



EMPLOYMENT TRIBUNALS (ENGLAND & WALES)

BETWEEN

Claimant Miss N Hemati

AND

Respondent Communication and Surveillance Systems Limited
T/A Spymaster

HELD AT: London Central on 21/11/2017

Employment Judge: Mr J S Burns

Appearances

For Claimant: In person

For Respondent: No appearance

JUDGMENT

1. The Claimant's claims of unfair dismissal and for notice pay succeed.
2. The Respondent shall pay the Claimant
One weeks net pay in lieu of statutory notice £238.84
Net pay for the period 20-30 June 2017
as compensation for unfair dismissal. £345.00
Total award £583.84
3. The claims of sex harassment and for pay in lieu of holidays fail and are dismissed.
4. The hearing listed to start on 31st January 2018 is cancelled.

REASONS

1. The Respondent is in administration and has not served an ET3. The joint Administrators have confirmed that they do not object to the claim proceeding, do not intend attending any hearings and have lodged representations in the form of emails from ex-colleagues of the Claimant which they have asked to have taken into account.
2. The Claimant (who was accompanied by her friend Mr S Sore) wished to proceed so that the matter could be disposed of today. I heard evidence on oath from the Claimant and dealt with the matter under Rule 21 in schedule 1 of the 2013 Rules.

Claim of sex harassment

3. The Claimant told me that she suffered sexual harassment from an Assistant Manager Tamer El Nahas. As the matter was not particularised at all in the ET1, I asked her what she meant by that and she said he had grabbed her wrist once and held it hard.
4. I asked her why she was claiming sexual harassment and that she should tell me frankly exactly what she was claiming Tamer had done wrong which had anything to do with her gender, her sex or the fact that she was a woman.
5. She then said that once or twice he had criticised the fact that she wore dresses and skirts which were too short to work.
6. I asked the Claimant several times if she could think of anything else that Tamer had done wrong which related to sex, gender and the fact that she was a woman and she twice said there was nothing else.
7. However about twenty minutes later she alleged that she had complained to Julia Wing in a meeting on 8/6/2017 that Tamer had told her (the Claimant) twice in May 2017 that "*she liked to be touched up*".
8. I asked the Claimant why she had not mentioned this earlier when I carefully asked about it – she said she did not know why, alternatively she had "*panicked*". However she showed no sign of panicking at any stage of the hearing and was calm and collected throughout.
9. I note that following the meeting on 8/6/2017 Ms Wing, a director, sent an email to the Claimant informing her that the Respondent was extending her probation period until the end of June 2017 so that the Claimant could improve her relations with other members of staff, and in particular Tamar.
10. The Claimant told me she sent numerous emails to Ms Wing over the three months of her employment, but she did not at any time send any email complaining about sexual harassment by Tamer. I asked the Claimant why, if her account was true she had not responded to Ms Wing's email of 8/6/2017 confirming that the problem was being caused by Tamers sexual harassment. The Claimant said she did not know, alternatively she did not think it was necessary to do so.
11. I also read to and discussed with the Claimant various emails from Mrs Saoussen Ouertani and Priya Virdee which do not support the Claimant's account of the reasons for the poor relations between her and Tamer.
12. I do not accept the Claimant's account about sexual harassment because it is inconsistent and contradicted by the contemporaneous documentation.

Unfair dismissal

13. There was an incident at work on 19/6/2017. I accept the Claimant's evidence that she was told by a colleague Jahvou Irish that Tamer had asked for the telephone number of Baillie (an ex –employee) so that he (Tamer) could call Baillie to ask her to come in to work and “*sort out*” the Claimant. The Claimant tried unsuccessfully to contact Ms Wing about this. She then contacted the police and made a complaint. The police attended, discussed the matter with the Claimant, and possibly with Tamer, and went away.
14. The next day the Claimant was called into a meeting and dismissed by Ms Wing. She was dismissed because she had complained to the police.
15. I find that the Claimant's complaint to the police was a protected disclosure under section 43C(1)(b)(ii) and hence that the Claimant was automatically unfairly dismissed under section 103A ERA 1996.
16. I find that the Claimant would have been dismissed anyway at the end of June 2017 because of the problems which had been identified in Ms Wing's email of 8/6/2017 – namely the Claimant's poor relations with other staff and the perception amongst colleagues that she was not part of the team.
17. Furthermore I am not satisfied by the Claimant's evidence as to what mitigation she has received from other employment.
18. In the circumstances it is appropriate to limit her compensation for unfair dismissal to the period ending on the last day of June 2017.

Holiday pay

19. I asked the claimant what holiday pay she had been paid and she said she did not know. I note that in her email on 7/9/2017 Ms Wing has stated that the claimant was paid all her pay in lieu of holidays.
20. I do not find this aspect proved.

Notice pay

21. The Claimant had a statutory right to one weeks notice or pay in lieu. It is not possible to contract out of this. It is common cause that the Claimant was dismissed without notice and with no notice pay.
22. This claim therefore succeeds.

Employment Judge Burns on 23 November 2017