



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000096/2022

Held by Cloud Video Platform (CVP) in Glasgow on 11 January 2023

5

Employment Judge E Mannion

Mrs R Marczykiewicz

**Claimant
In Person**

Greentech-EU Ltd

**Respondent
Not present and
Not represented**

10

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is the claimant was unfairly dismissed by the respondent. The respondent is ordered to pay the following to the claimant:

15

- £ 2,030.77 in respect of eight weeks' notice pay subject to tax and national insurance;
- £3,046.18 as a basic award; and
- £5,426.40 as a compensatory award.

The judgment of the Tribunal is that the claimant was not subjected to discrimination under Section 13 or Section 26 of the Equality Act 2010 due to the protected characteristic of marriage. This claim is dismissed

20

The claimant withdrew her claim for outstanding payments and this is dismissed.

REASONS

25 Introduction

1. This is a claim of unfair dismissal, outstanding wages and marriage discrimination. The hearing was conducted under Rule 21 of the Employment Tribunal Rules of Procedure 2013. An ET3 was not received from the Respondent, nor did they attend at the hearing.

2. The claimant gave evidence on her own behalf. She provided documents including payslips to the tribunal which she wished to rely on.
3. During the course of the hearing, she confirmed that while she was paid late in June and July 2022, she did receive her wages. Her claim for outstanding wages was withdrawn.

Relevant law

4. Section 95 of the Employment Rights Act 1996 provides:

(1) *For the purposes of this Part an employee is dismissed by his employer if...*

- a. *The contract under which he is employed is terminated by the employer (whether with or without notice)*

5. Section 98 of the Employment Rights Act 1996 provides:

(1) *In determining for the purpose of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show -*

- a. *The reason (or if more than one, the principal reason) for the dismissal, and*
- b. *That it is either falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*

- (2) *A reason falls within this subsection if it –*

- a. *Relates to the capability or qualification of the employee for performing work of the kind which he was employed by the employer to do,*
- b. *Relates to the conduct of the employee,*
- c. *Is that the employee was redundant, or*

d. Is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

5 6. Section 26 of the Equality Act 2010 provides

(1) *A person (A) harasses another (B) if –*

a. A engaged in unwanted conduct related to a relevant protected characteristic, and

b. The conduct has the purpose or effect of –

10 *i. Violating B's dignity, or*

ii. Creating and intimidating, hostile, degrading, humiliating or offensive environment for B.

Findings in fact

7. The Tribunal makes the following findings in fact.

15 8. The claimant was employed by the respondent as a clerical assistant. Her employment with the respondent began in 2014. She was responsible for dealing with all administration related to the business including corresponding with customers, receiving deliveries, organising paperwork, contacting suppliers, and researching materials.

20 9. The respondent business is a small business specialising in installing domestic and commercial hearing systems. The claimant was the only other employee alongside Mr Grzegorz Czyba. The claimant and Mr Czyba were married. They separated at the end of 2021 and he moved out of the family home at that time.

25 10. The claimant did not have set hours of work and did not have a specific work location outside of her home which she shared with Mr Czyba. She conducted her work around her domestic tasks and her caring responsibilities for her daughter.

11. The claimant was paid £1,100 gross per month. She did not receive a contract of employment but was provided with pay slips. Her last pay slip is for the pay period 1 -31 July 2022.
12. Given the breakdown in the marital relationship between the claimant and Mr Czyba, they began to discuss how this would impact the business. From January 2022 onwards, the claimant was undertaking minimal work tasks and often had no work to do. She continued to be paid by the respondent.
13. At this time, being from the start of 2022 onwards, the claimant and her husband engaged lawyers to discuss and manage the breakdown in their marital relationship. As part of these discussions, they discussed the claimant's employment terminating at the end of 2022. This was set out in a Minute of Agreement in or around March 2022 but was not signed by the parties.
14. The claimant contacted the respondent in June 2022 as she was not paid her monthly salary. Her salary was paid into her bank account on 18 July 2022. She was not paid her salary in July 2022 and this was not paid until 12 September 2022. This was the final salary payment made to the claimant.
15. During this time, the claimant spoke to the respondent asking for confirmation that she continued to be employed by the respondent. She contacted the respondent's accountant on 11 July 2022 asking for a copy of her P60 and payments but was informed by them that they could not deal directly with her.
16. In September 2022, the claimant received a P45 from the respondent organisation which outlined that her employment with the respondent ended on 1 July 2022.
17. As the claimant's marriage broke down, she was subjected to name-calling by the Mr Czyba when she asked for clarification of her continued employment status, her P60 and payslips. He called her lazy, greedy and a parasite.

Observations on the evidence

18. The claimant gave evidence in a clear way and I considered she gave an honest account of events as she remembered them.

Claimant's submissions

5 19. The claimant put forward that she believes she was dismissed by the respondent at some stage in the summer of 2022. She stated that the respondent came to this decision and that she did not resign. She also put forward that she was subjected to harassment because of her marriage to Mr Czyba.

Decision

10 *Was the claimant dismissed by the respondent?*

15 20. The claimant's employment came to an end in 2022 as she received a P45 from the respondent. The respondent stopped paying her wages and the last wage payment she received was at the end of September 2022. She was clear in her evidence that she did not resign from her employment with the respondent but had agreed that she would continue to be employed by them until the end of 2022. This agreement was included in a Minute of Agreement which dealt primarily with their marital breakdown, but ultimately that Minute of Agreement was not signed in March 2022 and the parties continued as before where the claimant was receiving either minimal or no work from the respondent but was continuing to be paid by them on a monthly basis. The claimant did not receive written or oral notice of termination from the respondent. It was not until she received her P45 that she understood her employment terminated.

25 21. Section 98 of the Employment Rights Act 1996 sets out the reasons for dismissing an employee while Section 95 confirms the circumstances of dismissal. This provides, in law, two routes for the termination of employment: by the employer giving notice and terminating the employment relationship or alternatively, by the employee giving notice and terminating their employment. It is clear that the employment relationship was terminated. The question in
30 this case is who terminated the employment relationship.

22. While submissions were not made by the claimant on the case of *Miss A Sandle v Adecco UK Limited UKEAT/0028/16/JOJ*, it is relevant to this question. In that case Justice Eady QC found that the communication of the dismissal was key, asserted at paragraph 40.

5 *“A dismissal may be by word or deed, and the words or deeds in question may not always be entirely unambiguous; the test will be how they would be understood by the objective observer. Further, as the case law shows, an employer’s termination of a contract of employment need not take the form of a direct, express communication. It may be implied by the failure to pay the*
10 *employee (Kirklees), by the issuing of the P45 (Kelly) or by the ending of the employee’s present job and offer of a new position (Hogg). In each of those cases, however, there was a form of communication; the employee was made aware of the conduct in question, conduct that was inconsistent with the continuation of the employment contract and in circumstances where there*
15 *were no other contraindications. The question is: given the facts found by the ET, given what was known to the employee and to the relevant circumstances of the case, what is the conclusion to be drawn? Has the employer communicated its unequivocal intention to terminate the contract?”*

23. In this case, while the parties may have discussed how the employment
20 relationship might come to an end given the breakdown of the marital relationship, it was the respondent’s action in issuing a P45 to the claimant in September 2022 (with a termination date of 1 July) which communicated to her that the employment relationship had ended by the respondent.

Was the claimant’s dismissal an unfair dismissal in law?

25 24. The claimant confirmed that she was not subjected to a disciplinary process, nor was she subject to a performance management or an absence management process. A redundancy consultation had not taken place and indeed she understood that her work was undertaken by Mr Czyba’s new partner. In short there was no indication from the respondent that they were
30 terminating the employment due to one of the fair grounds under Section 98 of the Employment Rights Act 1996. The claimant was not provided with notice

in writing or written reasons for her dismissal. In the absence of any evidence of a fair reason to dismiss the claimant, I can only conclude that the termination of her employment was not in keeping with Section 98 of the Employment Rights Act 1996 and as such was an unfair dismissal.

5 *Was the claimant harassed contrary to Section 26 of the Equality Act 2010?*

25. The claimant gave evidence about how she was treated by the respondent, and by Mr Czyba from January 2022 and in the months of May, June and July 2022. She outlined that he called her greedy and a parasite and told her that she was lazy. She spoke about the effect of these and the impact upon her,
10 namely that the words were hurtful, upsetting and made her feel, specifically that she felt humiliated and angry and belittled by Mr Czyba. She felt hurt that her efforts over the years both in her role in the company and in their domestic life was not appreciated.

26. While I was not referred to the recent EAT decision in *Ellis v Bacon and another*
15 *[2022] EAT 188*, it is relevant to the case before me. In the Ellis case, the claimant, Mrs Bacon, worked alongside her husband and they were both directors in the employing company. When their marriage broke down, Mrs Bacon was subjected to less favorable treatment by the respondent, which was instigated by her ex-husband Mr Bacon. She brought a claim stating that she
20 has been subjected to discrimination due to the protected characteristic of marriage. The EAT found that the correct question was whether she had been treated less favourably because she was married, and not because she was married to Mr Bacon.

27. This is very similar to the case before me. The claimant believes that she was
25 harassed because of her marriage to Mr Czyba. I find that she was subjected to unwanted conduct and this had the purpose or effect of violating her dignity or creating an intimidating, hostile or degrading environment for her. However, this unwanted conduct was not because of her marital status. Following Ellis, the protection provided by the Equality Act 2010 in respect of the protected
30 characteristic of marriage is intentionally narrow. The unwanted conduct did not refer to the claimant's marital status either expressly or otherwise. While

the timing of the conduct coincided with the breakdown of the marriage between the claimant and Mr Czyba and the claimant was understandably hurt by the conduct, this conduct was not related to the protected characteristic of marriage. I find that the claimant was not harassed under Section 26 of the
5 Equality Act 2010.

Employment Judge: Eleanor Mannion
Date of Judgment: 02 March 2023
Entered in register: 06 March 2023
10 and copied to parties

15