



EMPLOYMENT TRIBUNALS

Claimant: Ms L Scott

Respondent: O Heap & Son (Derby) Ltd

Heard at: Nottingham

On: 16 August 2021

Before: Employment Judge Flint (sitting alone)

Representation

Claimant: In person

Respondent: Mr Frew, counsel

JUDGMENT

1. The claim for Automatic Unfair Dismissal is dismissed.
2. The Respondent's application for costs is refused.

REASONS

3. This hearing was conducted remotely (by cloud video platform) with the consent of the parties.
4. The Claimant asserted that the Respondent dismissed her on 15 September 2020 because she had taken the previous day off work to care for her son, who was too ill to attend school. The Respondent defended the claim on the basis that the reason for dismissal was redundancy.
5. The parties agreed that the Claimant had commenced employment on 3 February 2020 and that the date of dismissal was 15 September 2020. The Claimant conceded that she did not have two years continuity of employment.
6. The relevant law was contained within the Employment Rights Act 1996 (ERA). In summary, section 57A entitles an employee to take time off work to care for a dependant. Section 99 states that dismissal for taking such time off work is automatically unfair.
7. The key issue for the Tribunal to decide was whether the reason, or principle reason, for the Claimant's dismissal was her taking time off work on 14 September 2020 to look after her son. It was accepted by the Respondent that the Claimant's son had been ill and that the Claimant satisfied the conditions set out in section 57A ERA.

8. In reaching my decision, I considered the bundle of documents and statements of the Claimant, Mr Nicholas Heap, Mr Gavin Parkin and Ms Gemma Slater, as well as their evidence during the hearing.
9. My findings of fact were as follows:
 - a) That the Respondent was adversely affected by the pandemic and suffered a significant reduction in work;
 - b) That a discussion took place on Friday 11 September 2020 between Mr Parkin and Ms Slater during which it was decided that the reduction in business made it necessary to make redundancies. The Claimant was selected on the basis that she had been employed by the company for the shortest time;
 - c) Ms Slater and Mr Parkin intended to inform the Claimant of her dismissal on Monday 14 September 2020. This was postponed until the following day because of the Claimant's absence from work;
 - d) The reason for the Claimant's dismissal was redundancy. It was not because of her failure to attend work on 14 September 2020.
10. Upon dismissal of the claim, the Respondent made an application for costs on the basis that a) the Claimant's case had had no realistic prospect of success and b) the Claimant had acted unreasonably in proceeding with the case. This application was refused on the basis that key evidence supporting the Respondent's defence was not adduced until witnesses gave evidence at the hearing. This included evidence that the decision to dismiss the Claimant had been made prior to 14 September 2020.

Employment Judge Flint

__16/8/2021_____
Date

JUDGMENT & REASONS SENT TO THE PARTIES ON

17 August 2021

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FOR THE TRIBUNAL OFFICE