



EMPLOYMENT TRIBUNALS

Claimant

Ms R Metling

Respondent

Knight IT Group Ltd (in liquidation)

Heard at: Watford (CVP)

On: 17-18 February 2025

Before: Employment Judge S Moore
Ms J Buck
Ms S Williams

Appearances

For the Claimant: In person

For the Respondent: No appearance or attendance

JUDGMENT

- (1) The claim for automatic unfair dismissal is dismissed.**
- (2) The claim for wrongful dismissal/notice pay is dismissed.**
- (3) The claim for direct race discrimination is dismissed.**
- (4) The claim for victimization is dismissed.**
- (5) The claim for pregnancy and maternity discrimination is dismissed.**
- (6) The claim for harassment related to sex succeeds.**
- (7) The claim for direct discrimination on grounds of sex succeeds.**
- (8) The Claimant is entitled to £5,000 compensation for injury to feelings.**

REASONS

Introduction

1. The Respondent is a company that provides IT hardware. The Claimant was employed by the Respondent as a Financial Administrator between 23

November 2022 and 8 March 2023, when she was dismissed. Although she speaks very good English, Portuguese is her mother tongue.

2. ACAS Conciliation took place between 8-17 March 2023.
3. On 6 June 2023 the Claimant brought a claim for automatically unfair and discriminatory dismissal, wrongful dismissal/ breach of contract, harassment on the grounds of sex, direct sex, race and pregnancy discrimination and victimization. She also brought a claim for whistle-blowing detriment but that was subsequently withdrawn. The Respondent brought a counterclaim but that was struck out on the basis that it was a claim for negligence, rather than for breach of contract.
4. The issues referred to below are the issues that were identified and agreed at a Preliminary Hearing on 4 March 2024.

Evidence

5. The Respondent did not attend the hearing and had not submitted witness statements. On checking Companies House, it was found the company had been placed into a Creditor's Voluntary Liquidation and a liquidator had been appointed on 8 June 2024. The Claimant was informed of the position but stated that she wanted to proceed with the hearing. She had submitted a witness statement, and answered questions from the Tribunal, and a bundle of documents was made available to the Tribunal.
6. As stated above, she was employed as a finance administrator from 23 November 2022. Her employment contract provided:

Probation Period

- a) The first 3 months of your employment is a probation period, during or at the end of this time, the period of notice required by either party to terminate employment is one week. Notice must be given in writing.
 - b) The Company reserves the right to extend your probation period and one-week notice entitlement in circumstances where it is dissatisfied with your performance.
7. The Respondent is/was a very small company. The only employees apart from herself were Stuart Kenny (SK), the Managing Director, and Jason Bridges (JB) the Sales Director. Somebody called Hermione also worked for the Respondent for a few days in February 2023 to assist with sales. SK's wife and JB's daughter also worked from the same office on occasions, although they were not employed by the Respondent.
 8. The Claimant says that during the months of November and December 2022 her performance was praised by both SK and JB and she was told she doing a better job than her predecessor (GN).
 9. During December 2022 the Claimant says she witnessed SK repeatedly referring to GN as "stupid", a "cunt" and a "bitch" when he came across mistakes that GN had made. The Claimant said that she sat at the same long table as SK and that he often shouted out these terms of abuse (in relation to GN).

10. The Claimant was away on holiday between 23 December 2022 and 4 January 2023.
11. In January 2023 SK seemed impatient and irritated when the Claimant asked how to perform certain tasks.
12. Between 12 January 2023 to 4 February 2023 the Claimant was on holiday.
13. On 6 February 2023 the Claimant says she witnessed JB make a comment about Hermione's decorated nails and asked her how she cleaned herself after using the bathroom. She says that Hermione stopped working for the Respondent after only a few days.
14. On 7 February 2023 the Claimant asked SK a question, but instead of giving her an answer he asked if "Botox had affected her brain".
15. On 8 February 2023 SK threatened to reduce the Claimant's wages after she supposedly asked a "stupid" question about the operating system.
16. On 9 February 2023 SK commented on Hermione's appearance, saying she looked like somebody "who had had a hard life", meaning he didn't think she was pretty.
17. In the last week of February 2023, the Claimant overheard SK refer to a woman from a client company as a "bird" before a meeting and she said to him this was not appropriate, but SK dismissed her concerns.
18. On 20 February 2023 the Claimant told SK she was pregnant and would need to have a scan the next day due to bleeding.
19. At the end of February or early March 2023 SK told the Claimant he would hold her review meeting on 6 March to give her a "fair amount of time" to familiarize herself with the Respondent's systems and working methods since her holiday. The meeting was subsequently rescheduled to 7 March 2023.
20. On 7 March 2023 SK told the Claimant that he was extending her probationary period due to her performance and the Claimant reluctantly agreed to this.
21. However, the following morning, the Claimant sent SK the following message.

"Morning Stuart
I won't go to KIG today, I feel sick.
Regarding our meeting yesterday, I have no intention of extending my probationary period, the other option you gave me was to be fired. Could you please let me know what notice I will have."

22. SK replied:

"Hi Renata, I hope you feel better. The other option wasn't for me to fire you. When I advised I was going to extend your probation you were clearly not

happy with that decision. I advised that if you did not want to work here you could resign. Your notice period is one week during your probation. I'm happy to waive the notice period and you will be paid up until yesterday. Would you like me to accept this as your resignation?"

23. She replied:

"Your meeting was about how much I did not meet your expectations and you were frustrated, due to this you want to extend my probationary period, when I said that I saw no advantage in this you then told me that: "I can just fire you now without the extension of the probationary period". My frustration is exclusively related to the way you treat me. I'm not resigning, I don't accept the extension of my probationary period, leaving the company was never my idea."

24. SK replied:

"That is not what was said. I said I was happy to spend the next month trying to work with you, to bring your work up to the standard that is expected by the business. If you refuse to come back to work I will have no choice but to dismiss you. Are you refusing to come back to work? I will follow up with an email."

25. The Claimant replied:

"I'm not refusing to go back to work, I'm off sick due to stress and nausea."

26. In the meantime SK sent the Claimant an email (at 10.31) saying:

"During your probation review yesterday I expressed that I was not satisfied with the quality of the work you were producing and you made it clear you were not happy with the training you received. I advised the following:

- I would be extending the probation period by one month
- I would provide additional training
- You were to write up a process document for each of your duties
- We would review the process document and I would sign them off when they were correct."

27. The email then set out the gist of the WhatsApp messages that had been exchanged and finished:

"I am unsure what your expectation is here. You have been offered the chance to work through and resolve any issues over the next month. Whether the probation period is extended or not is my decision and you cannot refuse to accept it being extended."

28. At 10.57 SK sent the Claimant a further email stating:

"I have just had advice from our solicitors and your refusal to accept the extension of your probation means that we will interpret that as you failing your probationary period."

29. The email then continued by dismissing the Claimant with immediate effect and paying her one-week's pay in lieu of notice.

Conclusions

Victimisation

30. It is convenient to deal first with the claim for victimization:
31. On the evidence before us, we are satisfied that the Claimant did the acts at paragraph 8.1. of the List of Issues. The act at paragraph 8.1.1 is referred to above. The act at paragraph 8.1.2 was in fact the Claimant complaining to SK in the meeting of 7 March 2023 about the two instances in February when he asked her if Botox had affected her brain and threatened to reduce her wages because she had asked a "stupid" question. We are also satisfied that these were protected acts within the meaning of s.27(2)(d) Equality Act 2010.
32. However, we are not satisfied that SK did the matters alleged at paragraph 8.2. of the List of Issues because the Claimant had done those acts. We deal with the reason for the Claimant's dismissal below, but as regards the reason why SK questioned her performance and told her he was extending her probationary period, the evidence before us suggests that this happened because SK considered the Claimant was making mistakes and because her probation period had effectively been considerably shorter than three months because of the amount of holiday she had taken during that period.
33. SK's notes of the meeting of 7 March 2023 commence with a reference to him explaining to the Claimant that there "were lots of mistakes happening that are causing issues with the clients", and the Claimant explaining that she feels like she needs more training. The notes state that SK was extending the Claimant's probation by one month because the Claimant had spent more than a third of the probation period on holiday and extending the probation would provide an opportunity for continuous attendance and a more accurate and fair review of her work.
34. Although the Claimant didn't accept that SK's notes of the meeting of 7 March 2023 were accurate, even her own summary of the meeting (set out in an email of 21 March 2023) says that the meeting began by SK asking the Claimant how she thought the work was developing and the Claimant responding "that she understands the mistakes she has been making and would like help to better understand the details..." that "... she had been improving her performance in relation to the use of the Dynamics system and is more confident but still needs guidance".
35. Furthermore, if SK was minded to subject the Claimant to a detriment because of her complaints about his behaviour, there is no logical reason why he would have extended her probation rather than saying she had failed her probation and dismissing her.

36. Accordingly for all these reasons the claim for victimization is dismissed.

Automatic Unfair Dismissal

37. Turning next to the claim for automatic unfair dismissal, on the evidence before us we are satisfied the Claimant was dismissed by email on 8 March 2023. However, we are not satisfied that the reason or principal reason for her dismissal was because she was pregnant or did a protected act (for the purposes of paragraph 2.2.2 of the List of Issues).

38. The evidence before us, in particular the exchange of WhatsApp messages and emails between the Claimant and SK on 8 March 2023 suggest that the reason or principal reason for her dismissal was because she told SK that she had “no intention of extending [her] probationary period” and then later that she “didn’t accept” the extension of her probationary period and SK decided that in these circumstances he was simply going to dismiss her.

39. In this respect we note the Claimant thought it was not open to SK to extend her probation because it had already finished, since she had been employed by the Respondent for more than three months prior to the meeting on 7 March 2023. However, regardless of whether the Claimant’s position was correct as a matter of contract law, the evidence shows that SK plainly believed he was entitled to extend the Claimant’s probation and that her messages on 8 March 2023 refusing that extension were the reason why he dismissed her. In this respect it appears plain from the evidence that at the meeting on 7 March 2023 SK considered the Claimant was making too many mistakes to pass her probation so the options, as far as he was concerned, were to extend her probation or dismiss her. Accordingly, when the Claimant said she didn’t accept her probation being extended he treated her as having failed her probation and dismissed her.

40. It follows that the claim for automatic unfair dismissal is dismissed.

Pregnancy and Maternity Discrimination

41. In the light of our findings in respect of the reasons for the extension of the Claimant’s probation period and her dismissal set out above in the context of the claims for victimization and automatic unfair dismissal, namely that this treatment was not because of the Claimant’s pregnancy or an illness suffered as a result of her pregnancy, it follows the claim for pregnancy and maternity discrimination is dismissed.

Harassment and Direct Sex Discrimination

42. The unwanted conduct relied upon is set out paragraph 4.1 of the List of Issues.

43. The Claimant gave evidence in relation to the alleged conduct in her witness statement and in answer to questions from the Tribunal. She had also set out details of the same conduct in an email to SK of 13 March 2023, within a week

of her dismissal and well before these proceedings were brought. We note that the Respondent denied that there were any conversations in the office that could be construed as discriminatory, but that was the limit of the Respondent's evidence on the matter.

44. On the basis of the evidence before us we are satisfied that the conduct happened as alleged and that it was unwanted.
45. We are also satisfied that the conduct was related to sex and had the effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. We note that only two of the allegations of unwanted conduct were directed at the Claimant and that she didn't complain about most of them at the time. However, given the short amount of time for which the Claimant was employed and in attendance in the office it appears that instances of what was effectively misogynistic behaviour were relatively frequent. We further note that while SK's use of the term of abuse of "cunt" and "bitch" was in relation to GN, the Claimant was sitting alongside him while he apparently shouted out these words, that the Claimant did challenge SK about referring to a woman as a "bird" and that he simply dismissed her concerns. We therefore find that the unwanted conduct was sufficiently serious and persistent to meet the test set out in s.26(1)(b) EqA 2010.
46. We are also satisfied, on the evidence before us, that the instances of harassment alleged at issues 4.1.3 and 4.1.4 of the List of Issues amounted to direct sex discrimination and that SK would not have spoken to the Claimant in the same way if she were male. In this respect we note there is no evidence of SK and JB making derogatory comments, even in jest, to each other.
47. There is however an issue of time limits in relation to these complaints in that five of the six pleaded acts of harassment, and both acts of direct discrimination, occurred before 27 February 2023.
48. However, as regards the harassment, there was conduct extending over a period which at the very earliest ended on 27 February 2023 (that being the last pleaded act of harassment) and given, that we have found the conduct created an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant, which is an ongoing state of affairs, probably did not end until her dismissal.
49. Accordingly, the claim for harassment has been brought in time.
50. As regards the claim for direct discrimination, even if there is no evidence of conduct of that kind extending beyond 8 February 2023, we consider it just and equitable to extend time. The claim for direct discrimination overlaps entirely with the harassment claim (which we have found to be in time), so the Tribunal must consider the relevant evidence in any event. Moreover, the Claimant plainly believed she was discriminated against up to and including the point of her dismissal and that therefore her dismissal was the key date as regards the application of time limits. Furthermore, she acted swiftly after her dismissal in

bringing her claim, given that her limited means meant she had to work out how to bring her claim herself and that English is not her first language.

51. It follows that complaints of harassment and direct sex discrimination succeed.

Race Discrimination

52. The complaint of race discrimination is that at the meeting on 7 March 2023 SK asked the Claimant to write up all her notes for each duty within the role in English, rather than Portuguese.

53. Even if this amounted to less favourable treatment, we are not satisfied this was because of the Claimant's race. SK didn't ask the Claimant to write the notes in English because of her race or nationality but because he wanted to be able to read the notes himself to see where she was going wrong when she made mistakes. If the Claimant were English, but writing notes in a short-hand that SK couldn't read, we consider he would similarly have asked her to write them in a long-hand version of English that he could read. Accordingly, the reason for the treatment complained of was not race.

54. It follows that the complaint of race discrimination is dismissed.

Breach of Contract/Wrongful dismissal

55. The Claimant's case is that by the date of her dismissal her probationary period had expired and therefore she was entitled to 4 weeks' notice pay, not one week.

56. The Claimant's contract provided that the first 3 months of her employment was a probation period. Her employment commenced on 23 November 2022 and so her probation period ended on 22 or 23 February 2023.

57. Although the Respondent had the right to extend the Claimant's probation period where it was dissatisfied with her performance, we accept the Claimant's argument that any extension had to take effect before the end of the normal 3-month probation period (otherwise the probation period had already terminated and would have to be effectively re-activated rather than extended).

58. In this case there is no evidence that SK extended the Claimant's probation period before 22 or 23 February 2023. From the evidence in the bundle his position is that he told her at the end of February he wanted to schedule her 3-month appraisal in the first week in March 2023. The Claimant said he told her this on 3 March 2023. In any event, there is no evidence that SK said anything to her before 22 or 23 February 2023 that could be construed as an extension of her probation period.

59. We therefore accept that by the date of the meeting on 7 March 2023 the Claimant's 3-month probationary period had ended.

60. However, it is clear from the evidence, and the Claimant agrees, that at the end of that meeting she agreed to an extension of her probationary period by one-month.
61. The Claimant said if she had not agreed she would have been dismissed, so in the meeting she felt she had no other option but made it clear she had changed her mind the next day.
62. We consider that the Claimant's agreement to an extension of her probationary period in the meeting of 7 March 2023 amounted to a binding variation of her contract.
63. It is true that if she had not agreed to the extension she probably would have been dismissed, but this reflected the fact that SK was not happy with her work. It was open to him to dismiss her, but he offered her the option of extending her probation and the chance of keeping the job. The choices open to the Claimant at the meeting of 7 March 2023 were therefore to accept the further month of probation or be dismissed, and she chose the former option which was a conscious and rational choice. In the circumstances the possibility of remaining in her job but not on probation was simply not an option that was available to her.
64. It follows that when the Claimant was dismissed the following day, she was on probation and entitled to only one weeks' notice.
65. It follows that the claim for wrongful dismissal/breach of contract is dismissed.

Remedy

66. Following our judgment, we heard evidence from the Claimant regarding her injury to feelings in respect of her complaints of harassment and direct sex discrimination.
67. She said that the harassment continued for the duration of her employment. She found SK's very frequent and derogatory comments about GN and the treatment of Hermione offensive and it made her feel vulnerable as she was aware that SK and JB might also speak about her like that. She also said that the comments SK made to her on 7 and 8 February 2023 were not made in jest but were intended to make her feel stupid and deter her from asking more questions. During February 2023 she had felt very unhappy and often drove home from work in tears. She had also consulted her GP about her mental health but had not been prescribed medication because of her pregnancy. After she left the Respondent, she had problems with her pregnancy which she blamed on the stress and harassment she had faced at work. She developed Pre-Eclampsia, and her daughter was born at 27 weeks with the condition of Cerebral Palsy.
68. Whilst the Tribunal is of course sorry to learn of this, there is no evidence before us which suggests the Claimant's Pre-Eclampsia and premature birth of her daughter was caused by the harassment or direct sex discrimination to which

the Claimant was subjected whilst employed by the Respondent. However, we accept the other aspects of her evidence set out above. We note that the harassment continued for the duration of her employment but also that that employment was short-lived. We also consider that while the harassment was offensive and distressing most of the conduct was not directed towards the Claimant.

69. Taking everything into account we consider that an award towards the middle of the lower band of the Vento guidelines is appropriate. For claims presented on or after 6 April 2023 the lower band (appropriate to less serious cases) is from £1,100 to £11,200 and we have decided that an award of £5,000 is appropriate in this case.

Employment Judge S Moore
Date: 18 February 2025

Sent to the parties on:
8 March 2025

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For the Tribunal:

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