



THE EMPLOYMENT TRIBUNALS

Claimant
Ms Rebecca McKeith

Respondent
Mr Liam Alexander

JUDGMENT (Liability Only)
Employment Tribunals Rules of Procedure 2013 –Rule 21

MADE AT NEWCASTLE

ON 27 May 2020.

JUDGMENT

The claims of direct sex and pregnancy/maternity discrimination contrary to sections 13 and 18 of Equality Act 2010 are well founded . Remedy will be decided at a two hour hearing on a date to be fixed

REASONS (bold print is my emphasis and italics quotations)

1. During the Covid19 pandemic, Tribunals and parties have to adapt. I, and some other Judges, am working from home without the paper file or printing facilities. It helps to have everything relevant in one electronically accessible document so I convert pdf to Word documents (which can lead to minor printing errors) then copy and paste parts into this one. The claim was presented on 4 March 2020. The claimant, born 7 January 1997, was employed from December 2017 and still is. She describes herself as a “personal assistant“. Her claim reads *I received a message from my employer (Liam Alexander) saying he could no longer give me any hours as I was a "female" and was posing problems for him, despite being employed for nearly 2 years previously with no problems.*

This happened while I was roughly 6/7 months pregnant. This also caused me stress during my pregnancy which my doctor made me take sick leave for as the situation was making me very ill and it wasn't good for either me or the baby.

Due to this I decided to seek legal advice and resolve the problem through ACAS to no avail. Since going through these proceedings my employer has withheld my wage/statutory maternity pay every month and I have had to chase it up - sometimes receiving it 5 days late. I have also received emails from my employer using vulgar language and making references towards me which are hurtful and disgusting and what I would also class as sexual and extremely unprofessional, all which I have evidence of.

As for remedy claimed she writes

I have seen fit to take legal advice on this matter and the person in question believes I should be seeking compensation for sex discrimination and injury to feelings. I have also lost out on maternity pay I was entitled to due to cancellation of shifts and me having to bring my maternity leave forward in fear of losing my job and being left penniless when I was having my son.

2. The claim was served on the respondent's address which is known to me as "supported housing", including for elderly people. No response was received by the due date or even now as far as I am aware. I am required by rule 21 of the Employment Tribunals Rules of Procedure 2013 to decide on the available material (which may include further information a Judge requires parties to provide) whether a determination can be made and, if so, obliged to issue a judgment which may determine liability only or liability and remedy. The claimant by letter to the Tribunal replying to a query about the identity of her employer said:

"Sorry for the confusion regarding my employer. Liam Alexander is my employer not Direct Payments. Direct Payments are a company involved in Gateshead Council's payroll who give Mr Alexander the funding he needs in being able to employ people to care for him.

Again, I am really sorry for any confusion this has caused and again would like to ensure it is clear that Mr Liam Alexander is my employer."

Hope this helps!"

3. I have encountered cases where a Local Authority, under a statutory obligation to care for vulnerable adults, funds their care but under an arrangement where the person receiving the care is nominally the employer of his carers. In some such cases I have seen strong evidence the "employer" does not have the mental capacity to enter into any contract, let alone understand his obligations under the Equality Act 2010 or how to put in a response. On consideration of the file Employment Judge Johnson said at a preliminary hearing today, to be by telephone due to the pandemic, we would discuss if Gateshead Council should be added as a respondent.

4. I asked the claimant about the respondent. She informed me he is about her age, has muscular atrophy which results in him having little movement from his neck down but is studying for a university degree and has full mental capacity. His carers open his post and he gives instructions how to deal with it. He is IT literate and uses a laptop despite having little finger movement. He advertised for a carer which is how the claimant got the job. She worked for him without problems until she became pregnant. Three days ago, he emailed her asking if there was a way they could settle their differences.

5. Rule 2 of the Employment Tribunal Rules of Procedure 2013 (the Rules) provides their *overriding objective* is to enable Tribunals to deal with **cases** fairly and justly which includes, in so far as practicable

(a) ensuring the parties are on an equal footing

(b) dealing with a case in ways which are in proportionate to the complexity or importance of the issues

(c) avoiding unnecessary formality and seeking flexibility in the proceedings

(d) avoiding delay, so far as compatible with proper consideration of the issues

(e) saving expense

*A Tribunal or Employment Judge shall seek to give the effect to the overriding objective in interpreting, or exercising any power given to it by the Rules **The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal***

The reason for emboldening the word "cases" is that it is not only this case Employment Judges have to manage and Tribunal staff have to deal with. Especially during the Covid19 pandemic my

aim is to give effect to the overriding objective, as best I can by reducing to a minimum the need for further hearings. Other relevant Rules include

Disclosure of documents and information

31. *The Tribunal may order any person in Great Britain to disclose documents or information to a party (by providing copies or otherwise)*

Requirement to attend to give evidence

32. *The Tribunal may order any person in Great Britain to attend a hearing to give evidence, produce documents, or produce information.*

Addition, substitution and removal of parties

34. *The Tribunal may on its own initiative, or on the application of a party or any other person wishing to become a party, add any person as a party, by way of substitution or otherwise, if it appears that there are issues between that person and any of the existing parties falling within the jurisdiction of the Tribunal which it is in the interests of justice to have determined in the proceedings; and may remove any party apparently wrongly included.*

Other persons

35. *The Tribunal may permit any person to participate in proceedings, on such terms as may be specified, in respect of any matter **in which that person has a legitimate interest.***

6. I had in the claim form sufficient to enable me to find the claims proved on a balance of probability but not enough to determine the sums to be awarded. I was until I spoke to the claimant at the preliminary hearing today cautious about issuing a Rule 21 judgment in case the respondent lacked the ability to have put in a response. I was minded to send questions to Gateshead Council Social Services Department. The claimant assured me they had said the respondent's actions had nothing to do with them. I am reassured the respondent could have entered a response in time. He may still be heard on questions of remedy. A hearing in person cannot be arranged for many weeks unless by remote means so if either party wishes to inform the Tribunal of their ability to participate in one they should do so. I will order a schedule of loss.

Employment Judge Garnon

Judgment authorised by the Employment Judge on 27 May 2020