



EMPLOYMENT TRIBUNALS

Claimant:
Miss T Gutt

v

Respondent:
Menzies Aviation UK Limited

PRELIMINARY HEARING

Heard at: Reading

On: 16 May 2017

Before: Employment Judge George

Appearances

For the Claimant: In person

For the Respondent: Mr N Bidnell-Edwards (Counsel) – by telephone

JUDGMENT

1. The claims against the second and third respondent are dismissed.
2. For the avoidance of doubt, the employment tribunal does not have jurisdiction to hear a claim of personal injury caused by an alleged breach of duty of care and/or breach of the Health and Safety at Work Act 1974. Any such claim is struck out.
3. Leave is granted to the claimant to amend the claim to add a complaint of unfair dismissal based on the alleged acts of the respondent set out in her resignation letter of 3 May 2017.

CASE MANAGEMENT SUMMARY

Listing the hearing

1. After all the matters set out below had been discussed, we agreed that the hearing in this claim would be completed within **three days**. It has been listed at **Reading Employment Tribunals, 30-31 Friar Street (Entrance in Merchants Place), Reading RG1 1DX** to start at 10.00 am or so soon thereafter as possible on **6 to 8 November 2017**. The parties are to attend by **9.30 am**. The hearing may go short but this allocation is based on the claimant's intention to give evidence and the respondent's to call **three** witnesses. The time will be used as follows:-
 - 1.1 Maximum **1.5** days for oral and other evidence on liability;
 - 1.2 A maximum total of **one** hour (half each) for submissions on liability;

- 1.3 Approximately **two hours** for the tribunal to determine the issues which it has to decide and reach its conclusions;
- 1.4 **One hour** for the tribunal to give judgment, with reasons if possible;
- 1.5 **One hour** for the tribunal to identify issues relevant to remedy, hear further evidence if appropriate and reach its conclusions in respect thereof, if the claimant succeeds in whole or in part.

The complaint(s)

2. By a claim form presented on 16 February 2017, the claimant brought complaints of unauthorised deduction from wages in relation to alleged failure to pay company sick pay. The respondent defended the claims.

The issues

3. I now record that the issues between the parties which fall to be determined by the tribunal are as follows. Any party who considered that the following does not accurately reflect the issues to be decided at final hearing is to write to the tribunal within **7 days of the date on which this order was sent** explaining what changes to the recorded issues they consider it is necessary to make.

4. Constructive unfair dismissal claim

- 4.1 Why did the claimant resign?
- 4.2 Was it in response to acts of the respondent? Were those acts repudiatory breaches of a fundamental term of the claimant's contract which entitled her to resign and consider herself to be dismissed? The claimant alleges that the respondent breached her contract by:-
 - 4.2.1 Failing to pay her full entitlement to company sick pay in breach of an express term to pay it in accordance with the BMI Attendance Management Policy Guidance Notes.
 - 4.2.2 Denying the existence of a policy by which an employee is entitled to re-qualify for company sick pay by working for 14 continuous days either in breach of an express term to that effect or the implied term of mutual trust and confidence.
 - 4.2.3 Rejecting her grievance in breach of the implied term of mutual trust and confidence (this may be factually an identical claim to 4.2.2).
- 4.3 If the claimant was dismissed, what was the reason for dismissal?
- 4.4 Was it a potentially fair reason?
- 4.5 Was dismissal fair or unfair in all the circumstances?

5. Unauthorised deduction from wages

- 5.1 Under the applicable terms for the provision of company sick pay, to what sick pay was the claimant entitled during her absence starting on 23 October 2015?
- 5.2 What did the respondent pay the claimant by way of sick pay from 23 October 2015 onwards?

6. Breach of contract

- 6.1 Did the respondent breach the contract of employment by denying the existence of a policy by which an employee is entitled to re-qualify for company sick pay by working for 14 continuous days?
- 6.2 The claimant claims seven months' loss of earnings as a result of the alleged breach of contract.

7. Remedies

- 7.1 If the claimant succeeds, in whole or part, the tribunal will be concerned with issues of remedy.

8. Judicial mediation

- 8.1 In her completed agenda for today's preliminary hearing, the claimant expressed interest in a judicial assessment or mediation. In the event, because the start time of the hearing was unavoidably delayed and the time taken in dealing with the issues and application to amend, there was insufficient time to canvass these issues.
- 8.2 The parties are to write to the tribunal **within fourteen days** of the date on which this order is sent to them stating whether or not they are interested in pursuing judicial mediation. A note explaining the scheme is sent with this order.

Other matters

9. Unfortunately, the respondent's Counsel had been told to attend at Watford Employment Tribunal when the hearing was listed to take place in person at Reading Employment Tribunal. He consented to attend the hearing by telephone. The Judge and the claimant were in person at Reading. It was in accordance with the overriding objective to proceed in this way notwithstanding the fact that one party was present in person and the other on the telephone. The respondent's Counsel consented to proceed and by doing so the parties and the tribunal saved cost and avoided delay.
10. Concern was expressed by Counsel for the respondent that the claimant in her letter of resignation appeared to refer to matters of which she had only become aware during without prejudice communications from the ACAS conciliator. I advised the claimant that although there was no objection to the employment judge at the final hearing knowing that there had been without prejudice communications, they must not know the content of them. If they did find out the contents of them, they might consider that they were unable to

decide the case. Were they to make such a judgment that would cause cost and delay. For that reason, and since I have seen further without prejudice communications, I will direct that the final hearing of this case be not listed before me. I have also taken steps to ensure that any other employment judge seeing the file does not inadvertently read the without prejudice material.

11. The respondent takes the view that the resignation letter needs to be redacted to remove reference to the contents of without prejudice communications. The claimant confirmed that only the alleged acts which are now set out in paragraph 4.2 of this order were reasons on which she relies for the constructive dismissal claim. It seemed to me that that being the case, the parties should be able to deal with any redaction by agreement. If the parties are unable to reach agreement on this point then they are to request that any interim applications to the employment tribunal to adjudicate on the questions of redaction be determined by an employment judge based in Watford Employment Tribunal so as not to restrict the listing in Reading Employment Tribunal.
12. I made the following case management orders by consent.

ORDERS

Made pursuant to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013

1. Amended response/Further information

- 1.1 The respondent is granted leave, if so advised, to amend their response to set out the respondent's factual assertions in connection with the claim as now understood **by 13 June 2017**.

2. Disclosure of documents

- 2.1 The parties are ordered to give mutual disclosure of documents relevant to the issues identified above by list and copy documents so as to arrive on or before **13 June 2017**. This includes, from the claimant, documents relevant to all aspects of any remedy sought.
- 2.2 Documents relevant to remedy include evidence of all attempts to find alternative employment: for example a job centre record, all adverts applied to, all correspondence in writing or by email with agencies or prospective employers, evidence of all attempts to set up in self-employment, all pay slips from work secured since the dismissal, the terms and conditions of any new employment. They also include documents relied upon by the claimant to explain why she has been unable to secure work, if that be the case.
- 2.3 This order is made on the standard civil procedure rules basis which requires the parties to disclose all documents relevant to the issues which are in their possession, custody or control, whether they assist the party who introduces them, the other party or appear neutral.

- 2.4 The parties shall comply with the date for disclosure given above, but if despite their best attempts, further documents come to light (or are created) after that date, then those documents shall be disclosed as soon as practicable in accordance with the duty of continuing disclosure.
- 2.5 The claimant has made an application for discovery of specific documents. It would be premature to make an order upon that application before there has been mutual discovery of documents in accordance with paragraph 2.1 above. The claimant is to renew her application if, following compliance with paragraph 2.1 above she considers there to be in the respondent's possession, custody or control further documents relevant to the issues set out above.

3. **Statement of remedy/Schedule of loss**

- 3.1 The claimant is ordered to provide to the respondent and to the tribunal, so as to arrive on or before **5 September 2017** a properly itemised statement of the remedy sought (also called a schedule of loss).
- 3.2 The claimant is ordered to include information relevant to the receipt of any state benefits.

4. **Bundle of documents**

- 4.1 It is ordered that the respondent has primary responsibility for the creation of the single joint bundle of documents required for the hearing.
- 4.2 The respondent is to send a draft index and details of proposed redactions to the claimant by **20 June 2017**.
- 4.3 The claimant is ordered to notify the respondent on or before **27 June 2017** of any documents to be included in the bundle which are not already in the index at their request. These must be documents to which they intend to refer, either by evidence in chief or by cross-examining the respondent's witnesses, during the course of the hearing. The claimant is also to respond to the respondent's requests for redaction. This correspondence does not need to be copied to the employment tribunal.
- 4.4 The respondent is ordered to provide to the claimant a full, indexed page numbered bundle to arrive on or before **4 July 2017**.
- 4.5 The respondent is ordered to bring **sufficient additional copies (at least three)** to the tribunal for use at the hearing, by **9.30 am** on the morning of the hearing.

5. **Witness statements**

- 5.1 It is ordered that oral evidence in chief will be given by reference to typed witness statements from parties and witnesses.
- 5.2 The witness statements must be full, but not repetitive. They must set out all the facts about which a witness intends to tell the tribunal, relevant to the issues as identified above. They must not include generalisations, argument, hypothesis or irrelevant material.
- 5.3 The facts must be set out in numbered paragraphs on numbered pages in chronological order.
- 5.4 If a witness intends to refer to a document, the page number in the bundle must be set out in the reference.
- 5.5 It is ordered that witness statements are exchanged so as to arrive on or before **5 September 2017**.
- 5.6 Each party must bring to the tribunal **at least three additional copies** of the statements which it has served. The parties are reminded of rule 44, which requires a copy of each statement to be provided to the public.

CONSEQUENCES OF NON-COMPLIANCE

1. **Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.**
2. **The Tribunal may also make a further order (an “unless order”) providing that unless it is complied with, the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice or hold a preliminary hearing or a hearing.**
3. **An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative.**

Employment Judge George

Date: 31 May 2017.....

Sent to the parties on: