



EMPLOYMENT TRIBUNALS

Claimants: Mrs R Bemrose and Mrs B Hassell

Respondent: TSRC Property Services Ltd

Heard at: Leicester
On: 10 May 2021

Before: Employment Judge M Butler (sitting alone)

Representation

Claimants: Ms H Barney of Counsel
Respondent: No attendance

RESERVED JUDGMENT

1. The Judgment of the Employment Judge is that the Claimants' claims of unfair dismissal, holiday pay and breach of contract succeed.
2. The Respondent is ordered to pay the first named Claimant compensation in the sum of £8,169.46 and the second named Claimant compensation in the sum of £6,235.77.
3. The claims for a redundancy payment are dismissed.

RESERVED REASONS

The claims

1. The first Claimant submitted her Claim Form to the tribunal on 4 August 2020 and the second Claimant submitted her Claim Form on 5 August 2020. Both had entered into a period of early conciliation. The Claimants claimed unfair dismissal, holiday pay, wrongful dismissal and a redundancy payment.

2. The claims against the Respondent were made after the Claimants' employment was transferred to it under the Transfer of Undertakings (Protection of Employment) Regulations 2006.
3. The Respondent's conduct of the cases against them left much to be desired. The Response Forms gave no detailed account of how the Claimants' employment came to be terminated. There were vague references to redundancy but nothing was ever actioned in that regard.
4. The Respondent also consistently failed to comply with the tribunal's case management orders and failed to attend the hearing before me. On the day before the hearing, on 9 May 2021 (which was a Sunday), the Respondent sent an email at 16:21 saying:

“...

It is with deepest regret that due to unforeseen circumstance above our control we will be unable to attend the court hearing for the above case on the 10th May 2021.

...”

It went on to ask for a “*delay in proceedings*”.

Since it was apparent the Respondent was not going to attend the hearing and gave no reason for not attending, I decided that the hearing should proceed.

6. These two cases had previously been consolidated by order of the tribunal because the claims arose out of the same circumstances.

The issues

7. The issues before me are to determine whether the Claimants were dismissed and, if so, the reason for the dismissal and if the dismissals were not for a potentially fair reason, to determine the amount of compensation payable to the Claimants. The second issue was to determine whether the monetary payments claimed by the Claimants were properly due to them.

The evidence

8. Both Claimants prepared witness statements and gave oral evidence. As the Respondent did not attend, their evidence was not challenged.

The factual background

9. The first Claimant had continuous service which commenced on 22 August 2011 and on the date her employment terminated, her salary was £4,804.51 per annum with a benefit of 28 days holiday per year.
10. On 23 March 2020, as the country went into lockdown due to the pandemic, she received a note from the Respondent unilaterally reducing her holiday

entitlement and converting her contract of employment to a zero hours contract. At a meeting on the same day, she was told by the Respondent that she would have to wear a uniform for Storm Healthcare and her job function would be to assist individuals registering for care work for Storm Healthcare as well as accepting parcels and post for the Respondent. She claims that she was told all staff would be furloughed by the Respondent but would be required to work 80% of their hours for Storm Healthcare. The first Claimant protested about the changes to her contract of employment and her duties and was then called to a meeting on Monday 20 April 2020 by Mr Chopra of the Respondent who said he was offering her redundancy. He told her she could leave and since then she heard nothing about the redundancy and was not paid. There was no consultation with her.

11. The second Claimant stated that she had been employed by the Respondent from 27 July 2015 at a salary of £6,684. She was contacted by Mr Chopra on 20 March 2020 who asked her to attend a meeting on 23 March 2020. She attended the meeting along with the first Claimant and confirms the first Claimant's account of that meeting. On the same day, the second Claimant was presented with a wage slip which showed a shortfall in her holiday pay of £155.99. She queried this the following day and chased a response on 29 March 2020. She then had a period away from the Respondent due to her husband, who is disabled, having to self-isolate. When she returned to work on 15 April 2020, Mr Chopra said he was surprised to see her as he was not employing her. He said she was not going to be furloughed, her outstanding holiday pay would be sorted out at a later date, accused her of being very rude, which he said was a "*dismissible offence*". The second Claimant categorically denies that she left the Respondent's employment voluntarily.
12. The above evidence not being challenged by the Respondent, I accept it as true accounts and find accordingly.

Conclusions

13. In the light of my findings of fact as set out above, I conclude that in respect of both Claimants the Respondent, by the conduct of Mr Chopra, dismissed them. No potentially fair reason for the dismissals has been given and I therefore conclude that they have been unfairly dismissed.
14. I also conclude that the Claimants are entitled to the outstanding holiday pay they have claimed.
15. I discussed the compensation to be awarded with the Claimants and Ms Barney. Following that discussion, I have considered the amounts claimed in detail. In respect of both Claimants, I find that the ACAS Code of Conduct in relation to disciplinary hearings was not followed by the Respondent and it is appropriate to award an uplift at the maximum amount of 25%.

16. I set out below the sums to be awarded to each Claimant. They both gave evidence as to their attempts to mitigate their losses by finding alternative employment. I accept that they made genuine and concerted efforts to obtain employment, which would not have been easy as the country was in midst of the pandemic.

The first Claimant

17. Basic award	£1,108.68
Holiday pay	£172.33
Payment in lieu of notice	£400.38
Loss of future earnings for 11 months	£4,404.18
Expenses in obtaining further employment	£100.00
Failure to supply a statement of particulars of employment	£200.00
Loss of statutory employment rights	<u>£350.00</u>
Total award	£6,735.57
25% uplift for failure to follow the ACAS Code	<u>£1,213.54</u>
Grand total	£7,849.11

The second Claimant

18. Basic award	£1,044.38
Holiday pay	£155.99
Payment in lieu of notice	£557.00
Loss of future earnings for 11 months	£6,127.00
Expenses in obtaining further employment	£100.00
Failure to supply a statement of particulars of employment	£200.00
Loss of statutory employment rights	<u>£350.00</u>
Total	£8,214.37
25% uplift to compensatory award £1,644.25	
Grand total	£9,858.95

19. The second Claimant received Job Seekers' Allowance from 21 July 2020 until 14 January 2021 (25 weeks). That is £74.35 per week. The Employment Protection (Recoupment of Job Seekers' Allowance and Income Support) Regulations 1996, SI 1996/2349 (Recoupment Regulations 1996) apply to this award. The prescribed element of the award is £7,169.99. The dates of the period to which the prescribed element is attributable are 16 April 2020 until 1 July 2021. The amount by which the monetary award exceeds the prescribed element is £1,044.38.

Costs

21. In the light of the Respondent's conduct in this matter, the Claimants are seeking costs. A schedule of those costs have been sent to the Respondent and an order in respect of the determination of the costs application is attached to this judgment.

Employment Judge M Butler

Date: 30 July 2021

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

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