



EMPLOYMENT TRIBUNALS

Claimant: Mrs S Attisha

Respondents:

1. Moor Allerton Preparatory School Limited
2. AS Northern Limited
3. Alpha Schools (Holdings) Limited
4. Mr Ali Khan
5. Adriana Ewart-Jones
6. Alpha Schools Limited

JUDGMENT

1. The following complaints are dismissed upon withdrawal by the claimant:
 - (a) The complaint of a breach of the flexible working provisions of the Employment Rights Act contained in paragraphs 62 and 63 of the Particulars of Claim
 - (b) The complaint of indirect sex discrimination contrary to section 19 Equality Act 2010 contained in paragraph 67(b) of the Particulars of Claim.
2. The remaining complaints will proceed. The issues to be determined in the light of the claimant's additional information of 20 October 2017 are set out in the Annex to this judgment which supersedes Annex B to the case management orders of 21 September 2017.

Employment Judge Franey

14 November 2017

JUDGMENT SENT TO THE PARTIES ON
20 November 2017

FOR THE TRIBUNAL OFFICE

ANNEX
Complaints and Issues
Revised 14 November 2017

Detriment in employment – Part V Employment Rights Act 1996

Flexible working detriment – section 47E

1. Was the claimant subjected to any detriment by any act or deliberate failure to act by the employing respondent as alleged in paragraphs 64.a-64.h (excluding paragraphs 64.f and 64.g which were withdrawn)?

2. If so, can the employing respondent show the ground on which any such act or deliberate failure to act was done and that it was not the claimant's flexible working request?

Pregnancy and maternity detriment – section 37C Employment Rights Act 1996/Reg 19 MAPLE

3. Was the claimant subjected to a detriment by any act or deliberate failure to act by the employing respondent in either of the following alleged respects:

- (a) a failure to allow her the benefit of terms and conditions of employment concerning holiday pay during maternity leave; and/or
- (b) a failure to honour her right to return after maternity leave under regulation 18 of MAPLE?

4. If so, can the employing respondent show the ground for any such act or deliberate failure to act and that it was not a ground within regulation 19(2) of MAPLE?

Time limits

5. In so far as any of the acts or failures to act to which these complaints relate occurred more than three months prior to the presentation of the claim form, allowing for the effect of early conciliation, can the claimant show that:

- (a) they formed part of a series of similar acts or failures the last of which occurred less than three months before presentation of the claim; or
- (b) it was not reasonably practicable for the complaint to be presented before the end of that period of three months and it was presented within such further period as the Tribunal considers reasonable?

Equality Act 2010

Pregnancy and maternity discrimination – section 18

6. Are the facts such that the Tribunal could conclude that during her protected period the employing respondent treated the claimant unfavourably because of pregnancy in:

- (a) in or before June 2016 allocating her position of Year 1 teacher to Mr Vernon; and/or
- (b) prior to 5 April 2017 advertising and subsequently filling the roles of Early Years and Infant Teacher and Key Stage 2 Teacher?

7. If so, can the employing respondent nevertheless show that it did not contravene section 18?

Harassment related to disability – section 26

8. Are the facts such that in relation to any or all of the allegations contained in paragraph 72 of the claim form the Tribunal could conclude that the respondents or any of them:

- (a) subjected the claimant to unwanted conduct;
- (b) which was related to disability; and
- (c) which had the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?

9. If so, can the respondents nevertheless show that they did not contravene section 26?

Indirect disability discrimination – section 19

10. Are the facts such that the Tribunal could conclude that:

- (a) the respondents applied one or more of the PCPs specified in paragraph 74 of the claim form;
- (b) each PCP which was applied placed disabled people at a particular disadvantage when compared with people who were not disabled, as asserted in the further information of 20 October 2017, and
- (c) each PCP which was applied put the claimant at that disadvantage?

11. If so, can the respondents show that they did not contravene section 19, whether because each PCP was a proportionate means of achieving a legitimate aim (to be specified in the amended response) or otherwise?

Discrimination arising from disability – section 15

12. Can the respondents show that they did not know and could not reasonably have been expected to have known that the claimant had the disability?

13. If not, are the facts such that the Tribunal could conclude that in relation to the matters set out in paragraph 77 of the claim form the respondents treated the claimant unfavourably because of something (her sickness absence) which arose in consequence of her disability?

14. If so, can the respondents nevertheless show that they did not contravene section 15, whether because the treatment was a proportionate means of achieving a legitimate aim (to be specified in the amended response) or otherwise?

Breach of duty to make reasonable adjustments – sections 20 and 21

15. Are the facts such that the Tribunal could conclude that

- (a) the respondents applied any of the PCPs set out in paragraph 79 of the claim form, and that
- (b) each PCP applied put the claimant at a substantial disadvantage because of her disability compared with a person who is not disabled because her disability made it more difficult for her to work five days a week, to teach without support, to undertake preparation assembly and PHSE roles, and because her disability meant that stress resulting from delay to her grievance was greater than for a disabled person?

16. If so, can the respondents nevertheless show that they did not know and could not reasonably have been expected to have known that the claimant had a disability and was likely to be placed at that disadvantage?

17. If not, did the respondents fail in their duty to take such steps as it would have been reasonable to have taken to avoid that disadvantage? The adjustments to the PCPs for which the claimant contends are set out in paragraph 80 of the claim form and paragraph 4.g of the additional information of 20 October 2017.

Time limits

18. In so far as any of the matters for which the claimant seeks a remedy occurred more than three months prior to the presentation of her claim, allowing for the effect of early conciliation, can the claimant show:

- (a) that it formed part of conduct extending over a period which ended less than three months before presentation; or
- (b) that it would be just and equitable for the Tribunal to allow a longer time for bringing proceedings?

Unlawful Deductions from Pay

Sick Pay

19. Can the claimant establish that the respondent made unlawful deductions from her pay by failing to pay her full pay during sick leave from February 2017 onwards?

Holiday Pay

20. Can the claimant establish that the respondent made an unlawful deduction from her pay by failing to pay her unpaid contractual holiday pay for the holiday years 2015/2016 and 2016/2017?

Time Limits

21. In so far as any payment of wages from which it is alleged an unlawful deduction has been made occurred more than three months prior to the presentation of the claim, allowing for the effect of early conciliation, can the claimant show that:

- (a) it formed part of a series of deductions ending less than three months before presentation of the claim; or
- (b) that it was not reasonably practicable for the complaint to be presented before the end of the three month period and that it was presented within such further period as the Tribunal considers reasonable?

Remedy

22. If any of the above complaints succeed, what is the appropriate remedy?