



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
MRS L YARD

Respondent
AND HINTON ROAD INVESTMENT LTD (R1)

MR ANDREW MELLOR (R2)

MR RICHARD DAVIES (R3)

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: BRISTOL ON: 22ND APRIL 2024

EMPLOYMENT JUDGE MR P CADNEY
(SITTING ALONE)

MEMBERS:

APPEARANCES:-

FOR THE CLAIMANT:- IN PERSON

FOR THE RESPONDENT:- MR E HURLEY (COUNSEL)

JUDGMENT

The judgment of the tribunal is that the claimants claims of:-

1. Unfair Dismissal;
2. Unpaid Notice Pay;
3. Direct Disability Discrimination (s13 Equality Act 2010);

4. Harassment related to disability (s26 Equality Act 2010);
5. The failure to make reasonable adjustments (s20 Equality Act 2010)
Are well founded and are upheld.

The claimant's claim of:

6. The failure to provide written particulars of employment is not well founded and is dismissed.

Remedy

The claimant is awarded against the First Respondent :

7. Unfair dismissal - Basic award £6748.00
 8. Unfair Dismissal – Compensatory award – Loss of earnings £1277.44
 9. Unfair Dismissal – Compensatory award – Loss of statutory rights - £500
 - 10.ACAS uplift on compensatory award - £355.48
 - 11.Notice Pay - £4380.00
- Total award against R1 only- £13,260.92

The claimant is awarded against the First, Second and Third Respondents jointly and severally:

- 12.Injury to feelings – £18,000 (including ACAS uplift)
- 13.Interest - £1149.13

Total = £19, 149.13

Reasons

1. By a claim form submitted on 26th October 2023 the claim brought the claims set out below. No response was entered to them and the case was listed for a remedy hearing today, although in fact no rule 21 liability judgment has been entered. The respondents recently instructed solicitors, who instructed Mr Hurley for today's hearing. There was no application to permit the respondents to enter responses out

of time to all or any of the claims by all or any of the respondents, and Mr Hurley indicated that they were content to proceed with the remedy hearing. I permitted Mr Hurley to cross-examine the claimant and make submissions. No evidence was called on behalf of the respondents.

2. Background – The claimant was employed by the respondent or its predecessors from August 2009 until her dismissal on 31st August 2023 as a Members Accounts Manager.
3. She was signed off work sick from 22nd May 2023, and on 13th June 2023 received an allegation that she had breached the terms of her contract by doing self-employed work whilst off sick, and as a result was no longer eligible for sick pay. The claimant lodged a grievance and attended what she understood to be a grievance meeting on 5th July 2023. In that meeting she was accused of fraud in working whilst off sick. The claimant has a small business with her sister making dog collars and bandanas, which she states makes no profit and is in reality a hobby, and she was alleged to have worked on this whilst off sick.
4. On 19th July 2023 Mr Mellor stated that he had concluded his investigation and the case would proceed to a disciplinary hearing. Following an exchange of information including the factual basis of the allegations and the claimant's response, in which she denied the allegations, she was informed by email on 31st August 2023 that she was dismissed for gross misconduct. She sought to appeal but was not permitted one.
5. Arising from that are the claims in this case.
6. Respondents – As is set out below two of the claims (unfair and wrongful dismissal/notice pay) lie only against R1 as the claimants employer.
7. All three respondents are potentially liable for the alleged acts of discrimination. No response has been entered from any respondent, and there are no submissions made that they should be treated differently. In the circumstances I have upheld the claims against each of them, and they will be jointly and severally liable for the compensation awarded.

Claims

8. Unfair Dismissal - The claimant alleges that she was unfairly dismissed, both substantively and procedurally. No response has been entered, and here has been no application for permission to submit a response out of time. This claim necessarily only lies against R1 as her employer. As the burden lies on the respondent to prove a potentially fair reason for dismissal, and in the absence of any response this claim is bound to succeed.

9. Wrongful Dismissal / Notice Pay – The claimant is entitled to notice pay unless the tribunal makes factual findings that she committed misconduct of sufficient seriousness that the respondent was entitled to dismiss without notice. No response has been entered and no evidence called from which any such finding could be made and this claim is upheld.
10. Direct Disability Discrimination (s13 Equality Act 2010) – The claimant contends that the true reason for her dismissal was her disability, (severe depression and anxiety) from which she has suffered for ten years and which is controlled by medication. No response has been submitted and in my judgment the fact of her lengthy absence and the, on the face of it, extremely minor allegations of misconduct, are sufficient to satisfy stage 1 of the Igen v Wong test and transfer the burden of proof. It follows that in the absence of any evidence from the respondent this claim is well founded.
11. Harassment related to disability (s26 Equality Act 2010) – The allegation of unwanted conduct related to disability arises from the allegation that her medical information was shared by her work team with third parties. Again no response has been entered disputing the factual allegations, and again in my view those facts are sufficient to satisfy stage 1 of the Igen v Wong test. It follows that in the absence of any evidence from the respondent this claim is well founded.
12. Failure to Make Reasonable Adjustments (s20 Equality Act 2010) - The claimant contends the respondent had a PCP of a requirement to attend meetings in person, which placed her at a substantial disadvantage; and for which the reasonable adjustment was holding meetings remotely or via email. The specific meeting she was required to attend was 5th July 2023. Again no response has been entered disputing the factual allegations, and again in my view those facts are sufficient to satisfy stage 1 of the Igen v Wong test. It follows that in the absence of any evidence from the respondent this claim is well founded.
13. The Failure to Provide Written Particulars of Employment - The respondent has supplied a copy of the claimants contract of employment and this claim has been withdrawn .

Remedy

First Respondent

14. Notice Pay – There is no dispute as to the calculation of this claim in the sum of £4,380 (12 x £365), which is and can only be brought against R1 as her employer. .
15. Unfair Dismissal -

16. Basic Award – There is no dispute that the claimant is entitled to a basic award of £6748.00
17. Compensatory Award – Loss of Earnings – The claimant has claimed twenty weeks loss of earnings. The respondent points out, correctly in my view, that if she is awarded her notice pay she will have been paid for twelve weeks of this period leaving a claim for $8 \times £153.43 = £1277.44$.
18. Compensatory Award – Loss of Statutory Rights – The claimant claims £500, the respondent suggests £350. As the award encompasses two rights and the claimant is a long serving employee I accept the claimant's proposed figure of £500 .
19. ACAS uplift – This a misconduct dismissal and so the ACAS Code applies. There was, in my judgment a significantly procedurally flawed dismissal, in particular in the failure to hold a disciplinary meeting and provide an appeal, and in my view a 20% uplift is appropriate. - $(£1277.44 + £500 \times 20\%) = £355.48$

Discrimination claims

20. Injury to Feelings - In my judgement it is sensible to make one award for injury to feelings to encompass all three of the claims set out above rather than attempt to separate out the consequences of each individual act of discrimination, which necessarily creates the risk of double recovery.
21. The claimant suggests a figure in the middle Vento band of £15,000. The respondent points to the fact that the claimant was already off sick with severe depression, and there is no evidence of any increase of severity of any symptoms, and that in the circumstances an award in the lower band of £5,000 would be appropriate.
22. I bear in mind that there are three separate acts of discrimination one of which was a discriminatory dismissal, which in and of itself would merit, in my judgement, an award at or about the cusp of the lower and middle bracket. To take into account the effect of the other two acts of discrimination, and looked at overall, an award towards the lower end of the middle bracket is appropriate in my view, and I award £15,000.
23. ACAS uplift – The ACAS uplift will also apply to this award which makes the overall award £18,000.
24. Interest – I have adopted the date of the meeting of 5th July 2023 as the start date of the discrimination which gives 41.5 weeks and an overall calculation of - $£18,000 \times 8\% \text{ (annual rate)} / 52 \times 41.5 = £1149.13$

Employment Judge Cadney
Dated: 23rd May 2024

Judgment sent to the parties on 21 June 2024

For the Tribunal Office