



EMPLOYMENT TRIBUNALS

Claimant
Mr S Sangster

v

Respondent
Honest Burgers Limited

Heard at: Central London Employment Tribunal On: 7 September 2022
Before: Employment Judge Norris, sitting alone (via CVP)

Representation:

Claimant – In person

Respondent – Did not appear and was not represented (no ET3)

JUDGMENT

1. **The Respondent having entered no response to the claim, default judgment pursuant to Rule 21 (Schedule 1, Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013) is entered in the Claimant's favour in respect of the complaints of direct age discrimination, unfair dismissal and other payments.**
2. **The Respondent is ordered to pay the following sums to the Claimant:**
 - a. **In respect of injury to feelings for age discrimination, the sum of £8,500.00;**
 - b. **In respect of loss of earnings for unfair dismissal, the sum of £2,508.00;**
 - c. **In respect of guaranteed payments outstanding at the date of termination, the sum of £152.00,**

a total of £11,160.00 to be paid without deduction.

REASONS

Background

1. The Claimant worked for the Respondent as a Waiter, from 7 November 2021 until his dismissal effective 12 February 2022. The Claimant entered ACAS Early Conciliation between 19 and 21 April 2022 and submitted his claim on 10 May 2022. He had indicated that he was bringing complaints of age discrimination, unfair dismissal for asserting his statutory rights, arrears of pay and "other payments".
2. The claim was acknowledged by the Tribunal administration on 15 June 2022 and a copy sent to the Respondent on the same day. The deadline

for filing the ET3 was 13 July 2022. The claim, a blank response form and a covering letter with a link to the portal on which an ET3 can be completed online were sent to the (then) registered office for the Respondent: PO Box 71, 95, Mortimer Street, London W1W 7GB.

3. On 21 June 2022, the Tribunal administration wrote to the parties informing them that there would be a Preliminary Hearing (Case Management) on 8 August 2022. This document was also sent to the Respondent's registered address, which at the time remained the PO Box in Mortimer Street.
4. Evidently, post was being received at that address, because on 29 June 2022, Ms Maureen Sandbach emailed the Tribunal. She stated that she was the new "People Director" for the Respondent and that although she had received the notice of hearing, she did not believe it had received the ET1. She asked for a further copy to be sent direct to her, by email. Notwithstanding that the footer of her email bore the PO Box address in Mortimer Street as the Respondent's registered office, Ms Sandbach asked that the Tribunal amend its records to show the Respondent's postal address as 10 [sic] Lant Street, London SE1 1QR.
5. On 21 July, the Tribunal did send a further copy of the ET1 by email to Ms Sandbach's address. On the same date however, in line with the Regional Judge's instructions, the Claimant was asked to provide suitable email addresses for those responsible for HR at the Respondent, as the Regional Judge was concerned that in the absence of a response, the Respondent may not have been properly served. On 27 July, the Claimant duly provided the names of two further employees, who he said had handled his case: Kate Moscardini and Charlie Walker-Mcclimens. The Tribunal administration emailed both of those employees to ask whether the Respondent had submitted a defence to the claim, or intended to do so. Neither of them replied.
6. On 28 July the Tribunal emailed Ms Sandbach again to ask her to confirm whether an ET3 had been submitted and if not, whether it intended to resist the claim, sending a response/ET3 in draft if it did, together with an application for an extension of time to present that response. The email indicated that the Respondent must include in any such application the reasons for not presenting the ET3 within the time allocation. No response was received. The Tribunal emailed Ms Sandbach again on 2 August to repeat the question of whether the Respondent intended to reply and to respond to the claim. The email warned that if no response was received by 5 pm that day, the Tribunal would consider entering judgment against the Respondent.
7. Ms Sandbach did reply to say that she had previously responded but to the wrong email address. She said she had only received the copy of the ET1 and not any information regarding submitting an ET3 and wanted to request for an extension. She gave no further details of the basis on which the Respondent defends the claim. She asked whether the PHCM would proceed on 8 August 2022.
8. On 4 August 2022, a letter was sent by email (and by post to the address

that Ms Sandbach had given) informing the Respondent of the postponement of the PHCM until 7 September 2022. It stated that the Respondent's application for an extension of time to present its response and the draft response would be considered at the start of that hearing.

9. Notwithstanding EJ Grewal's letter, the Respondent did not submit a response to the claim, nor an application for an extension of time, and it did not co-operate in preparation for the hearing on 7 September (e.g. by completing and returning the case management agenda). On 8 August 2022, according to the Companies House website, the Respondent changed its registered address to 10A Lant Street, London SE1 1QR. There is a note on the register that correspondence can validly be sent to the former address for up to 14 days thereafter.
10. On 6 September, the Tribunal sent the parties by email joining instructions for the hearing, which was to be conducted by CVP. At 07.55 on 7 September, Ms Sandbach emailed the clerk Miss Torgo to say "I am sorry but this is very short notice, please can this be rearranged. I am on annual leave until next week". At 09.11, Miss Torgo on my instruction sent a letter to confirm that the hearing would proceed; it had been listed on 4 August. I did not consider this to be short notice. It was clear that the Respondent had received the letter postponing the hearing from 8 August, because nobody had attended on that date as they surely would have done if they had been unaware of the re-listing. It was also noted that the Respondent had not submitted a response or asked for an extension of time in which to do so. Miss Torgo confirmed that it was the Tribunal's intention to enter default judgment if the Respondent was not present or represented, and to list the matter for a remedy hearing at which the Respondent's participation would be a matter for the Tribunal's discretion.

The Hearing

11. Nobody from the Respondent attended the Hearing which accordingly proceeded in its absence in line with Rule 47 (Schedule 1, Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013). Default liability judgment was entered in light of the Respondent's failure to submit a response. Remedy in fact could be addressed straight away because the Claimant, who attended and represented himself, had clearly done a considerable amount of preparation, including considering what he was seeking as compensation for injury to feelings. He gave evidence on oath, answering a number of questions from me and made submissions. Since his evidence was not challenged and was plausible, I accepted it.

Findings and Conclusions

12. The Claimant, who was born in October 2004, said that his manager had required him to work after 11 pm and until midnight. Until 22 December 2021, the Claimant was contracted to work 16 hours a week (11 hours a week thereafter) and told his manager it was not possible for him to stay that late because of his college schedule. The manager told the Claimant he was required to prioritise working for the Respondent over his studies. The Claimant again said this was not possible, but he was nonetheless quite

often pushed to stay beyond 11 pm if the restaurant had not completely closed.

13. Thereafter the Claimant carried out some research into his employment rights. He found that he was entitled to a rest break of 30 minutes during his shifts, because of his age. He asked his manager to sit down with him to discuss his genuine concerns. He mentioned the rest breaks and the statutory limit on his working hours, including night work. The manager initially asserted that the Claimant had been getting his rest breaks but then said that he would put them on the rota. The Claimant had not been getting his breaks and nobody had their breaks rostered. The meeting became more formal and the manager said that the Claimant's schedule was an inconvenience. When the Claimant went in for his next shift, he was dismissed.
14. I considered that the Respondent had applied a provision, criterion or practice (PCP) of requiring the Claimant to work until between 11 pm and midnight and that this PCP would put those in the Claimant's age group at a particular disadvantage compared to those who do not share his age, and it put him at that disadvantage, contrary to section 19 Equality Act 2010. While other employees might well have restrictions on their ability to attend work because (for example) they might have child or adult caring responsibilities, the specific disadvantage for the Claimant and those of a similar age is that he had to be up early (and not exhausted) for college. It is clear from the Claimant's manager's comments that the manager's attitude to the Claimant's unwillingness or inability to comply with the PCP led to him considering the Claimant in a much less favourable light. The Claimant has shown facts from which the Tribunal could conclude that this conduct contravened the Equality Act. The burden has passed to the Respondent under section 136 and the Respondent has failed to show that it did not contravene section 19.
15. So far as the unfair dismissal claim is concerned, since the Claimant had less than two years' continuous service, it is for him to show on balance of probabilities that the reason for his dismissal was an impermissible one. I am satisfied that he has done so. His unchallenged evidence was that when he asserted his statutory rights in relation to his working hours, he was dismissed, contrary to section 104(4)(d) Employment Rights Act 1996.
16. So far as the payments claim is concerned, the Claimant said that he had guaranteed hours which were taken away between 16 and 22 December 2021. He was not given alternative work and nor was he paid for the hours. When he raised it, he was disregarded. I conclude that this was a claim for a sum due that was outstanding on the termination of the Claimant's employment and accordingly that the Tribunal has jurisdiction to deal with it under the Employment Tribunals Extension of Jurisdiction Order 1994 (article 3).
17. I heard evidence of the impact that the discriminatory conduct had had on the Claimant. He said that this was his first job which he had been delighted to be offered, and he had intended to carry on working there during university. Things changed for him after he lost his job. He had periods

where he did not want to speak to anyone and friends were coming to his house, concerned because they had not heard from him. His overall health declined, he became run down, his weight was affected and his grades dropped. He was less active and had reduced energy to go out during the day. He had built friendships in the branch and at other sites where he covered shifts, and it was difficult to let those go.

18. In addition, the Claimant lost his sense of self-worth and his pride at being able to contribute to his family's income. Instead he had to rely on his mother. He was struggling to afford the cost of a ticket to get to college.
19. All that said, the Claimant acknowledged that he had not been subjected to a campaign of harassment or discrimination. It did however result in the loss of his job and he put the impact of that at the top of the lower *Vento* band or the bottom of the middle band. I awarded him £8,500 for injury to feelings.
20. The Claimant spent six months without work but had started a new job on 16 August. I awarded him £2,508 for loss of earnings as the compensatory award for his unfair dismissal.
21. Finally, I awarded the Claimant £152 for the breach of contract claim, being 16 hours for the relevant week at £9.50 an hour. The Claimant confirmed he did not pay tax, so the sums in this decision are all to be paid to him without deductions. The Claimant confirmed that he did not seek any associated financial loss under section 24(2) Employment Rights Act.

Post-Hearing Correspondence

22. I record for completeness that early on 8 September, Ms Sandbach emailed the Tribunal again. She said that Miss Torgo would see from the ET3 response that the Respondent had requested the case to be "thrown out". She asserted that the previous postponement had been due to administration errors by the Tribunal because the Respondent had not received the initial notification.
23. I considered whether to reconsider the decision of the Tribunal's own motion and concluded that I should not. There has been no ET3 sent in, no application for an extension of time to serve one and no explanation for the delay in producing it. Accordingly, the default judgment was properly issued and it would not be in the interests of justice to revoke it.
24. All correspondence was sent to the registered office until Ms Sandbach gave the Tribunal her email address, and thereafter that is what the Tribunal has used. Nobody else had responded when the Tribunal tried to communicate with Ms Sandbach's colleagues. Further, it is implausible that the Respondent received a notice of hearing but not the ET1 itself, sent just days apart to the same address.
25. There was no failure of administration by the Tribunal whose staff have in fact done their best to encourage the Respondent to participate in the proceedings, without success. Even if the Respondent did not receive the

original ET1, it has been sent further copies and has still not responded. Asking the Tribunal to “throw out” a claim would not amount to a valid defence.

26. The notice of hearing sent on 21 June 2022 made it clear that hearings sometimes start late or are cancelled at short notice. The hearing in this case had been listed to start at 10.00. It had to be held at 14.00 because I had another case at 10.00. Ms Sandbach could have sent another representative if she was unable to attend herself though she should not have assumed that she would be free to attend a “personal event” that afternoon (as to which she has submitted no evidence). Given that the Respondent had not complied with the requirement to submit a defence, her attendance would have made no difference to the outcome. She was told that the hearing would proceed without her if she did not attend; she did not, so it did.

27. In the circumstances, the original decision stands.

Employment Judge Norris
Date: 13 September 2022
JUDGMENT SENT TO THE PARTIES ON

14/09/2022

FOR THE TRIBUNAL OFFICE