EMPLOYMENT TRIBUNALS

Claimant: **Miss S Masters**

Respondent: **Nottingham City Council**

Heard at: **Nottingham**

On: **Tuesday 5 and Wednesday 6 July 2016**

Before: **Employment Judge Britton**

Members: **Mr G Austin**
Ms J Johnson

Appearances
For the Claimant: **In Person**
For the Respondents: **Ms J Smeaton, Barrister at law**

JUDGMENT

1. The entirety of the remaining claims brought pursuant to Sections 15 and 20-21 of the Equality Act 2010 are dismissed upon withdrawal.

2. For the avoidance of doubt that means that all proceedings brought to the Tribunal by the Claimant in relation to her employment with the Nottingham City Council have now been dismissed upon withdrawal.

3. The Claimant is ordered to pay the Respondent's costs, limited to Counsel's fees in the sum of £3,600 (ex-VAT).

REASONS

1. This case can now be taken short. The Claimant withdrew her claim of disability discrimination shortly before the lunch adjournment. She did so having made an admission which made her case untenable. It meant that her claim had been unreasonably brought. By then it was clear that the Claimant's case was in deep trouble. That was obvious from all the documentation that we had read during the reading in period on the first day; her own witness statement; those of the witnesses the Respondent intended to call; and from the cross examination as it progressed, conducted fairly by Counsel for the Respondent. The claim had

been made the subject of a deposit order, which she paid[1].

2. Just before that second adjournment and having been taken by Counsel to the submissions that she, the Claimant, had made for the purposes of the reconvened disciplinary hearing (Bp 917), this presiding Judge asked her to carefully consider the paragraph therein that on the face of it at least seemed to imply a complete admission to having improperly accessed the data on child ER. By now the Tribunal was aware from the written evidence that the death of child ER was highly case sensitive because of the suspicious circumstances surrounding the death. The Judge put it to her that was clear that she had been told by her half sister of the death of the baby before she accessed the data. The Claimant had just suffered a third miscarriage which would make the death of ER even more poignant. The Claimant knew that the half sister's partner was, to use the vernacular, "a heavy"; part of a notorious gang in Nottingham. Would it not be tempting that in those circumstances, even though she knew she shouldn't, to have accessed the data base to see what was in there in relation to what was going on in relation to baby ER's death. Furthermore the evidence showed that there had to have been an element of deliberation to all of this as Counsel by then had conclusively shown via the IT audit trail. This included a 3 minute period of accessing the case notes. All of this was undertaken by the Claimant. It would be in clear breach of the policy. She was not permitted to access that data, and she knew it.

3. The Claimant admitted to the Judge, and thus the members of his Tribunal, that this was the reason that she looked on the data base; it was because of the link to her sister; and that she had knowingly done this. Well of course that makes a mockery of the case that she had sought to bring prior thereto.

4. So there is the admission by the Claimant. It clearly doesn't link to dyslexia; that proposition collapses, and there is no evidence before us that the Claimant's depression[2], was such as to mean that she wasn't a free agent, in terms of ability to access the data base and know what she was doing.

6. So there it is; a case abandoned, after having the lunch hour to reflect, and the Claimant having confirmed that she is doing so of her free will and which has been confirmed by her mother, who has been present to support her.

7. So it follows that the remaining claim of disability discrimination is dismissed upon withdrawal.

Costs

8. The Respondent's Counsel applies for costs. Very reasonably they are limited only to the costs of her being briefed and her refresher for today's purposes. The Respondent's costs of preparation are not sought albeit they are substantial. This is because the Respondent takes a realistic view. Counsel's fees are £3,600 (ex Vat). Given the amount of documentation before us and the obvious extent of the preparation by Counsel, this is not unreasonable. The Claimant will not be burdened with the VAT because the Respondent will be able

[1] This was made by Employment Judge Heap at a preliminary hearing on the 18th December 2015.A second deposit order was made in relation to the claim of unfair dismissal. The claimant decided not to pay that deposit and so that claim was treated as withdrawn on 21 April 2016.dismissed.

[2] Dyslexia and depression are the disabilities relied upon.

to claim that back.

9. Engaged is Rule 76(1) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Schedule 1:

> *"(1) A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that:-*
>
> > *(a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; or*
> >
> > *(b) any claim or response had no reasonable prospect of success."*

10. Once the truth came out, it follows that it had been brought unreasonably and never had any reasonable prospect of success.

11. So the Tribunal may make a costs order in those circumstances, the threshold has been reached. Thus it moves onto the second stage of the test. Shall it do so? That depends on what the Tribunal in all the circumstances of the scenario considers to be just and equitable. Given the scenario, it cannot but be just and equitable to award the costs in principle because the Claimant has bought this on herself. She should have taken heed when the deposit order was made, and she didn't.

12. Therefore we move to Rule 84:-

> *"In deciding whether to make a costs - order, and if so in what amount, the Tribunal may have regard to the paying party's ability to pay."*

13. We have undertaken an enquiry of the Claimant's means. Having undertaken a detailed assessment, it is clear that although the Claimant is on a combination of Jobseekers and disability related benefits with a combined income of only about £263.00 a week, but with her rent paid by way of Housing Benefit, that she nevertheless appears to have a disposable income which mirrors that which EJ Heap found to be the case of circa £500 a month disposable income. The Claimant's mother has told us that the Claimant is not good at managing her money; there may be other outgoings that she has forgotten about or it may just be that she runs short by the end of each fortnight from the payment of her benefit and is round to her mum's door for a top up. Even so the Claimant is an intelligent and well educated person who despite having problems is personable and capable. We think that even with her physical problems, which are the principle reason why she receives Disability Living Allowance and has to do with her hips, that she like many disabled people is capable of succeeding in the labour market once she puts this matter behind her. She has earning capacity. Thus we conclude, given there is some surplus income, and that she is just 40 and so has many years of working life ahead of her, that she will pay the costs asked for of £3,600.

14. The Tribunal does not deal with matters of enforcement, that is for the County Court.

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Employment Judge Britton

Date 21 July 2016