor in a civil partnership), "ordinary" unfair dismissal (she does not have two years' service), or indirect discrimination. The claimant accepted that she cannot claim negligence in the Employment Tribunal, although this was referred to in her witness statement. I have not dismissed that claim, I have simply not allowed it as an amendment to the claim form. The claimant also referred to constructive unfair dismissal in the witness statement. There can be no claim for constructive unfair dismissal because the respondent dismissed the claimant – she did not resign. The claimant did not dispute this.

- 6 Paragraph 35: "Despite much discussion, I found it very difficult to understand what the age discrimination complaint is. The claim form provided no details. The claimant says she was discriminated against as an older worker. The response states that the claimant was 44 at the material time and that the average age of its employees was 44.4 as at June 2023. When discussing the age discrimination claim, the claimant said she believed she was paid less than younger workers. I explained this was inherently improbable because younger workers are usually paid less, by reference to the national minimum wage. The respondent's representative shook her head emphatically at the proposition that the claimant was paid less than younger employees. I asked the claimant why there was no reference to the age complaint in the claim form or the witness statement."

- 7 Paragraph 36: "I then noticed that the claimant had made a brief reference to age discrimination in the witness statement. This stated she was denied opportunities for training, development, and promotion. It did not cite any comparators. In the witness statement, the claimant made reference to a trainer called Maris, from which it appears there was training. I asked the claimant what development and/or promotion opportunities she had been denied during the seven and a half weeks she was employed by the respondent. She did not provide any detail but said that when she was an agency worker she had applied for employment with the respondent but was not successful and that this could be because of her age. I explained to the claimant that the age discrimination complaint (however it is put) appears to be without merit, and that it adds nothing because there are other discrimination claims, so that if the claimant succeeds in establishing harassment or discrimination and/or victimisation, harassment, any injury to feelings will not increase because she also seeks to rely on the protected characteristic of age. That is because it is based on the injury to the individual and not the number of successful allegations. At that point she accused me of bias. I continued with the hearing, but eventually concluded that the merits of the age discrimination complaints should be determined at the preliminary hearing, along with any other applications which are made, rather than on the basis of written representations. For the avoidance of doubt, I have not given the claimant permission to amend to add an age discrimination complaint. I suggested she takes legal advice about that claim."

- 8 Because I was not persuaded there was a viable claim of age discrimination, I listed the case for a public preliminary hearing on 25 April 2024. There will be further case management following that hearing.

- 9 Paragraph 3: “The purpose of the preliminary hearing is to consider whether the claimant’s age discrimination complaint should be struck out as having no reasonable prospect of success or to order the claimant to pay a deposit as a condition of continuing with that claim on the ground that it has little reasonable prospect of success. If any further applications are made, they will also be determined at that hearing. There will then be further case management.”

Employment Judge Hughes
10 January 2024