



EMPLOYMENT TRIBUNALS

Claimant: Mr C S Manhuwa

Respondents: East Cheshire NHS Trust

HELD AT: Manchester

ON: 21 March 2017

BEFORE: Employment Judge Horne

REPRESENTATION:

Claimant: In person

Respondents: Ms C Shafar, solicitor

In this document, “the Schedule” means the document headed “Scott Schedule” attached to the respondent’s solicitors’ e-mail of 10 January 2017.

Upon the claimant confirming that his entire claim is set out in the Schedule:

JUDGMENT

1. By consent, the claimant has permission to amend his claim (to the extent that such permission is required) so as to pursue:
 - 1.1. all 21 allegations of direct race discrimination set out in the Schedule;
 - 1.2. his direct race discrimination complaint on the basis that he was treated less favourably because he was “not white” in addition to his existing complaint that the reason for his treatment was because he was British Black African;
 - 1.3. the same 21 allegations as complaints of harassment related to race on the basis that the unwanted conduct was perpetrated by the same people as identified in column 3 (under the heading, “Alleged Perpetrator”);
 - 1.4. all 11 allegations of victimisation set out in the Schedule;

- 1.5. a request for exemplary damages in the event that the claim is well-founded.
2. The claimant withdraws his application to amend his claim to introduce a free-standing claim for damages for breach of contract. Accordingly, the 5 allegations of breach of contract in the Schedule may be pursued solely in support of the complaint of unfair constructive dismissal.
3. The claimant is permitted to amend his claim so as to pursue the 3 allegations of direct sex discrimination set out in the Schedule.
4. By consent, time for the respondent to present its ET3 response is extended by 98 minutes such that it will be treated as having been presented in time.
5. The respondent has permission to amend its ET3 response so as to rely on the final column of the Schedule and the further two-column document attached to the e-mail of 10 January 2017.

CASE MANAGEMENT ORDER

1. The final hearing currently listed to begin on 2 May 2017 is postponed.
2. The final hearing will now take place before an employment judge (other than Employment Judge Horne) sitting with lay members on **5, 6, 7, 8, 9, 12, 13, 14, 15 and 16 March 2018**. **Ten days** have been allocated to the hearing.
3. The purpose of the hearing will be to determine all issues relevant to liability. If the claim is well-founded, any issues relating purely to remedy will be determined at a separate hearing.
4. The timetable for the hearing will be as follows:
 - 4.1 Day 1 – preliminary discussion and tribunal reading time;
 - 4.2 Day 2 (morning) continued tribunal reading time;
 - 4.3 Day 2 (afternoon) and Day 3 – oral evidence of the claimant;
 - 4.4 Day 4 and Day 5 (morning) – oral evidence of up to 8 witnesses for the claimant (unless otherwise ordered, cross-examination to be confined to 1 hour per witness);
 - 4.5 Day 5 (afternoon), Day 6 and Day 7 – oral evidence of 6 witnesses for the respondent;
 - 4.6 Day 8 (morning) – closing submissions (90 minutes each);
 - 4.7 Day 8 (afternoon) and Day 9 – deliberation
 - 4.8 Day 10 – judgment.
5. If at any time a party considers that the timetable or time allocation needs to be varied, that party must immediately apply in writing to the tribunal.
6. No later than 4pm on 22 May 2017, each party must make a reasonable search for all relevant documents in that party's control and deliver a list of all such documents to the other party.

7. A party is entitled on request to receive a copy of any document on the other party's list and/or to inspect the original of such a document. Any such request must be made to the other party in writing by 4pm on 5 June 2017. The other party must deliver the requested or permit inspection by 4pm on 26 June 2017.
8. A document is relevant if it assists a party's case or undermines a party's case.
9. The parties are reminded of their continuing obligation to disclose relevant documents.
10. The respondents must prepare the bundle of documents for use at the final hearing. The bundle must be contained in one or more files that can be opened flat. It must have an index. Pages must be consecutively numbered. They must appear in chronological order unless there is a good reason for them appearing in a different order.
11. No later than 4pm on 31 July 2017, the respondents must send to the claimant a draft index for the bundle to be used at the final hearing. The parties must produce an agreed index no later than 4pm on 11 September 2017. The respondents must then immediately send a copy of the agreed bundle to the claimant.
12. By 4pm on 6 November 2017, the parties must deliver to each other signed witness statements from all the witnesses on whose evidence they rely. The claimant complies with this paragraph in relation to her own evidence by delivering a copy of her own witness statement.
13. This order does **not** require the parties to exchange their witness statements simultaneously. If a party considers that the other party has failed to deliver its witness statements on time, it must deliver its own witness statements to the other party in compliance with the order and immediately inform the tribunal of the other party's non-compliance.
14. Witness statements must be full and complete and must contain all the evidence upon which the party calling the witness relies. The statements must, however, be confined to the evidence that is relevant to the issues to be determined by the tribunal. They must be divided into separate numbered paragraphs. Evidence of communications covered by "without prejudice" privilege must not be included. If a witness statement refers to documents, it must indicate the page of the agreed bundle where each document can be found.
15. If the maker of a witness statement does not attend the hearing to be cross-examined, the tribunal may nevertheless consider the evidence contained in the witness statement, but is likely to give the statement reduced weight.
16. The respondents must ensure that, in addition to the parties' own copies, 4 copies of the bundle and 5 copies of the witness statements are brought to the tribunal no later than 9.15am on the first day of the hearing.

DISCUSSION

Complaints and issues

1. The respondent's solicitor helpfully confirmed that she understands the basis upon which the allegations in the Schedule are pursued.

Hearing

2. The parties consented to the hearing dates, time allocation and timetable.

Documents

3. The respondents helpfully volunteered to prepare the bundle, which the parties believe will occupy four lever-arch files.

Witnesses

4. The claimant will give oral evidence on his own behalf.
5. In addition, the claimant intends to call 6 or 7 further witnesses who he expects to come forward voluntarily. During today's hearing he named those witnesses and gave a brief synopsis of the topics of their evidence. On that basis, I indicated that it would be unlikely that any of their witness statements would need to exceed two pages. This is because two of the witnesses would chiefly describe the core parts of the claimant's role. The remainder would give evidence about the events of 5 November 2015. As the respondent pointed out, the critical question is not what actually happened on that day, but what Mrs Derbyshire did about it. I reminded the parties of the need for proportionality in this regard. This was also my reasoning for allocating no more than 1 hour of cross-examination time per witness.
6. One of the claimant's witnesses was a patient on 5 November 2015. The claimant is sure that he has the patient's authority to name him in documents that may be accessible to the public during the final hearing. The importance of obtaining such authority was emphasised to the claimant.
7. There are two further witnesses that the claimant believes will not give evidence unless compelled to do so by order of the tribunal. They are serving employees of the respondent. The claimant believes the "wall of fear" is such that he does not wish even to name them in the presence of the respondent until the tribunal has made its order. I informed the claimant that if he wished to apply in writing for a witness order he need not copy his application to the respondent. He would, however, have to explain how their evidence is relevant to the issues in the Schedule and what efforts he has made to secure their voluntary attendance. He ought also to be aware that there is no point in applying for a witness order unless he believes that the witness will give evidence favourable to his case in answer to open questions. He will not be able to extract evidence from them by cross-examination.

Consent to judgment and orders

8. The judgment indicates which paragraphs were made by consent. Otherwise they were disputed. I gave my reasons orally at the hearing. Written reasons will not be provided unless a party makes a request in writing within 14 days of this judgment being sent to the parties.
9. The case management order was made by consent except for the time limit on cross-examination of the claimant's witnesses, for which the reason appears above.

Judicial assessment

10. Once I had made the case management orders I conducted a judicial assessment in confidence with the parties' consent. I will therefore abstain from any further involvement in this case.
11. It was agreed that the respondent would not disclose what had been said during the assessment to anybody except its legal advisors and such decision-makers as are necessary to give authority in settlement negotiations. The claimant will not disclose what was said to any other person except a legal advisor, if he instructs one.

Employment Judge Horne
21 March 2017

SENT TO THE PARTIES ON
27 March 2017

FOR THE TRIBUNAL OFFICE