



EMPLOYMENT TRIBUNALS

Claimant: Ms S Earl
Respondent: Castleford Bowling Club Limited

AT A HEARING

Heard at: Leeds by CVP video conferencing On: 21st, 22nd & 23rd April 2021
Before: Employment Judge Lancaster
Members: Mr D Wilks
Mr K Lannaman

Representation

Claimant: Mr Y Lunat, solicitor
Respondent: Mrs KM Kendall, club secretary

This has been a remote hearing on the papers which has been not objected to by the parties. The form of remote hearing was CVP video conferencing. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

The unanimous decision of the tribunal is:

JUDGMENT

1. The claim of automatically unfair dismissal under regulation 20 of the Maternity & Parental Leave etc Regulations 1999 is not well-founded.
2. The claim of unfair dismissal for a reason related to conduct is well-founded.
3. The Respondent is ordered to pay to the Claimant a basic award for unfair dismissal in the sum of £728.00, calculated on the basis of 2 years' continuous employment between the ages of 22 and 41 as an entitlement to 2 weeks' pay. It would not be just and equitable to reduce that award under section 122 (2) of the Employment Rights Act 1996 by reason of any as yet still unparticularised conduct of the complainant before the dismissal.
4. Any further compensation for unfair dismissal (including, as applicable, loss of earnings, loss of employers' pension contributions and an award of £400 for loss of statutory rights) shall be assessed at a remedy hearing, if not agreed.

Case: 1805217/2019 (V)

5. The compensatory award for unfair dismissal shall be increased by 20 percent under section 207 (A) of the Trade Unions and Labour Relations (Consolidation) Act 1992 because of the Respondent's unreasonable failure to comply with paragraphs 8, 9, 10, 12 and 23 of the ACAS Code of Practice on Disciplinary & Grievance Procedures (2015).
6. It is just and equitable that any compensatory award for unfair dismissal under paragraphs 4 and 5 above be reduced by 90 percent under section 121 (1) of the Employment Rights Act 1996, as that is the probability that the Claimant would have been fairly dismissed by reason of her declaring more hours than actually worked, or other misconduct relating to the submission of staff wages figures to the accountant had a proper disciplinary process been conducted.
7. The total amount of any compensatory award for unfair dismissal is capped at 52 weeks' pay under section 124 of the Employment Rights Act 1996.
8. The Claimant was, contrary to section 18 of the Equality Act 2010, treated unfavourably because of her pregnancy in that she was, under a rota devised on 13th May 2019, required to work alone in circumstances where the Respondent had failed to carry out (or to review) a suitable and sufficient general risk assessment under regulations 3 and 16 of the Management of Health & Safety at Work Regulations 1999.
9. Compensation for injury to feelings in respect of that proven discrimination, together with interest if appropriate, shall be assessed at a remedy hearing, if not agreed.
10. All other complaints of discrimination on the grounds of pregnancy or maternity and/or of being subjected to a detriment under 47C of the Employment Rights Act 1996 are dismissed.
11. The claim of post-employment victimisation is dismissed. The Claimant has not proved that she did any protected act as alleged, and in any event she was not barred from the Respondent's premises because she had done a protected act but because of her behaviour when attending the club on 9th June 2019.
12. The Claimant is not entitled to carry forward any untaken leave, calculated pro-rata, for the partial holiday year which ran from 23rd April 2018 to 31st March 2019.
13. In the leave year from 1st April 2019 to the date of termination on 26th May 2019 the Claimant had accrued 0.86 weeks holiday, which on a 40 hour week is 34.4 hours of which she had taken 24 hours, leaving 10.4 hours accrued but untaken at the date of termination which has not been paid. The Respondent is therefore ordered to pay to the Claimant compensation in the gross sum of £94.64.

Case: 1805217/2019 (V)

14. The Respondent is further ordered to pay to the Claimant the sum of £728.00, being an award of 2 weeks' pay under section 38 of the Employment Act 2002 because at the time these proceedings were begun the Respondent was in breach of its duty under section 1(1) or 4(1) of the Employment Rights Act 1996 to have given the Claimant a written statement of her terms and conditions of employment.

EMPLOYMENT JUDGE LANCASTER

DATE 23rd April 2021

Date 30th April 2021