



EMPLOYMENT TRIBUNALS

Claimant:
Ms J Breach

v

Respondent:
Bow House Lifestyle Ltd

PRELIMINARY HEARING

Heard at: Reading

On: 2 May 2107

Before: Employment Judge J Hill

Appearances

For the Claimant: Ms N Hillier – HR consultant

For the Respondent: Ms B Higgins - Counsel

JUDGMENT

1. The name of the 1st respondent is amended to include “Ltd”.
2. The 2nd and 3rd Respondents (Ms J Weeks and Ms J Preston) are discharged from the proceedings.

CASE MANAGEMENT SUMMARY

Listing the hearing

1. After all the matters set out below had been discussed, we agreed that the liability hearing in this claim would be completed within **2 days**. It has been listed at **Reading Employment Tribunals, 30-31 Friar Street (Entrance in Merchants Place), Reading RG1 1DX** to start at 10.00 am or so soon thereafter as possible on **23 & 24 October 2017**. The parties are to attend by **9.30 am**. The hearing may go short but this allocation is based on the claimant’s intention to give evidence and call **2** witnesses and the respondent’s to call **2** witnesses. The time will be used as follows:-
 - 1.1 Maximum **1.5** days for reading, oral and other evidence on liability;
 - 1.2 A maximum total of **1** hour (half each) for submissions on liability;
 - 1.3 Approximately **1.5 hours** for the tribunal to determine the issues which it has to decide and reach its conclusions;
 - 1.4 **30 minutes** for the tribunal to give judgment, with reasons if possible;

The complaint(s)

2. By a claim form presented on 22 January 2017, the claimant brought complaints of constructive unfair dismissal; detriment arising from health and safety; breach of the Working Time Regulations (48 hours directive); unlawful deduction of wages; breach of contract (commission). The respondent defended the claims.

The issues

3. I now record that the issues between the parties which fall to be determined by the tribunal are as follows.

4. **Unfair dismissal claim**

- 4.1.1 Did the respondent act in a way without proper cause or justification to undermine the claimant's contract of employment?

- 4.1.2 Was the claimant entitled to accept this/these action(s) as a repudiatory breach of contract and resign.

- 4.1.3 If yes, was the dismissal fair or unfair?

5. **Detriment arising from health and safety**

The respondent allegedly asked the claimant to work alone and/or use a step ladder alone. When the claimant complained about such actions did the respondent act in a way to her detriment within the meaning of s.44 (2)(c) of the Employment Rights Act 1996?

6. **Breach of the Working Time Regulations**

Was the claimant required to work more than 48 hours in a week without signing a derogation?

7. **Other claims: Unlawful deduction of wages: breach of contract**

- 7.1 Was the claimant offered an unconditional pay rise of £1.50 or was it conditional on her qualifying as an interior designer?

- 7.2 Was the claimant entitled under her contract to the payment of commission. If yes, did the respondent fail to pay her that commission.

8. **Remedies**

- 8.1 If the claimant succeeds, in whole or part, the tribunal will be concerned with issues of remedy.

- 8.2 There may fall to be considered reinstatement, re-engagement, a declaration in respect of any proven unlawful discrimination, recommendations and/or compensation for loss of earnings, injury to feelings, breach of contract and/or the award of interest.

Other matters

9. I made the following case management orders by consent

ORDERS

Made pursuant to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013

1. Amended response/Further information

- 1.1 The respondent is ordered to serve on the claimant a properly structured request for further and better particulars of the claims relating to the Working time Regulations 1998 and the detriment arising because of health and safety by **19 May 2017**.
- 1.2 The claimant is ordered by **9 June 2017** to respond to that request giving all the details sought, in particular what event is relied on; when it happened; who was involved and what, if any, paperwork would support that claim. The response must be served on both the respondent and the tribunal.
- 1.3 The respondent is given leave to present an amended response, if so advised, by **30 June 2017**.

2. Disclosure of documents

- 2.1 The parties are ordered to give mutual disclosure of documents relevant to the issues identified above by list and copy documents so as to arrive on or before **17 July 2017**. This includes, from the claimant, documents relevant to all aspects of any remedy sought.
- 2.2 Documents relevant to remedy include evidence of all attempts to find alternative employment: for example a job centre record, all adverts applied to, all correspondence in writing or by email with agencies or prospective employers, evidence of all attempts to set up in self-employment, all pay slips from work secured since the dismissal, the terms and conditions of any new employment.
- 2.3 This order is made on the standard civil procedure rules basis which requires the parties to disclose all documents relevant to the issues which are in their possession, custody or control, whether they assist the party who introduces them, the other party or appear neutral.
- 2.4 The parties shall comply with the date for disclosure given above, but if despite their best attempts, further documents come to light (or are created) after that date, then those documents shall be disclosed as soon as practicable in accordance with the duty of continuing disclosure.

3. Statement of remedy/Schedule of loss

- 3.1 The claimant is ordered to provide to the respondent and to the Tribunal, so as to arrive on or before **9 June 2017** a properly itemed statement of the remedy sought (also called a schedule of loss).
- 3.2 The claimant is ordered to include information relevant to the receipt of any state benefits.

A pro forma schedule of loss is attached herewith to assist in the preparation of the schedule.

4. Bundle of documents

- 4.1 It is ordered that the respondent has primary responsibility for the creation of the single joint bundle of documents required for the hearing.
- 4.2 The respondent is ordered to provide to the claimant a full, indexed page numbered bundle to arrive on or before **8 September 2017**.
- 4.3 The respondent is ordered to bring **sufficient additional copies (at least five)** to the tribunal for use at the hearing, by **9.30 am** on the morning of the hearing.

5. Witness statements

- 5.1 It is ordered that oral evidence in chief will be given by reference to typed witness statements from parties and witnesses.
- 5.2 The witness statements must be full, but not repetitive. They must set out all the facts about which a witness intends to tell the tribunal, relevant to the issues as identified above. They must not include generalisations, argument, hypothesis or irrelevant material.
- 5.3 The facts must be set out in numbered paragraphs on numbered pages in chronological order.
- 5.4 If a witness intends to refer to a document, the page number in the bundle must be set out in the reference.
- 5.5 It is ordered that witness statements are exchanged so as to arrive on or before **22 September 2017**.
- 5.6 Each party must bring to the tribunal **at least five additional copies** of the statements which it has served. The parties are reminded of rule 44, which requires a copy of each statement to be provided to the public.

6. Other matters

- 6.1 The parties are ordered to prepare a neutral chronology for use at the hearing.

- 6.2 The parties are ordered to agree a statement of issues identifying the legal and factual matters in dispute and thus for consideration by the tribunal
- 6.3 These documents should be agreed 7 days before the hearing and brought to the tribunal on the first day of the hearing.

CONSEQUENCES OF NON-COMPLIANCE

1. **Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.**
2. **The Tribunal may also make a further order (an “unless order”) providing that unless it is complied with, the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice or hold a preliminary hearing or a hearing.**
3. **An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative.**

Employment Judge J Hill

Date: 2 May 2017

Sent to the parties on: 17 May 2017