



EMPLOYMENT TRIBUNALS

Claimant: Ms H Kim

Respondent: TLR London Limited

Heard at: London Central (via CVP)

On: 12 April 2024

Before: Employment Judge S Connolly

Representation

For the claimant: Mr Mahouzi (Trainee Solicitor)

For the respondent: Mr Sayed (Owner)

JUDGMENT

1. The Tribunal does not have jurisdiction to hear the claimant's claim of automatic unfair dismissal as it was not submitted within the prescribed time limits.
2. The claimant's claim for discrimination on the grounds of pregnancy is well founded and succeeds.
3. The respondent must pay the following sums to the claimant:
 - a. £8,810.79 for financial losses arising from the discrimination. The respondent may make deductions for tax and national insurance from this amount.
 - b. £6,544.44 for injury to feelings. No deductions for tax and national insurance should be made from this sum.

REMEDY REASONS

1. Oral reasons for the decisions in relation to the time limits and merits of the claims were given at the hearing so written reasons will not be

provided here.

2. The claimant provided a witness statement and a schedule of loss and Mr Sayed provided a statement on behalf of the respondent. The respondent's statement focuses mainly on the current financial status of the respondent. This is not relevant to the issues the Tribunal must consider in relation to remedy so the Tribunal has not attached significant weight to it.
3. The claimant's gross salary was £30,000 per annum and this amounts to £576.92 per week.
4. The calculation period between the date of discrimination (the dismissal date) on 24 February 2023 and the date of the judgment on 12 April 2024 is 414 days.
5. The Tribunal's award for discrimination claims covers two elements: financial loss and injury to feelings.

Financial Losses

6. The focus of the Tribunal is to put the claimant in a position she would have been in had the discrimination not taken place. The Tribunal finds that the claimant was carrying out freelance work up to early May 2023, before stopping in preparation for the birth of her baby. She carried out freelance work for another company on 3 May 2023 and refused an offer of further work from the respondent on 9 May 2023. Her baby was born on 12 June 2023.
7. On this basis, the Tribunal finds that had she not been dismissed by the respondent, the Claimant would have worked up to 9 May 2023 before going on maternity leave. This is a period of 15 weeks after her dismissal date. She would have received gross salary of £8,653.80 during this period (15 x £576.92)
8. Thereafter, the Tribunal finds that the claimant would have been entitled to receive statutory maternity pay for the full 39 week period. This would have amounted to a total of £9,005.21 calculated as follows:
 - a. 90% of her weekly salary for 6 weeks = £3,115.37;
 - b. the prescribed rate of £178.48 x 33 = £5,889.84
9. Statutory maternity pay added to the salary would have amounted to a total loss of £17,659.01. The Tribunal finds that the claimant would have been in a position to return to work following maternity leave so makes no further award for financial losses after the maternity pay period.
10. The claimant mitigated her loss by carrying out freelance work (she received £2,121.50 for this) and she was in receipt of maternity allowance. This amounts to a total of £6,726.72 for the full period of eligibility. This results in a total amount received in mitigation of £8,848.22
11. The claimant seeks an 25% uplift on the financial losses pursuant to

section 207A(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 due an unreasonable failure to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures. The Tribunal has considered this and considered the principles in the case of *Holmes v Qinetiq Ltd* UKEAT/0206/15. Given that it was the claimant’s own evidence that the purported reasons given by the respondent were related to redundancy i.e. that there were no further projects for the claimant and that the respondent needed an employee to cover longer hours, the Tribunal finds that the ACAS Code does not apply to the dismissal. Whilst there was some discussion about the claimant’s performance in the lead up to dismissal, the Tribunal’s finding was that this was not part of the reasons given for the dismissal.

12. The total sum for financial loss is as follows: £17,659.01 less £8,848.22 = **£ 8,810.79**

Injury to Feelings

13. The claimant gave evidence of the impact that her dismissal had on her. The Tribunal accepts that it was a particularly difficult time for her to be out of work. She had a high risk pregnancy and was in a vulnerable position in terms of seeking additional, secure employment while she was pregnant and in the period after childbirth. There was no detailed evidence of the impact of the discrimination beyond these elements.

14. The respondent did not wish to cross-examine the claimant and did not otherwise challenge the amounts claimed in the schedule of loss. The Tribunal considers that the award should be in the lower band (based on the bands set out in the case of *Vento v Chief Constable of West Yorkshire Police (No2)* [2003] IRLR 102. The lower band for this claim is between £1,100 and £11,200. An award of £6,000 would be appropriate.

In terms of interest on this award, this can be awarded at 8%. There are 414 days between 24 February 2023 and the date of the judgment. $414 \text{ days} \times 0.08 \% / 365 \times 6,000 = £544.44$. The total injury to feelings sum is **£ 6,544.44**

Employment Judge S Connolly

Date 15 April 2024

JUDGMENT & REASONS SENT TO THE PARTIES ON

24 April 2024

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FOR THE TRIBUNAL OFFICE