



EMPLOYMENT TRIBUNALS

Claimant: Mrs M. Varghese

Respondent: Sunquest Home Ltd

Heard at: Watford ET, via CVP **On:** 3 July 2024

Before: Employment Judge G. King

Representation

Claimant: In person

Respondent: Mr I. Pettifer - solicitor

JUDGMENT

1. The Claimant's claims are dismissed due to lack of jurisdiction.

REASONS

1. The Claimant was employed by the Respondent from 9 August 2023. She became pregnant in October 2022. She commenced maternity leave on 10 April 2023 and her baby was born on 31 June 2023.
2. She presented her ET1 on 8 December 2023. In her ET1, she brought claims of unfair dismissal; discrimination on the grounds of pregnancy or maternity; arrears of pay; and other payments. At box 8.2, she set out that she was owed maternity pay, and set out her calculations.
3. The Claimant states "*The company did not pay me for May. Then they Paid £995 in June. £228 in July and £182 in August, September 840.02, October 62.40, November 189.92*".
4. The hearing was listed as a case management hearing. The Tribunal had the benefit of a bundle of 76 pages. Where page numbers of that bundle are referred to in this judgement they are done so in [square brackets].

5. At the beginning of the hearing, the judge asked the Claimant to clarify her maternity / pregnancy discrimination claims. She explained that, when she told the Respondent that she was pregnant, her hours were cut from her contracted rate of 39 hours to 20 hours. She also explained that she had been living in accommodation provided by the Respondent and paying rent on a cash-in-hand basis. She said that when she told the Respondent that she was pregnant, she was told to move out of the house. She says this caused her hardship as she was not able to find a property to rent, due to the fact that she had been paying rent on a cash-in-hand basis and this meant she had no credit history.
6. The Respondent said that neither of these allegations had been brought in the Claimant's ET1. There had been no application to amend the claim, and as these were entirely new claims these would not fall within a "re-labelling" exercise (*Selkent Bus Co Ltd v Moore [1996] I.C.R. 836 [02 May 1996]*).
7. The Respondent's case is that UK Visas and Immigration (UKVI) imposes a duty on the Respondent, as a sponsor, to maintain a history of the personal contact details of sponsored individuals. This includes Tier 2, Skilled Worker Visa holders such as the Claimant.
8. The Respondent also says that it loaned the Claimant (and her husband) £15,000 by way of a loan agreement [43] and this was to be paid back at a rate of £1000 per month (£500 each).
9. The Respondent says that the Claimant moved from the address provided by the Respondent (82 Tudor Way in Rickmansworth), but in view of the forthcoming birth of their new baby, they chose to move out of that accommodation. The Respondent says the Claimant provided verbal assurances she would provide the Respondent with her new address.
10. Respondent says Claimant did not provide her new address. The Respondent tried to contact her by text and email but received no reply. As a result, the Respondent was in breach of its obligations to UKVI and ran the risk of having its status as a sponsor withdrawn.
11. The Respondent sent the Claimant a letter, dated 13 July 2023, by email, telling the Claimant that unless she provided her new address by 17:00 on 14 July 2023, as sponsorship would be cancelled, and she would be dismissed [49]. The Claimant accepts that she received this letter, and she replied by email on the same day [50]. She told the Respondent that she was planning to go to India if she got her child's passport and would come back in November, at which point she wanted to continue working for the Respondent. She said she was staying at a cousin's house. She did not provide the address.
12. The Respondent sent a letter by email to the Claimant on 30 August 2023 [51], stating that the Claimant still had not provided an address, and that she was in breach of both her contract of employment and her terms of sponsorship. This letter stated that her sponsorship had been withdrawn and this had been reported to UKVI.

13. The Claimant also accepted that she did receive this letter. She replied by email on the same day [52], querying why her sponsorship had been withdrawn.
14. The Respondent's case is therefore that the Claimant was dismissed on either 14 July 2023 or 30 August 2023. There is a question over which date is the actual Effective Date of Termination
15. The Claimant was asked when she thought her employment came to an end. She said she did not know. She initially said she thought it was in November 2023, as this was the date that she had hoped to return to work (but could not). She also said it could be either 14 July 2023 or 30 August 2023.
16. The Claimant was asked why she thought she had been dismissed. She said it's because he did not provide her address to the Respondent. The Claimant said she and her husband had been staying with a friend of her husband in York. She accepted that she did not provide the Respondent with this address. She therefore agreed with the Respondent's reasons for dismissal.
17. On that basis, the Claimant's dismissal could not be an act of discrimination on the grounds of maternity / pregnancy. There were therefore no pleaded claims of discrimination on the grounds of maternity / pregnancy within the Claimant's ET1.
18. The Claimant's claim would therefore proceed only on the basis that she had not been paid her correct Statutory Maternity Pay.
19. Once the Claimant had been dismissed from her employment, there was no longer a liability for the Respondent to pay her Statutory Maternity Pay, as she was not an employee of the Respondent after that date. In any event, the Claimant had made an application to HMRC to resolve a dispute about Statutory Maternity Pay entitlement. As this aspect of the claim was being considered by HMRC, the Tribunal had no jurisdiction to hear this aspect of the claim, certainly from the EDT, and arguably in its entirety.
20. The Tribunal did, nonetheless, look at the Claimant's payslips for the payments made to the Claimant on 29 June 2023 [68], 28 July 2023 [67], 28 August 2023 [66] and 28 September 2023 [65] (the Claimant being paid one month in arrears).
21. There was no payslip concerning payments made in May 2023. The last payment recorded on a payslip prior to 29 June 2023 was on the 27 April 2023 [69]. It was clear, however, that the payment made on 29 of June 2023 spanned two months. This was evident in the amounts paid and also the fact that the Claimant was repaying a loan at a rate of £500 per month, and the 29 June 2023 payment contained two £500 deductions.
22. The calculations for Statutory Maternity Pay in the payslips of 28 July, 28 August and 28 September agreed with the figure the Claimant had put in her ET1 as the correct weekly amount of Statutory Maternity Pay. The payslip for September [65] showed eight weeks pay, for some reason, but

the Tribunal was satisfied that the payment for Statutory Maternity Pay was at least equal to what the Claimant should have received, if not greater.

23. The Claimant was asked if she agreed that she had in fact been paid the correct amount of Statutory Maternity Pay. She said she did not agree, as she had only been paid £226.92 in July and £189.92 in August.
24. The payslips for July [67] and August [66] showed that the reason that the pay was lower than the amount of Statutory Maternity Pay was due to the £500 deduction for the loan that had been advanced to the Claimant.
25. It therefore seemed that the Claimant's claim in fact related to the deductions made in relation to the loan advanced by the Respondent. At this point the Claimant said she had never received a loan from the Respondent and disputed the authenticity of the document at page [43]. The Tribunal noted, however, that in the Claimant's ET1 she referred to a £10,000 loan to pay for her Visa. It appears that the Claimant was therefore aware that there was a loan from the Respondent to her, even though she referred to it as £10,000 and not £15,000.
26. In any event, the Claimant had not brought her claim on the basis of an unlawful deduction of wages in respect of the loan repayments. The Claimant's claim was based on failure to pay Statutory Maternity Pay. The payslip showed that this was being correctly paid. There was, therefore, no deduction or failure to pay in relation to Statutory Maternity Pay. Put simply, there was no claim that the Tribunal could hear.
27. The Claimant's claim therefore failed due to lack of jurisdiction.

Employment Judge G. King

Date: 3 July 2024

JUDGMENT & REASONS SENT TO THE PARTIES ON

15/08/2024

FOR THE TRIBUNAL OFFICE

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