

## Sample of Particulars of Claim

VCAT Ref No. A\*\*\*/2012

**Natalie Jones**

**APPLICANT**

**and**

**Jars Pty Ltd**

**FIRST NAMED RESPONDENT**

**John Smith**

**SECOND NAMED RESPONDENT**

### **PARTICULARS OF CLAIM**

1. The Applicant began working with the first Respondent in June 2002 as a machinist in the first Respondent's bottle-making factory at 33 Creek Street, Dandenong, Victoria. At all material times, the Manager of that factory was the second Respondent.
2. On 1 July 2012 two leading hand positions at the first Respondent's factory were advertised.

#### **Particulars**

They were advertised on the internal notice board in the factory. The advertisement stated that applications must include a short statement of experience and must be received by close of business on 15 July 2012.

3. The Applicant applied for one of these positions on 8 July 2012.
4. Two of the Applicant's co-workers, working in the same section of the factory as she did, Jim Snow and Bill Burton, also applied for those positions on 8 July 2012.
5. On 16 July 2012 the second Respondent told the Applicant that Bill Burton and Jim Snow had been appointed to the leading hand positions.
6. By July 2012, the Applicant had worked in the first Respondent's factory for ten years. She had been acting as the leading hand from March to September 2009 and from April to October 2011.
7. Bill Burton started work with the first Respondent in April 2008. He has no previous experience as a worker in the glass industry.
8. Jim Snow started work in the first Respondent's factory in October 2009. He has not previously worked in the glass industry except for a two-month period immediately before coming to that factory.

9. On 16 February 2012 the Applicant complained to the second Respondent that it was unfair not to have appointed her to the leading hand position and that if she were a man she would have been appointed. The second Respondent said to her words to this effect, "If can't stick it you can leave". The Applicant left work and has not returned.
10. By reason of the conduct described in paragraph 5 the Respondents have breached the *Equal Opportunity Act 2010*, in particular sections 16, 18 and 109.

**Particulars of contravention**

- a. By refusing the Applicant's application to be appointed to a leading hand position, the second Respondent directly discriminated against her on the ground of her sex, in that he treated her less favourably than he treated the other two male applicants for leading hand positions.
  - b. This contravention occurred in the course of the Applicant's employment with the first Respondent, and the first Respondent is vicariously liable for it under section 109 of that Act.
11. By reason of the conduct described in paragraph 9, the Respondents have breached sections 103 and 109 of the [Equal Opportunity Act 2010](#).

**Particulars**

- a. The second Respondent's conduct constituted constructive dismissal of the Applicant.
  - b. A substantial reason for that conduct was that the Applicant had complained to the second Respondent that she had been treated unfairly because of her sex, an allegation capable of constituting a breach of Part 4 of that Act.
  - c. The second Respondent's conduct therefore constitutes a breach of section 103 of that Act.
  - d. That conduct occurred in the course of the second Respondent's employment with the first Respondent, and the first Respondent is vicariously liable for it.
12. The Applicant has suffered financial loss, humiliation, embarrassment, loss of self-esteem, stress, anxiety, and depression, which is continuing.
  13. The Applicant claims –
    - a. reinstatement to a position of full-time leading hand with the first Respondent;
    - b. loss of wages from 17 February 2012;
    - c. an apology from the Respondents;
    - d. damages for embarrassment, humiliation and stress;
    - e. costs; and
    - f. any other order the Tribunal deems necessary.

Dated this 13th day of August 2012

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(Signed by Natalie Jones)