



# EMPLOYMENT TRIBUNALS

**Claimant:**  
Miss SL Ross

v

**Respondents:**  
Ms Lorraine Hook (R1)  
Mayglade Ltd (R2)  
Ms Lesley Hewitt (R3)  
Mr John Wells (R4)

## PRELIMINARY HEARING

**Heard at:** Reading

**On:** 20 February 2017

**Before:** Employment Judge S Jenkins

### Appearances

**For the Claimant:** In person

**For the Respondents:** Mr J Wells (Owner)

## JUDGMENT

1. The claims against the third and fourth Respondents, Ms L Hewitt and Mr J Wells, are dismissed on withdrawal.

## 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 **29, 30 and 31 August 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 call one witness and the Respondents' intention to call three witnesses. It is possible that the Claimant may call some further witnesses from whom she has currently obtained brief written statements. Bearing in mind the likely length of the evidence of those additional witnesses if they attend, it is anticipated that they can be accommodated within the overall time allocation but the Claimant is required to notify the tribunal if she ultimately intends to call further 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 **half a day** for the tribunal to determine the issues which it has to decide and reach its conclusions; and to give judgment, with reasons if possible;
- 1.4 Approximately **half a day** 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 2 August 2016, the Claimant brought complaints of unfair dismissal, disability discrimination (harassment and victimisation) and failure to provide a written statement of terms and conditions of employment. The Respondents defend the claims. The claims in essence arise out of actions towards the end of the Claimant's employment with the second Respondent which she contends amount to constructive unfair dismissal and to harassment and victimisation.

### **The issues**

3. I now record that the issues between the parties which fall to be determined by the tribunal are as follows.
4. **Unfair dismissal claim**
  - 4.1 Was there a fundamental breach of the Claimant's contract of employment? The breach alleged is the Second Respondent's complete failure to respond to her grievance and subsequent chasing emails and letters which destroyed the Claimant's trust and confidence in her employer. This took the form of a series of events starting from her initial grievance letter up to the final letter she sent to the Second Respondent in July 2016.
  - 4.2 Did the Claimant resign in response to the breach?
  - 4.3 Did she delay too long before resigning?
5. **Disability**
  - 5.1 Does the Claimant have a physical or mental impairment, namely depression?
  - 5.2 If so, does the impairment have a substantial adverse effect on the Claimant's ability to carry out normal day-to-day activities?
  - 5.3 If so, is that effect long term? In particular, when did it start and:-
    - 5.3.1 Has the impairment lasted for at least 12 months?
    - 5.3.2 Is or was the impairment likely to last at least 12 months or the rest of the Claimant's life, if less than 12 months?

5.4 Are any measures being taken to treat or correct the impairment? But for those measures, would the impairment be likely to have a substantial adverse effect on the Claimant's ability to carry out normal day-to-day activities?

**6. Section 26: Harassment on the grounds of disability**

6.1 Did the Respondents engage in unwanted conduct by referring to her as mentally unstable, paranoid, mentally ill and f\*\*\*ed up due to her depression?

6.2 Was the conduct related to the Claimant's protected characteristic?

6.3 Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

6.4 If not, did the conduct have the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

6.5 In considering whether the conduct had that effect, the tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

6.6 Was the second Respondent vicariously liable for the First Respondent pursuant to section 109 Equality Act 2010 as its employee and therefore jointly and severally liable for the harassment?

**7. Section 27: Victimisation.**

7.1 Has the Claimant carried out a protected act? The Claimant relies upon the making of an allegation of discrimination in her grievance dated 6 May 2016.

7.2 If there was a protected act, did the Second Respondent subject the Claimant to a detriment because of that protected act by failing to acknowledge, investigate or respond to her grievance leading to her resignation?

**8. Failure to provide a written contract of employment**

8.1 Did the Second Respondent fail to provide the Claimant with a written statement of the terms and conditions of her employment as required by the Employment Rights Act 1996?

**Other matters**

9. I made the following case management orders by consent.

**ORDERS**

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

**1. Disclosure of documents**

- 1.1 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 **20 March 2017**. This includes, from the Claimant, documents relevant to all aspects of any remedy sought.
- 1.2 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.
- 1.3 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.
- 1.4 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.
- 1.5 The Claimant is also ordered to disclose by list and copy so as to arrive with the Respondents by **20 March 2017** all medical records held by the Claimant's GP relevant to her claim that she suffers from a disability, including notes, whether manual or on computer, of attendances by the Claimant, referrals to other medical or related experts, reports back from such experts, test results or other examinations, and so on.

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

- 2.1 The Claimant is ordered to provide to the Respondents and to the Tribunal, so as to arrive on or before **20 March 2017** a properly itemised statement of the remedy sought (also called a schedule of loss).
- 2.2 The Claimant is ordered to include information relevant to the receipt of any state benefits.

**3. Medical and expert evidence/admissions re disability**

- 3.1 The Respondents are ordered **by 3 April 2017** to notify the Claimant and the tribunal whether, having considered the medical records, they concede that the Claimant is or was at the material time a disabled

person, identifying the disability and the period and/or the extent of any remaining dispute on these issues.

- 3.2 If disability is not conceded or there is some relevant continuing dispute, the Respondents are ordered to provide to the Claimant by **3 April 2017** the names and office addresses of three consultant psychiatrists together with a draft letter of instruction. The experts must not have been involved in the Claimant's treatment and must be able to prepare a timely report, in accordance with the orders made below which apply also to the expert who is instructed.
- 3.3 So as to arrive by **10 April 2017**, the Claimant is ordered to notify the Respondents of the chosen medical expert and to provide any comments on the letter of instruction.
- 3.4 The expert is to be instructed by the Respondents sending the letter and a copy of these orders **within seven days** from receipt of the Claimant's comments and thereafter the Claimant must liaise directly if contacted to arrange an interview or examination with the expert.
- 3.5 The expert is required to provide a report answering the questions in the letter of instruction, sent so as to reach both parties simultaneously by **17 July 2017**.
- 3.6 If anything is unclear in the report, the parties may send a further joint letter within a fortnight of receipt of the report and any further questions are to be answered within a fortnight.
- 3.7 If any party disputes any significant finding or conclusion in the report, that party must arrange the attendance of the expert for a half day at the hearing.
- 3.8 The Claimant and Respondents are ordered by **24 July 2017** to notify the other party/ies and the tribunal whether, having considered the expert medical report:-
  - 3.8.1 The Respondents concede that the Claimant is or was at the material time a disabled person, identifying the disability and the period and/or the extent of any remaining dispute on these issues; or
  - 3.8.2 The Claimant withdraws the disability-based complaint/s.

#### **4. Bundle of documents**

- 4.1 It is ordered that the Claimant has primary responsibility for the creation of the single joint bundle of documents required for the hearing.
- 4.2 To this end, the Respondents are ordered to notify the Claimant on or before **10 April 2017** of the documents to be included in the bundle at their request. These must be documents to which they intend to refer,

either by evidence in chief or by cross-examining the Respondents' witnesses, during the course of the hearing.

- 4.3 The Claimant is ordered to provide to the Respondents a full, indexed page numbered bundle to arrive on or before **8 May 2017**.
- 4.4 The Claimant is ordered to bring **sufficient additional copies (at least five)** 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 **31 July 2017**.
- 5.6 Each party must bring to the tribunal **at least five 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.**

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Employment Judge Jenkins

Date: 7 March 2017

Sent to the parties on: .....