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# EMPLOYMENT TRIBUNALS

**Claimant:** Ms K Nasreen

**Respondent:** Dr Malik t/a Malik Law Solicitors (in intervention)

**Heard at:** East London Hearing Centre

**On:** 12 October 2018

**Before:** Employment Judge Jones

## Representation

**Claimant:** In person

**Respondent:** No appearance and no representation

**JUDGMENT** having been sent to the parties on 12 October 2019 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013.

## REASONS

1. The Claimant made four complaints. She complained of unfair dismissal, sex discrimination and unlawful deduction of wages in respect of outstanding wages and holiday pay.

2. The Claimant attended the hearing and gave sworn evidence. There was no representation from the Respondent or the intervener. The Tribunal considered all the evidence before it and made the following Findings of Fact.

### Findings of Fact

3. The Claimant confirmed that she was employed by Malik Law Chambers which was owned by Dr Malik. The office was based at 233 Bethnal Green Road, London, E2 6AB. The Respondent failed to file any ET3 Response to this Claim.

4. As we had not received an ET3 from the Respondent, the Tribunal conducted a company search which confirmed that Malik Law Chambers operated at 3 points across England - Bethnal Green Road, Southall, and Birmingham. That is in accordance with the Claimant's evidence. The company search also revealed that Dr Malik, was a manager of the firm called Malik Law Chambers operating at 233 Bethnal Green Road, London, 239 The Broadway, Southall and 393-395 Soho Road, Birmingham. The search stated that the firm had failed to comply with SRA Principles 2011 and the SRA decided that there was reason to suspect dishonesty on the part of Dr Akbar Ali Malik and Mr Imtiaz Ali Malik, the firm's managers in relation to the firm's business. That confirmed that Dr Malik was one of the firm's managers.

5. When the claim form was served on the Respondent the Tribunal also enclosed a Notice of a Preliminary Hearing. The hearing was listed for Friday 12 October 2018 at 10am. Dr Malik did not attend the hearing or complete the Response form but he did receive the documents as he completed an Agenda form for the preliminary hearing.

6. In the Agenda form he stated that he had not been the Claimant's employer but that the firm had been run by Halima Malik and Mr I A Malik. He stated that he was not I A Malik. He attached a letter dated 12 September 2017 from HMRC to Ms Halima and Mr I A Malik at 223 Bethnal Green Road. The letter described itself as a 'Notice to pay amount due: £857.83'. The letter did not refer to and was not addressed to the firm Malik Law Chambers.

7. In the statement attached to the Agenda form he applied for the claim to be struck out on the basis that he was a consultant to the firm and not a partner and that the claim was malicious as the Claimant had only brought the claim against him. He confirmed that he had worked for the firm as a consultant but stated that he had begun working there after in February 2018, which was long after the Claimant left her job just before Christmas 2017. He also stated that he had not worked since April 2018 and that he was unwell and on medication due to ill health and that the claim should be struck out with costs.

8. The Tribunal considered whether to make a default judgment under Rule 21 of the Employment Tribunals Rule of Procedure 2013 which gives the Tribunal the power to make a default judgment where no response has been presented within the time limit and no application has been received from the Respondent for an extension of time in which to present a response. The Tribunal considered that it was appropriate to wait until the hearing as Dr Malik could attend and make applications to the court.

9. Dr Malik did not attend the preliminary hearing. The Tribunal decided to it would be in the interests of justice, saving time and expense and in keeping with the overriding objective to determine the claim that day rather than adjourn to another day.

10. The Claimant gave sworn evidence at the hearing in support of her claim.

11. In the hearing, the Claimant confirmed that Dr Akbar Malik was one of the owners of the practice known as Malik Law chambers where she had been employed as a receptionist.

12. In January 2018, the Claimant who was pregnant became ill with pregnancy-related illness and was unable to attend work. The Claimant provided the Respondent's with a medical certificate advising her not to return to work for a period of at least 14 days, given her pregnancy related illness. The Claimant was off sick for approximately four weeks. In mid-February, when her husband contacted the Practice, he was told that the Claimant was no longer required.

13. The Claimant's evidence was that she continued to send in medical certificates and messages to the Respondent. She made several calls, attempting to speak to Dr Malik but received no reply and her calls went unanswered. The Claimant's last medical certificate provided to the Respondent was for the period of 10 March to 28 March 2018. The Claimant's husband hand delivered the medical certificates to the Practice and he was told that the Claimant was no longer needed by the Practice.

14. The Claimant sought advice from the Citizen's Advice Bureau who contacted the Respondent. The CAB was told by email and by telephone that the Claimant had been dismissed because she took unauthorised holidays in 2017. This was denied by the Claimant.

15. The Claimant's evidence was that the Respondent refused to communicate with the Citizen's Advice Bureau thereafter and she began the ACAS conciliation process. ACAS also tried unsuccessfully to contact the Respondent.

16. The Claimant informed the Tribunal that she was aware that the business was intervened by the Law society on 18 April and the Practice is no longer is in operation. The Claimant believes that Respondent has ceased trading.

17. The Claimant's evidence was that she worked for the Respondent from 2014 to 2018.

18. The Claimant's evidence was that she was not paid for the last four weeks of her employment, from the date on which she informed the Respondent that she was ill on 22 January 2018. The Claimant brought payslips to the hearing and the Tribunal noted their contents. The payslips show that the Claimant's wages were £1140.84 on 2 January 2018 and £1328.56 on 13 November. She was also paid the sum of £1328.56 in August.

19. The Claimant complains that she is owed 4 days holiday pay.

## **Law**

20. The Tribunal considered the following law: -

- 20.1. Section 13 Employment Rights Act 1996; which confirms that wages should not be deducted from an employee unless authorised by a statute or under a signed agreement with the employee.

- 20.2. Section 13 of the Equality Act 2010 states that less favourable treatment to an employee on the grounds of gender is direct sex discrimination which is prohibited. Less favourable treatment towards a pregnant woman for reasons related to that pregnancy is discrimination contrary to section 18 of the Equality Act 2010.
- 20.3. Section 124 of the Equality Act 2010 makes provision for an employee to be compensated for the hurt feelings and the losses that arise from being treated less favourably on the grounds of the protected characteristics of sex.
- 20.4. The Working Time Regulations 1998 give all workers the right to four weeks annual leave and to be paid in lieu of any annual leave accrued at the time of their dismissal that had not been used.

## **Judgment**

### **OUTSTANDING WAGES**

21. The Claimant was not paid for the last month of employment. She began her sickness on 11 January. She was told in mid-February that she was no longer required. The Respondent followed no procedure in dismissing the Claimant. There were no meetings and the Tribunal was not shown any letters from the Respondent informing her of its decision to dismiss her or why.

22. In this Tribunal's judgment the Claimant is entitled to her wages for the month of January. In this Tribunal's judgment, taking the average of the three months' payslips that the Claimant presented today, it is likely that a month's wages was likely to be approximately £1,356.00. The Respondent is ordered to pay the Claimant's wage for her final month of employment of £1,356.00.

### **HOLIDAY PAY**

23. The Claimant accrued four days holiday, which is outstanding to her. The Respondent is ordered to pay to the Claimant the sum of £156.00 in relation to her outstanding existing holiday entitlement.

### **UNFAIR DISMISSAL**

24. It is in this Tribunal's judgment that the Respondent dismissed the Claimant because she was sick and unable to work because of pregnancy related illness. The Claimant would have been employed for another two months before the firm was intervened in April and the business shutdown. The Respondent ceased trading in April. The Tribunal therefore awards the Claimant two months wages equal  $£1,356.00 \times 2 = £2,712.00$ .

### **PREGNANCY/OR MATERNITY DISCRIMINATION**

25. The Claimant was off sick because of pregnancy-related illness. The Claimant remained off sick for four weeks because of pregnancy-related illness.

26. It is this Tribunal's judgment that there was no other reason put forward for the Claimant's dismissal. It is clear that she was dismissed as she was not allowed to return to work when she wished to do so. Her husband was told that her employment had been terminated.

27. It is this Tribunal's judgment that the Claimant was treated unfavourably because of illness suffered by her as a result of her pregnancy. She was dismissed because of her pregnancy-related illness. Her dismissal was a discriminatory dismissal.

28. The Respondent treated the Claimant less favourably for a reason related to her pregnancy. The Claimant's feelings were hurt by her dismissal and her treatment. The Claimant is awarded £500 as remedy for injury to feelings that she experienced because of the pregnancy-related discrimination.

29. The Respondent is ordered to pay the Claimant the total sum of £1,356 + £156 + £2,712 + £500 = £4,724.00 forthwith to the Claimant.

Employment Judge Jones

10 May 2019