EMPLOYMENT TRIBUNALS

Claimant: Miss L Fairclough

Respondent: Forever 21 (UK) Limited

Heard at: Liverpool **On:** 15 March 2018

Before: Employment Judge

REPRESENTATION:

Claimant: Mr M Keenan, Solicitor
Respondent: Not in attendance

JUDGMENT

The judgment of the Tribunal is as follows:-

1. The application for postponement of this hearing by the respondent's solicitors is refused.

2. The claim for indirect sex discrimination succeeds.

3. The respondent is ordered to pay forthwith to the claimant the sum of £15,000 together with interest thereon in the sum of £714.00 making a total due to the claimant of £15,714.00.

REASONS

1. The claimant issued her proceedings for indirect sex discrimination within time on 4 January 2018.

2. The ET1 together with supporting papers were sent by the Tribunal to the Registered Office of the respondent on 15 January 2018 with a requirement that any response must be received at the Tribunal office by no later than 12 February 2018.

3. No ET3 was received.

4. The respondent was also informed on 15 January 2018 by a letter sent again to their Registered Office that there would be a hearing on 15 March 2018 (i.e. today) for there to be a preliminary hearing.

5. As no ET3 was received Employment Judge Shotter wrote to the respondent on 22 February 2018 informing them that she was considering a rule 21 judgment because they had not entered a response. The letter went on to say that the respondent, despite not entering a response, was still entitled to receive notice of hearing.

6. Throughout this period nothing has been heard from the respondent.

7. When the respondent was served with the claimant's Schedule of Loss and a statement supporting the schedule they instructed, for the first time, solicitors who have made an application to postpone early this morning.

8. That postponement application was rejected by me on the basis that there was no draft response attached to the application. There was a suggestion that an employee who could deal with this matter for the respondent had gone to France on business and consequently was not available to deal with the matter. However, this organisation is a large organisation with the wherewithal to instruct Eversheds Sutherland and who presumably have an HR support network. Another employee could have been found to represent the respondent.

9. Miss Fairclough has done nothing wrong. I put her on oath and she explained the details of her application for a flexible return to work because she was suffering from post natal depression.

10. The respondent initially refused that application. The claimant submitted a grievance and she had to wait from August 2017 through to November 2017 before a meeting took place.

11. Eventually, on 15 December 2017, the respondent relented and she was offered 16 hours' work per week.

12. The claimant has been off work since her maternity leave. She was due to return to work from that leave on 31 July 2017.

13. The policy requiring the claimant to work 40 hours per week placed her at a substantial disadvantage compared with persons with whom the claimant does not share the protected characteristic.

14. I have not heard from the respondent that they could show that that provision, criterion or practice was a proportionate means of achieving a legitimate aim.

15. The claimant's evidence is that the delay in dealing with her application exacerbated her depression and has caused her much distress.

16. The respondent's attitude throughout suggests their officers were either not bothered nor interested in the claimant's situation and in her declining health which is connected to the birth of her child.

17. Furthermore, they were not in attendance today in order to deal with the serious issues raised by the claimant in her ET1.

18. In those circumstances I felt that the appropriate way forward was to proceed with the claim and to give judgment on liability and on remedy.

19. In the circumstances of this case this matter was clearly within the middle band of Vento and the amount due to the claimant therefore is £15,000 together with the interest set out above.

15-03-18

Employment Judge Robinson

JUDGMENT AND REASONS SENT TO THE PARTIES ON
23 March 2018

FOR THE TRIBUNAL OFFICE

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Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: 2400060/2018

Name of case: Miss L Fairclough v Forever 21 (UK) Ltd

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: 23 March 2018

"the calculation day" is: 24 March 2018

"the stipulated rate of interest" is: 8%

MR S ARTINGSTALL
For the Employment Tribunal Office