



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs R McLelland

**Respondents:** 1. Jolly Good Pub Company Limited  
2. Jonathan Musson  
3. John Locke

**HELD AT:** Liverpool **ON:** 26 October 2017

**BEFORE:** Employment Judge Barker

## REPRESENTATION:

**Claimant:** In person  
**Respondents:** Mr Warnes, Consultant

## JUDGMENT

1. The claimant's equal pay claims were presented within the appropriate time limit found in s127 Equality Act 2010;
2. The second and third respondents' ET3 response forms may be submitted to the Tribunal after the time limit to do so had expired;
3. These proceedings are stayed for a period of 28 days until 23<sup>rd</sup> November 2017. A case management discussion was conducted at the conclusion of the hearing and is recorded separately.

## REASONS

1. The purpose of this hearing was to determine three issues, as follows:
  - a. whether to allow the second and third respondents to submit ET3 response forms out of time; and
  - b. whether the claimant's equal pay claim was in time;

- c. to deal with any remaining case management issues to prepare the case for its final hearing, including making any case management orders that may be necessary.
2. In relation to whether to accept the second and third respondents' claim forms late, there was some confusion from the parties as to when the second and third respondents were first served with these claim forms. It was Mrs McLelland's view that they were first notified in May or June 2017 that the claim form would be served on them individually. Her submissions to the Tribunal were that the Tribunal ought not to permit the second and third respondents to submit their response forms late, as the proceedings had been subject to unreasonable delay which had caused her distress. Mrs McLelland believes that the delay to the proceedings may have been due to the respondents or the respondents' representative. I note that permission was granted by the Tribunal to allow Mrs McLelland to join the second and third respondents as parties to the proceedings in June 2017.
3. Having carefully examined the correspondence on the Tribunal file, I note that following this permission being granted, there was a failure on the part of the Tribunal administration to serve the claim form on the second and third respondents.
4. Initially, the Tribunal administration asked Mrs McLelland for an address for service for Mr Locke and Mr Musson. Mrs McLelland notified the Tribunal that "they can be served at the same address as The Jolly Good Pub Company" and by that Mrs McLelland meant the actual pub business address.
5. What then happened was that a clerk at the Tribunal served the claim forms on Mr Locke and Mr Musson at the first respondent's representative's business address, who quite correctly refused to accept service, as they were not clients of theirs in their individual capacity. Mrs McLelland was then asked for alternative addresses by the Tribunal Administration and she provided those straightaway.
6. By the beginning of July 2017 Mrs McLelland had acted properly by sending alternative addresses for Mr Musson and Mr Locke. The respondents had also acted properly. The Tribunal administration ought to have sent the claim forms to Mr Locke and Mr Musson at those alternative addresses and that did not happen.
7. Therefore, the delay of several months in the second and third respondents responding to the claim form was not the fault of the respondents, it was the Tribunal's fault.
8. Eventually the matter came before Employment Judge Shotter in September for a preliminary hearing and at that hearing Employment Judge Shotter acknowledged that Mr Locke and Mr Musson had not had the claim forms served on them. It was only following this hearing that the claim forms were properly served.
9. The second and third respondents had until 11 October to submit their ET3 forms to the Tribunal. They did not do so until 26 October 2017. The respondents have applied for an extension of time for presenting their response under Rule 20 of the Employment Tribunals Rules of Procedure 2013. The Tribunal has discretion to

allow responses to be presented late and can take a variety of factors into account in deciding whether to grant such an extension of time.

10. One of those factors is the extent of the delay. In these proceedings, the delay is two weeks and not several months, which is a significantly shorter delay than first thought.

11. A second factor is that of practicality in the case management of the proceedings, and the need to ensure a fair hearing. In a case such as this where there are multiple claims being made against three respondents, if a default judgment is issued against two respondents (that being Mr Locke and Mr Musson), but the remaining respondent remains an active party and able to defend itself in the proceedings, it is extremely difficult to see how that would be managed.

12. Indeed, having considered the factual circumstances of this case and the nature of the claims made by Mrs McLelland, because so many of the facts and so many of the arguments that relate to the defence of The Jolly Pub Company also relate to defences raised by Mr Musson and Mr Locke, it is not possible to separate those issues out as they are inextricably linked. It is simply not possible to separate the issues out such that their defence can be excluded or default judgment entered against them.

13. I have also looked at whether there was any prejudice to the claimant caused by the two week delay. Apart from frustration, which is understandable because of the delay that has been caused to these proceedings, there is no other prejudice to Mrs McLelland by allowing the defences to be submitted two weeks late. This is because there are no new issues raised as the defence is identical for all three parties. There are no new issues for Mrs McLelland to deal with and no new evidence that is needed.

### **Equal Pay**

14. The equal pay claims are acknowledged by Mr Warnes to be in time. This is correct. They are in time as per s127 Equality Act 2010 and so can proceed to a final hearing with no further consideration of this preliminary issue.

15. The claimant's equal pay claim was examined by Judge Robinson at a case management discussion in March 2017 and was said to comprise an "equal value" claim and a "like work" claim. The "equal value" claim would appear to have been stayed as a result of this case management discussion, pending the outcome of all of the other claims. The "like work" equal pay claim was to proceed with the other discrimination claims and with the unfair dismissal and wrongful dismissal claims.

16. However, it is the opinion of the Tribunal that for a fair hearing to take place the claimant ought to be given the opportunity to seek legal advice specifically on the equal pay complaints that she brings, and for that reason these proceedings are stayed for 28 days, until 23 November 2017. The respondents' representative did not object to this.

### **Case Management**

17. There then followed a case management discussion at which orders were made for the future good conduct of the proceedings, which orders and discussion is recorded separately.

18. What concerned me, having spoken to Mrs McLelland, and this is no fault of Mrs McLelland, she is an individual who is representing herself and the Tribunal is more than aware of the difficulties that that results in in a complex case such as this, but Mrs McLelland was not when I first spoke to her familiar at all with the components of an equal pay claim. I expressed a reservation to Mrs McLelland about what I was able to tell her in my position as Judge, I am not able to give any legal advice. I did explain to Mrs McLelland the outline of the differences between a "like work" claim and an "equal value" claim, but I am concerned that that is not enough information for Mrs McLelland to allow us to go on and discuss the equal pay claim now and see whether Case Management Orders etc. need to be varied.

19. What I am going to do is I am going to say that now that we know the issues that are in Mrs McLelland's case, because we had an extensive discussion about them during the hearing and I am going to list them for the record in a moment, now that we know where we are in terms of the respondents and their defence and the claims that they have to answer, and knowing that some progress had been made by the parties towards compiling bundles and drafting witness statements, I am going to suggest that this case be adjourned at the end of this hearing for Mrs McLelland to go and seek some legal advice on equal pay claims.

20. *[Mrs McLelland, I know solicitors are expensive and I understand you are representing yourself for a reason, however I want you to investigate, either by doing this yourself or by going to see if you can get some advice from a solicitor on a no win, no fee basis, but I think you need some advice on equal pay. It is very complicated, particularly the equal value claim, but even the "like work" claim itself is quite complicated, and I think you need a bit of a pause in these proceedings given the hearing is not until April 2018 to either try and instruct a solicitor. I don't know whether you've any household insurance that allows you to get legal advice, that is worth looking at. Sometimes your home insurance has legal expenses insurance on there or you can look into a no win/no fee, there are lots of solicitors who do that. Quite a few of them will give you a half hour or an hour of legal advice for free for the first appointment, but I think you need to go and speak to somebody because I cannot advise you and this is a very complicated case. There are lots of different legal issues, and equal pay is particularly complicated.]*

21. *I do not see the point in rushing through the Case Management Orders to have the bundles and witness statements prepared by November to then sit with a gap until April, when in actual fact you perhaps might need to adjust your witness statement or introduce some more documents once you get more of a handle on the equal pay claim. You were very articulately able to tell me your sex discrimination and marriage discrimination complaints. Unfair dismissal and wrongful dismissal have been set out by the respondent at a very early stage in the proceedings so we know what the issues are there, but equal pay is still very cloudy and uncertain.]*

22. *What I am going to say is I am going to allow us this hearing, these proceedings, to have a stay of a month, 28 days, and then at the end of the 28 day*

*period we will have a case management discussion. Hopefully by that point you will be a bit clearer on the equal pay point and what will be done is that a Judge will discuss the equal pay claim with you, clarify the equal pay issues that you want to bring and if there needs to be any adjustment to the bundles or the witness statements you will still have a number of months before the hearing in order to do that, but really it would be very, very difficult for you to go any further with the hearing until you are clearer about that, because that is one your main complaints isn't it, equal pay.]*

23. *Mr Warnes I assume that you are content to do that as well, because it is in the respondents' interests that you are clearer on the equal pay points as well.*

24. For the record what I am going to do now is to list those sex discrimination and marriage issues that you want the Tribunal to decide. I will also set out the unfair dismissal issues for the Tribunal to decide and the wrongful dismissal issues, so that you have one document with all of the issues other than equal pay set out in it so that when we resume a month later it is literally just equal pay that needs to be added into that.

25. The directions that were issued by Employment Judge Shotter, which is that the bundles needed to be completed by 2 October and then the witness statements by 2 November, they are to be ignored. I know that there were issues as to lateness on those points as well. There were some complaints that you raised about that. When the case management discussion takes place in a month's time some new deadlines will be set down for those, taking into account how far each of you are, and Mr Warnes you know, your clients know, they are not to be ignored or missed. There are consequences if those deadlines are missed.

26. The issues so far that have been identified by Mrs McLelland that she wants the Tribunal to decide.

27. Taking first the discrimination complaints, Mrs McLelland complains that she was discriminated against on the basis of her sex and/or her marital status, and the issues that she wishes the Tribunal to decide upon in relation to this discrimination are as follows.

28. As some background Mrs McLelland began a relationship with Mr McLelland, who is also an employee of the first respondent, in spring 2013. Mr McLelland had worked for the first respondent for 2-3 years prior to the start of their relationship. Mrs McLelland had been involved as a director and shareholder and manager of the business from 2009 onwards. She said that she was solely responsible for the running of the business and for the first five years did so with no issue. Her co-director, Mr Musson, had no issues with the running of the business. Mr Coghlan, who is also a shareholder in the business, also had no issues with the claimant's running of the business.

29. The claimant will say to the Tribunal at the final hearing that her fellow business partners began to have issues with her management of the business following the start of her relationship with Mr McLellan and in particular following their marriage in June 2014. The business premises contained a self-contained flat and

the claimant had lived in that self-contained from May 2010 onwards. It also contained an office in the living area, and the office was used in the business management and to hold business meetings. Following the beginning of their relationship the claimant and Mr McLelland stayed over in the flat on a regular basis when he was at work at the pub premises, and then following their marriage in June 2014 moved in on a permanent basis.

30. The complaints that were made against the claimant following the start of her relationship and then particularly following her marriage were as follows:

- (1) Mr McLelland, in June 2014, walked on Mr Locke having a meeting with other members of staff asking those members of staff whether they had any complaints about the claimant or Mr McLelland.
- (2) The claimant was increasingly asked for work to be done to be submitted to Mr Musson for approval first when that had never been done on previous occasions and prior to the start of her relationship with Mr McLelland.
- (3) It was made clear to the claimant and Mr McLelland that it was a problem for the other business partners for her and Mr McLelland to be living in the self-contained flat and they were encouraged to move out, and as the claimant put it she was told that they needed to move out “and have a married life elsewhere”. Furthermore Mr Locke was intending to take over and live in the flat/stay in the flat rather than staying in one of the lettable bedrooms in the business premises.
- (4) There was no communication between Mr Locke, Mr Musson and the claimant other than at their Thursday business meeting from approximately June 2014 onwards. This was contrary to the situation that had been in place in the early years of the business and the claimant will say before the Tribunal that it was clear from the content and the tone of those Thursday business meetings that Mr Locke and Mr Musson had had extensive communication between themselves during the week that excluded her and issues were raised with her only on that Thursday meeting.
- (5) Mr McLelland was the first respondent’s head doorman for several years before the claimant and he married. Prior to that time the claimant will say that there were no complaints raised about his performance as head doorman but following their marriage numerous complaints were raised to her about him that she would have to answer for, was expected to answer for, and to disprove. She therefore found that these Thursday business meetings became extremely stressful because every week she said she would be expecting that a complaint about his behaviour, about matters for example to do with drug use or drug misuse would be raised for her to have to deal with, when prior to their marriage and prior to the start of their relationship no such issues had ever been identified or raised.

- (6) The claimant identified that four members of staff of the first respondent had been stealing and during the investigation into this particular issue the claimant will say that her decisions were overridden by Mr Locke and Mr Musson who backed up the four members of staff in question and supported them against her. Again this had never happened prior to the start of her relationship with Mr McLelland and Mrs McLelland will say that she was subsequently vindicated because those four members of staff were proven to have been guilty of misconduct, and although the four members of staff concerned left prior to the conclusion of the disciplinary proceedings the claimant will say that she had evidence that would have supported those misconduct allegations.
- (7) The claimant will say that she experienced difficulties staffing the door of the pub and difficulties using New Wave Security, a subcontractor company, to provide enough staff to staff the door at busy times in particular. The claimant will say that as a result of these difficulties she presented three alternative business proposals to Mr Locke and Mr Musson that she said would have saved money and resolved the issue of problems staffing the door: the first one was to have the door staff employed as a permanent team of door staff which she says would have provided for consistency and would have saved money; the second alternative was to have an entirely new door team; the third alternative was to continue using New Wave Security with the inconsistencies and the extra cost that that would have brought. The claimant will say that in spite of the problems with continuing to use New Wave that Mr Locke and Mr Musson chose to continue with that particular option even though that was a less convenient and more expensive option.
- (8) Mrs McLelland will say that gradually she became stripped of various elements of her responsibilities. For example, the cashing of tills, banking, maintaining responsibility for safe keys and having her PA do more of the hotel bookings are examples of roles that were taken away from her on a gradual basis. In addition Mrs McLelland will say that she was discouraged from coming into work at the weekend because Mr Locke had assumed responsibility for the weekend period. In general Mrs McLelland will say in support of her claims for discrimination on the basis of sex and marital status that during that two year period prior to her dismissal and following her marriage to Mr McLelland she was questioned constantly, her management authority was undermined and decisions that she took were either overridden or ignored by Mr Musson and Mr Locke, and that this constitutes unlawful discrimination on the basis of her gender and/or her marital status.
- (9) The claimant will also say that one of the reasons, if not the principal reason, for her dismissal was because of her marital status and/or her gender. If the link between her gender and/or her marital status and her dismissal is established before the Tribunal, such a dismissal would be automatically unfair and the Tribunal would not go on to consider whether

the respondents' actions were fair and reasonable in relation to that dismissal.

- (10) In the alternative if the claimant does not establish a causal link between her gender and/or marital status and her dismissal the claimant nevertheless wants the Tribunal to consider whether she has been unfairly dismissed.
- (11) The respondents will say that they had a fair reason for dismissing the claimant, that being misconduct. The claimant will say that there was an issue that arose with her housekeeper six weeks before her suspension and that the housekeeper was encouraged to make a formal written complaint to Mr Musson by email and encouraged to do so by Mr Locke. This then led to the claimant's suspension after the Bank Holiday weekend in August 2016 but that this allegation was withdrawn because it was unsubstantiated and that in the alternative the first respondent then dismissed the claimant because of allegations of bullying and harassment against members of staff that arose in June 2016. The claimant questions the credibility of dismissal for this reason given the length of time that elapsed between June 2016 and her eventual dismissal date in November 2016, and the claimant will say that this reason was a contrived reason for her dismissal and was not the real reason for her dismissal, which she says was partly to do with her gender and her marital status.
- (12) The respondents rely on conduct. The respondents will say that the allegations of bullying and harassment against another member of staff were allegations of misconduct sufficient to justify her dismissal. The respondents also say that they followed a fair procedure and acted reasonably in the circumstances in treating conduct as a reason justifying dismissal.
- (13) The claimant also says that she has not been paid the correct notice monies. The claimant says that she was entitled to a notice period of six months. The respondents dispute that the claimant is entitled to six months' notice money.

31. The final issue that is before the Tribunal is that of equal pay. As has been previously expressed, Mrs McLelland is a claimant in person and has been advised by the Tribunal to seek legal advice if at all possible on the aspects of her equal pay claim, those being like work and equal value. As the proceedings are currently managed, the equal value element of the equal pay claim is suspended pending the outcome of the other complaints that the claimant brings against the Tribunal. However, it is the opinion of the Tribunal that for a fair hearing to take place the claimant needs to be better informed as to the basis of the equal pay complaints that she brings, and for that reason these proceedings are stayed for 28 days to allow the claimant to seek legal advice if possible or alternatively to discover for herself some more information about the equal pay claims that she brings.

32. Once that 28 day period has elapsed, and 28 days from today's date is Thursday 23 November 2017, there is to be listed a case management discussion



for a duration of an hour before an Employment Judge sitting alone to allow the parties further to explore those equal pay issues and identify the complaints Mrs McLelland brings, and furthermore to adjust the directions timetable that was set down by Employment Judge Shotter in September 2017 to allow for those equal pay claims to be considered, and to adjust the length of the listed hearing in April 2018 is necessary.

33. The Tribunal understands that the parties are partway towards completing the disclosure exercise in these proceedings and that work has been done on the parties' relevant witness statements. However, this exercise is not to be completed until Mrs McLelland has had the opportunity to fully inform herself as to the nature of the equal pay complaints that she wishes the Tribunal to consider.

34. On that basis the orders that are made are that these proceedings are stayed for 28 days until **Thursday 23 November 2017** after which point there will be a case management discussion to set down any further Case Management Orders necessary for the future good conduct of these proceedings.

Employment Judge Barker

Date \_\_\_3 November 2017\_\_\_\_\_

ORDER SENT TO THE PARTIES ON

7 November 2017

FOR THE TRIBUNAL OFFICE

**(1) Any person who without reasonable excuse fails to comply with an Order to which section 7(4) of the Employment Tribunals Act 1996 applies shall be liable on summary conviction to a fine of £1,000.00.**

**(2) Under rule 6, if this Order is not complied with, the Tribunal may take such action as it considers just which may include (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.**

**(3) You may apply under rule 29 for this Order to be varied, suspended or set aside.**