EMPLOYMENT TRIBUNALS

Claimant: **Miss S Settersfield**

Respondent: **Pine View Care Homes Limited T/A Groby Lodge**

Heard at: **Leicester**

On: **25 September 2018**

Before: **Employment Judge Ahmed (sitting alone)**

Representation
Claimant: **In person**
Respondent: **Mr Raja (Director)**

JUDGMENT AT A PRELIMINARY HEARING

The judgment of the tribunal is that:

1. The complaints of detriment under section 47(C) Employment Rights Act 1996, constructive unfair dismissal, unlawful deduction of wages and failure to pay the national minimum wage are not struck out nor are they subject to a deposit order.

2. The Respondent's application for a postponement of the full merits hearing is refused.

REASONS

1. The purpose of this Preliminary Hearing was to determine whether the claimant's claims, as identified by Employment Judge Milgate at an earlier telephone hearing, should be struck out or whether they should be subject to a deposit order. Miss Settersfield represented herself. Mr Raja represented the Respondent.

2. The Claimant agrees that her true employer was 'Pine View Care Homes Limited T/A Groby Lodge' and not Mr Raja personally. The name of the Respondent is amended accordingly. There is no need for re-service of the papers.

3. It is not appropriate to strike out any of the complaints for the following reasons:

3.1 There are significant disputes of facts which were identified at paragraph 5 of Employment Judge Milgate's order. None of those disputes have been resolved. The disputes include the following (which is not intended to be an exhaustive list):

> 3.1 There is a dispute as to whether the Claimant worked 'sleeping shifts'. This is critical to the constructive dismissal and minimum wages claims;
>
> 3.2. There is a dispute as to what was working time and whether the Claimant was properly paid for all the hours that she worked;
>
> 3.3 There is a dispute as to the reason for the Claimant's resignation;
>
> 3.4 There is a dispute as to whether the Respondent undertook risk assessments when the Claimant fell pregnant.

4. An employer has certain obligations under the Maternity and Parental Leave etc Regulations 1999 in respect of both general and individual risk assessments in connection with pregnant employees. Failure to do so can constitute sex or pregnancy discrimination. There is no dispute that the Claimant notified her employer of her pregnancy in October 2017. The Claimant says that she did so in writing via a whatsapp message to her manager, Rikki Hamill, who remains employed by the Respondent. Mr Raja denies having seen any such whatsapp message but if it was delivered to the Claimant's manager then that is sufficient. The notification of pregnancy obliges the employer to undertake certain risk assessments under the 1999 Regulations. I have not seen any evidence of any specific risk assessment in relation to the Claimant in the bundle.

5. This is a classic fact-sensitive case. The determination of the complaints will depend on the findings of fact made by the Tribunal after hearing all the evidence. It is not suitable to be struck out. There are a number of authorities which make clear that in discrimination cases where there are factual disputes a case should not be struck out. In particular I refer to **Eszias -v- North Glamorgan NHS Trust [2007] IRLR 603** and **Anyanwu -v- South Bank Students Union [2001] IRLR 305**.

6. The constructive dismissal claim is also highly fact-sensitive. The Respondent says the real reason for the resignation was because of an investigation into inappropriate Facebook postings. The Claimant says it was

because of the Claimant's working conditions which were not adjusted given she was pregnant and because the Respondent failed to protect her and her unborn child. She says she asked for risk assessments on at least two occasions but they were never done.

7. In relation to whether there should be a deposit order, the authorities make it clear that should only be done in the clearest of cases (see for example, **Zeb v Xerox,** UKEAT/0024/16, per Simler J). This is not one of those types of case. It cannot be said that the Claimant has *little* reasonable prospect of success. If the Tribunal was to find that was no individual risk assessments were carried out for example or that the Claimant was being asked to deal with difficult and potentially violent residents (the Claimant says that one of them tended to lash out when he was being moved) and it finds the Claimant resigned because of valid concerns about her health and safety she has an arguable case on several fronts. A deposit order is not appropriate.

8. After the decision on the strike out and deposit applications was announced, both parties confirmed that they were ready and willing to proceed to the full merits hearing of this case which is listed for **3 days on 8 to 10 October 2018.**

9. Mr Raja then said that he was away and applied for an adjournment of the hearing. He said he could not be ready in the short time available for the full hearing. I treated his submission as an application for a postponement of the liability hearing.

10. The Respondent's application for an adjournment is refused. The Respondent has produced a bundle. The Claimant has served a witness statement. Any gaps in her statement can be filled in with oral evidence at the hearing. The preparation is not ideal but it is unlikely to get better over time. The earlier case management orders have never been suspended or put on hold pending this hearing. The overriding objective requires tribunals to avoid delay. To postpone now will mean the case is unlikely to be re-listed until summer of next year given the present state of the lists. The issues are relatively straightforward. The essential directions as to bundles and witness statements have been complied with. If Mr Raja was genuinely not ready he would not have said he was a little earlier at this hearing. He has not explained what prevents his readiness. The application for a postponement is therefore refused.

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Employment Judge Ahmed

Date: 27 September 2018

SENT TO THE PARTIES ON

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