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EMPLOYMENT TRIBUNALS

Claimant: Ms L Benstead

Respondents: (1) Silver Birch Academy Trust (Longshaw Academy)
(2) London Borough of Waltham Forest

Heard at: East London Hearing Centre

On: Friday 19 January 2018

Before: Employment Judge Prichard

Representation

Claimant: In person

First Respondent: No appearance or representation – did not attend

Second Respondent: Ms S Alrahi, Solicitor LBWF Legal Services Town Hall E17

JUDGMENT

It is the judgment of the tribunal that, in default of a response by the first respondent, and on a hearing of the merits, the claimant's complaints of unfair dismissal and disability discrimination both succeed. The claimant is awarded a total of £3,500.

The claim against the second respondent is hereby dismissed.

REASONS

1 With a fairly simple claim brought by a low-earning midday assistant, the first respondent's conduct of the process and proceedings has been lamentable. It is hard to believe.

2 The claimant eventually resigned saying that she was going to retire on 28 July 2017 following a protracted failure by the first respondent to deal with her problems. The failures were so bad that it is easy to make a finding that the claimant was constructively dismissed. That letter of resignation was clear notice to the respondent of the end of the

claimant's employment. Despite that she still receives regular zero payslips from the first respondent.

3 Within time relative to that letter of retirement/resignation the claimant referred the matter to Acas on 4 October 2017 as against both respondents. There was almost no time spent in early conciliation and on 12 October after eight days a certificate was issued. The claimant then presented her claim on 13 October 2017 so the ET1 claim form was well within time.

4 The claim is coded for disability discrimination and unfair constructive dismissal. The claimant has been able to explain it orally today better than she did in the ET1 claim form. There is a long history.

5 Sometime in 2014 the claimant noticed a lump on her arm which hampered her from lifting objects. She still does not know if it is malignant or not. She still has it. The claimant eventually went off sick in October 2015.

6 On 1 January 2016 the school, Longshaw Primary was in transition from being a maintained local authority school to being an academy. It is a medium sized primary school with a 2-form intake of approximately 400 pupils, in Chigwell.

7 The claimant eventually had a meeting on 9 February 2016 where, she reports, the academy did not know where they were in terms of their own sickness procedure. A meeting had to be arranged with governors, she was told. She heard nothing for another 8 months and so she contacted the London Borough of Waltham Forest in October. They provide a traded HR Service to the school.

8 In these proceedings they were providing representation until Ms Alrahi felt that she could no longer represent them over the "conflict" (i.e. the Academy's lack of engagement). She notified the tribunal two days ago on 17 January 2018.

9 The next meeting was a meeting with Gerry Kemble on 28 December 2016. As Head of Schools HR, he said that he would contact the school as soon as they returned from the Christmas holiday, on 4 January 2017.

10 The claimant was then given an occupational health appointment which was a step in the right direction. The ensuing report recommended that she be put on light duties that did not involve the same degree of lifting as a midday assistant's job obviously does. Then there was a meeting in March 2017 with Waltham Forest HR present.

11 The claimant had previously worked for Waltham Forest and had a pension with them. It was suggested that she might apply for ill health retirement. Therefore she returned to occupational health to be assessed for ill health retirement.

12 In the meantime in June she was diagnosed with renal cancer and has had a kidney removed. Ultimately the decision was that the pension provider would not provide ill health retirement as she did not meet the criteria and she does now draw a pension. She is aged 60 now. Accordingly, she wrote to the school and notified them of her retirement.

13 In circumstances where they failed to deal with the sickness procedure, with reviewing her absence, and failing to assign her (as the occupational health report had recommend to lighter duties), the claimant's claims appear to be made out on the merits. The school could surely have found the claimant something useful to do to make up her 6 hours per week. She could have worked tidying the library, she could have done office duties, and if they had offered such an opportunity she would most definitely have taken it. She only started drawing her pension at the time because she was unable to claim benefits. Her low pay put the claimant below the lower earnings limit of £206 per month for NI.

14 The claimant never even received the courtesy of a response to her retirement letter. She just continued to receive wage slips. So there is a clear case here of failure to make reasonable adjustments, and a clear loss of earnings.

15 The purposes of today's hearing is to hear the case in the first respondent's absence.

16 I award £2,500 for disability discrimination, injury to feelings, and £1,000 for loss of earnings. Those figures will be gross of any tax or NI for which there may be any liability.

17 The procedural history is as follows.

18 The claim received on 13 October 2017 was sent to the parties on 18 October. The respondents had to reply by 15 November 2017 Waltham Forest responded, and the Academy did not. They received a notice of preliminary hearing on the same date. Subsequently on 29 November 2017 a letter was sent upon my own direction saying that a copy of Waltham Forest response should be copied to the first respondent, Longshaw Academy / Silver Birch Trust. In that letter I specifically pointed out to the Academy that Waltham Forest's ET3 was only on behalf of Waltham Forest and therefore they urgently needed to enter an ET3 themselves because the claim was undefended. 19 January 2018 remained as the date for the preliminary hearing. In the meantime nothing at all came from the first respondent. Then on 18 December Employment Judge Brown directed that she was preparing to enter judgment against the Academy and the claimant's claims would succeed. She asked for the Academy's comments before 29 December 2017. There was no response. Then Ms Alrahi, who appears here today for the second respondent only, wrote on 8 January 2018 to say that she represented the Silver Birch Academy Trust and wanted the respondent to be given leave to put in a late response. That is not how it works We expect the respondents to respond and then we make a decision as to whether leave will be given to extend time to accept that response. We do not give a blank cheque for late responses to be entered. We never have done.

19 The claimant objected to postponement of the hearing or for a late response to be allowed and given the procedural difficulties she had with them previously one can understand why she might do that. She was not being gratuitously difficult. Subsequently Ms Alhari on 15 January 2018 wrote to ask if we have decided to allow the Trust response. We did not respond to that letter. I can see, internally, a Judge saw it only on Wednesday and simply directed to leave the issue to this hearing. It was too late to do anything else. The case was left as listed as it was and to leave everything until the case came on for hearing which is today really too late to do anything meaning follow that stage

and then on 17 January 2018 Ms Alhari wrote to the tribunal to notify us that she no longer represented the first respondent and sent a CMD agenda.

20 The tribunal does not likely entered judgments against respondents who have failed to respond but there is a persistent history both in handling of the claimant's complaints and attempts to get them to deal with her situation and then hopelessly with the tribunal proceedings such as this is imminently a clear case where judgment should be entered. There is no reason to delay the setting of the compensation amounts and these are set extremely modestly in the presence of Ms Alhari and the claimant and her daughter.

Employment Judge Prichard

19 February 2018