



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs Z M Wilczynska

**Respondent:** Mr Aziz Anjum, t/a Moj Y Moj Restaurant

**Heard at:** London South   **On:** 26 May 2017

**Before:** Employment Judge Pritchard

**Representation**

Claimant: In person

Respondent: No appearance

## RULE 21 JUDGMENT

1. The Claimant was unfairly dismissed under section 99 of the Employment Rights Act 1996 and regulation 21 of the Maternity and Parental Leave Regulations 1999. The Respondent is ordered to pay compensation to the Claimant in the sum of £4,070.00.
2. The Respondent unlawfully discriminated against the Claimant under section 18 of the Equality Act 2010. The Respondent is ordered to pay compensation to the Claimant in the sum of £ 7,448.00 (including interest).
3. The Respondent made unauthorised deductions from the Claimant's wages and the Respondent is ordered to pay the Claimant £168.00 gross.
4. The Respondent failed compensate the Claimant for accrued but untaken holiday upon the termination of her employment and the Respondent is ordered to pay the Claimant £714.00 gross.
5. The Respondent failed to pay the Claimant notice pay and the Respondent is ordered to pay the Claimant £185.00 net.
6. The Respondent failed to provide the Claimant with a written statement of employment particulars and the Respondent is ordered to pay the Claimant two weeks wages in the sum of £420.00.

# REASONS

1. The Respondent having failed to enter a valid response to the claim within the time limit prescribed by rule 16(1) of the Employment Tribunal Rules of Procedure 2013, this Judgment is entered under rule 21 as to both liability and remedy.
2. The Claimant appeared in person before the Tribunal and gave evidence under oath. She was a straightforward and wholly credible witness. She provided the Tribunal with a brief witness statement. The Claimant provided the Tribunal with a number of documents which included her schedule of loss.
3. The Claimant's gross pay when working for the Respondent was £210.00 per week gross, £185.00 net. Her employment commenced on 4 January 2016 and it ended on 9 August 2016. The Claimant's date of birth is 19 September 1997.
4. The Claimant's claim for outstanding wages, holiday pay and notice pay were calculated as follows:
  - 4.1. Outstanding wages: 1 to 4 August 2016 @ £42 per day = £168.00 gross.
  - 4.2. Holiday pay: 17 days accrued @ £42 per day = £714.00 gross
  - 4.3. Notice pay: one week's pay under section 86 of the Employment Rights Act 1996 = £185.00 net.
5. The Claimant did not work for the Respondent for a continuous period of 12 months and is not therefore entitled to a basic award.
6. The Claimant told the Tribunal that had she not been dismissed by the Respondent, she would have left his employment in any event one month before the birth of her baby and, perhaps, would not have sought to return to work until one year after the birth. As the Claimant put it: "maybe I would have gone back to work". The Tribunal accordingly determined that it was just and equitable to award loss of earnings from the end of the notional notice period (16 August 2016) to one month before the date of birth (18 January 2017). This is a period of 22 weeks.  $22 \times £185.00 = £4,070.00$ . The Claimant explained to the Tribunal that she did not claim recoupable benefits in the period from the date of her dismissal to the date of this hearing. The Tribunal made no award for loss of statutory rights: the Claimant did not work for the Respondent for a continuous period of 2 years or more it cannot be said that she lost the right to be unfairly dismissed under section 98 of the Employment Rights Act 1996.
7. The Claimant told the Tribunal how the Respondent was initially kind to her which encouraged her to work extremely hard for him. However, after she told him she was pregnant, he told her she should get rid of the baby. He repeated this three times. This upset the Claimant who told the Tribunal that her pregnancy was a beautiful thing for her and she was so happy that she was to become a mother. According to the Claimant, the Respondent also asked her if she knew who the father was (the Claimant told the Tribunal that of course she knew who the father is). When the Claimant asked a colleague

named Raheen if he would lift a crate of empty glass bottles because she feared that she should not be lifting while pregnant, Raheen told the Claimant if she could not do the job she should get out. The Respondent sent a text message to the Claimant saying that he did not think she should work at the restaurant any more; the Claimant felt sure that this was because she was pregnant. The Claimant and the Respondent had a meeting at which the Respondent told the Claimant she could return to work but the Claimant understood the Respondent to be saying that she must ignore her pregnancy meaning that she would have to follow the Respondent's instructions, including lifting heavy items. The Claimant told the Tribunal that she wondered if the Respondent wanted her to lose the baby or leave of her own accord. The Claimant also makes reference in her statement to the Respondent saying "I bet you don't have pink nipples". All these acts of discrimination caused the Claimant upset and distress. The Tribunal had regard to the guidelines set out in Vento v Chief Constable of West Yorkshire [2003] IRLR 102 as amended by Da'Bell v National Society for Prevention of Cruelty to Children [2010] IRLR 19 and Simmons v Castle [2012] EWCA Civ 1288. In the Tribunal's view, this was a case of discrimination where compensation should be awarded towards the bottom of the middle band. Accordingly, the Tribunal determined that compensation should be awarded in the sum of £7,000.00 for injury to feelings. Interest on that sum is calculated at 8% from dismissal to the date of hearing.  $(£7,000 \times 8\% \times 292) / 365 = £448.00$ .

8. The Claimant's financial losses were considered as part of the compensatory award and to award any further losses by reason of discrimination for the same period would amount to double recovery.
9. The Claimant told the Tribunal that she was not provided with a written statement of employment particulars and the Tribunal awarded 2 weeks' pay under section 38 of the Employment Act 2002.
10. The Claimant received full remission for her Tribunal fees.
11. At the conclusion of the hearing, the Claimant told the Tribunal that she had the Respondent's home address and that his restaurant, to which previous correspondence had been sent, was now closed. The Tribunal asked the Claimant to write to the Tribunal with the Respondent's home address so that future correspondence can be directed accordingly.

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Employment Judge Pritchard

Date: 26 May 2017