



EMPLOYMENT TRIBUNALS

Claimant: Miss. V Mbida

Respondent: Bella & Frank Ltd

Heard at: London South, by video

On: 24 April 2024

Before: Employment Judge G Cawthray

Representation

Claimant: In person, not legally qualified

Respondent: Mr. Egan, Counsel

JUDGMENT having been sent to the parties on 8 May 2024 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:

REASONS

Introduction

1. The hearing that took place on 24 April 2024 was listed to consider remedy. This hearing followed a previous hearing conducted by me on 22 November 2023. At that hearing, the respondents were not permitted to participate following a failure to provide a response on time. The hearing took place in accordance with Rule 21 of the Employment Tribunal (Constitution & Rules of Procedure) Regulations 2013.
2. In a reserved judgment, with reasons provided, I determined that:

“1. The complaint of unfair dismissal is well-founded. The Claimant was unfairly dismissed.

2. The complaint of direct race discrimination is not well founded and is dismissed.

3. *The complaint of harassment* related to race is not well founded and is dismissed.”

3. A remedy hearing was listed to determine the appropriate remedy, and the respondents, were permitted to participate in the remedy hearing. Directions were made to ensure the parties prepared for the remedy hearing.

Issues

4. As the Claimant was successful in her unfair dismissal complaint only, and was not successful in her discrimination and harassment complaint, the issue for determination was any compensation due to the Claimant in relation to her unfair dismissal.
5. The Notice of Hearing set out the issues for consideration as below.

Does the claimant wish to be reinstated to their previous employment?

Does the claimant wish to be re-engaged to comparable employment or other suitable employment?

Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.

Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.

What should the terms of the re-engagement order be?

If there is a compensatory award, how much should it be? The Tribunal will decide: - What financial losses has the dismissal caused the claimant? Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job? –

- If not, for what period of loss should the claimant be compensated?
- Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
- If so, should the claimant's compensation be reduced? By how much?
- Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
- Did the respondent or the claimant unreasonably fail to comply with it?
- If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?
- If the claimant was unfairly dismissed, did they cause or contribute to dismissal by blameworthy conduct?
- If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?
- Does the statutory cap of fifty-two weeks' pay apply?

What basic award is payable to the claimant, if any?

Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?

Facts

6. The Claimant was employed from 27 August 2019 to 24 June 2022. Her employer at the date of termination was Bella & Frank Ltd - company number 09274848.
7. Bella & Frank Ltd, and its predecessors, had little sales generated income following the start of the pandemic. The extracts of the accounts in the Bundle show significant debt owed to creditors.
8. In a judgment dated 31 December 2023 I set out that the reason for the Claimant's dismissal was redundancy, but that no fair process was followed.
9. The conclusions are set out at paragraphs 116 to 129 of the Liability Judgment.
10. In short, there was no consultation and no discussion about alternative employment, internally or in any family linked company. Other than Ms. Peachey-Thacker, there were no other employees in Bella & Frank Ltd following the dismissal of the Claimant.
11. Ms. Peachey-Thacker's family own a number of businesses. Other than Peacheyboo Limited, which was renamed Bella & Frank Ltd, there is no link with Bella & Frank Ltd.
12. Ms. Peachey-Thacker's family invested and put money into Bella & Frank primarily via her late father's former business and her parents personal bank account.
13. There were no vacancies within the family linked companies. It does not appear that this was considered at the time due to fact the various companies, Neptune Payment Solutions, One Stop Money Manager and Corvus Antiques, were directed primarily by Ms Peachey-Thacker's family members, but I accept the evidence given today that there was no appropriate vacancies within such family linked companies. The Claimant made reference to, Woodmans, but this was new business set up 6 months after Claimant's dismissal and has no link the Bella & Frank Ltd.
14. At the date of dismissal the Claimant was paid £39,288.00 per annum. This is the gross sum. This breaks down as below:

Gross monthly pay - £3,269.00

Net monthly pay £2,500.91

Gross weekly pay - £39,288.00 / 52 = £755.54

Net weekly pay - £2,500.91 x 12 = £30,010.92, £30,010.92 / 52 = £577.13

15. In June 2022 the Claimant was paid £5,257.50. This was the last payment made to the Claimant and comprised a redundancy payment of £1,142.00 and a payment for holiday pay of £3,168.27 in addition to her pay.
16. The Claimant is a director of a business called Aquarius Omens Limited. She has not paid herself or taken any money out of this business. This business has no link with Bella & Frank Ltd.
17. The Claimant did not secure new employment until approximately 10 and a half months after her dismissal. She applied for a very large number of jobs.

Law and Conclusion

18. I reached my conclusions by applying the law to the facts, and considered both parties submissions.
19. The Claimant did not seek reinstatement or re-engagement.
20. In *Polkey v AE Dayton Services Ltd 1988 ICR 142*, their lordships decided that a failure to follow correct procedures was likely to make the ensuing dismissal unfair unless the employer could reasonably have concluded that doing so would be futile. This meant that the employer would not normally act reasonably unless he warns and consults any employees affected, adopts a fair basis on which to select for redundancy and takes such steps as may be reasonable to avoid or minimise redundancy by redeployment. Further, on the issue of quantum, the decision holds that whether procedural irregularities actually made any difference to the decision can be taken into account when calculating compensation.
21. Subsequent case law has endorsed this approach and set out guidance.
22. The Respondent argued that the Claimant would have been dismissed in any event even if a fair procedure been followed. I agree with this. The Respondent was in financial difficulties due to limited sales from March 2020, the start of the pandemic. The accounts show significant debt owed to creditors. In close proximity to the Claimant's dismissal the company wages were being funded by family money as there was no other income. As considered at the liability stage above, it is not for the Tribunal to attempt to second guess the employer's business decisions unless there was something manifestly absurd about them which mean they lacked credibility.
23. Having, considering the legal principles I conclude that the Claimant would have been dismissed in any event. The Claimant was not given an opportunity to put forward suggestions on how her redundancy may have been avoided until these proceedings, but the Claimant references other family businesses and that a Brand Manager would have been required. There was no evidence that any of the companies had any vacancies at all, or indeed a need for a brand manager. There was no evidence that any family company directed by Ms. Peachey-Thacker, her mother or

sister was associated with Bella & Frank Ltd and were not obliged to look for roles within those companies. Accordingly, I do not consider that proper consultation would have resulted in a solution to avoid the Claimant's redundancy dismissal from Bella & Frank Ltd. The fact that family members set up new business six months after the Claimant was dismissed has no bearing on the facts of this case.

24. The Claimant cannot recover both a Basic Award and a redundancy payment, and she was paid a redundancy payment by the Respondent. As such, no Basic Award will be made.
25. The calculation of the Compensatory Award for unfair dismissal will be limited to pay and benefits for the period of time which I consider would have been reasonable to go through a proper redundancy consultation with the Claimant, and I determine that a reasonable process would have taken no longer than four weeks. In short, a reasonable consultation process involves the following: initial meetings to warn employees (at which selection criteria is explained), a scoring exercise, a consultation meeting (at which scoring is explained), consideration of any comments/proposals made by the employee, consideration of alternative employment (internally and externally), a meeting to confirm the outcome and written confirmation of redundancy dismissal and as best practice the right to appeal. I consider that following such a process would take between 3 to 4 weeks, and therefore conclude that a payment equivalent to 4 weeks net pay is appropriate in the circumstances. This amounts to $£577.13 \times 4 = £2,308.52$.
26. The Respondent liable for payment Bella & Frank Ltd as employer.
27. I have also considered it appropriate for the Claimant to be paid a sum of £500 in relation to loss of statutory rights.

Employment Judge Cawthray

Date 5 June 2024