



EMPLOYMENT TRIBUNALS

Claimant: Mr D Dixon

Respondent: Home Retail Group Plc

HEARD AT: HUNTINGDON ET **ON:** 5th May 2017

BEFORE: Employment Judge Ord

REPRESENTATION

For the Claimant: Mr R Owen-Thomas (Counsel)

For the Respondent: Mr J Pinder (Employment Law Manager)

JUDGMENT ON PRELIMINARY HEARING

1. No order is made on the Respondent's application to strike out the claim and/or for a Deposit Order on the basis that the Claimant's claim has no, alternatively little, reasonable prospect of success.

REASONS

2. The Claimant worked for the Respondent as Health and Safety Manager.
3. The Claimant makes complaints of unfair dismissal and unlawful discrimination, relying upon the protected characteristic of disability.
4. The Claimant says that he was downgraded in his annual appraisal because he was absent from work due to his taking his disabled son to medical appointments. He makes further complaint in his application to the Tribunal of bullying and harassment at the hands of his Line Manager Abigail Miller.
5. Thereafter the Respondent announced at the end of March 2016 that it was planning a redundancy exercise and the Claimant would be in a pool of 3 with two other individuals. The 2 other individuals had been told by Mrs Miller that they were "safe" from redundancy. As a result of which the Claimant raised a grievance which, in relation to that part, was upheld.

6. The Claimant says that he was not satisfied that the redundancy procedure would thereafter be conducted fairly, the Respondent having admitted that assurances were given to the other individuals allegedly “at risk” and pursued an application for voluntary redundancy.
7. The Respondent’s position was that the Claimant could not have been unfairly dismissed because his application for redundancy was accepted by the Respondent and he was dismissed at his own request. The Claimant says that he was constructively unfairly dismissed, his expressed desire to proceed with his extant application for voluntary redundancy in the face of what he considered to be inadequate assurances about the fairness of the redundancy procedures thereafter amount in his view to resignation and that the definition of dismissal in Section 95(1)(c) are engaged. The Claimant says that he therefore terminated the contract in the face of a fundamental breach of contract by the Respondent (relying upon the previous actions, the assurances given to the other employees on the outcome of the grievance as breaking the implied term of trust and confidence between employer and employee).
8. I was not satisfied that that argument had no or indeed little reasonable prospect of success. It is an argument which requires consideration of the evidence and which has some reasonable prospect of success. In those circumstances it was inappropriate to make an order as sought by the Respondent.

ORDERS

In light of the above Judgment the following Case Management Orders were made to enable this matter to proceed to a Final Hearing:-

1. The correct title of the Respondent is Argos Limited, and the title of the Respondent on the Tribunal file is altered to Argos Limited without the need for any further amendment or re-service.
2. In relation to the Claimant’s allegation that the Respondent, through Mrs Miller, disclosed personal information about the Claimant’s disability and the reason for it in or about the middle of January 2016, the Claimant is to provide the following further and better particulars by not later than **4pm on 26th May 2017**:-
 - (1) What the Claimant says was disclosed.
 - (2) To whom.
 - (3) When and how that disclosure was made. If orally then the gist of the words used and identifying any relevant document.
 - (4) When and how the Claimant learnt of this disclosure.

3. Disclosure of documents

- 3.1 The parties are ordered to give mutual disclosure of documents relevant to the issues identified above by list and copy documents so as to arrive on or before **4pm 9th June 2017**. This includes, from the Claimant, documents relevant to all aspects of any remedy sought. Copies are to be provided within 7 days of a request.
- 3.2 Documents relevant to remedy include evidence of all attempts to find alternative employment: for example a job centre record, all adverts applied to, all correspondence in writing or by e-mail with agencies or prospective employers, evidence of all attempts to set up in self-employment, all pay slips from work secured since the dismissal, the terms and conditions of any new employment.
- 3.3 This order is made on the standard civil procedure rules basis which requires the parties to disclose all documents relevant to the issues which are in their possession, custody or control, whether they assist the party who produces them, the other party or appear neutral.
- 3.4 The parties shall comply with the date for disclosure given above, but if despite their best attempts, further documents come to light (or are created) after that date, then those documents shall be disclosed as soon as practicable in accordance with the duty of continuing disclosure.

4. Bundle of documents

- 4.1 It is ordered that the Respondent has primary responsibility for the creation of the single joint bundle of documents required for the hearing.
- 4.2 To this end, the Claimant is ordered to notify the Respondent on or before **21st July 2017** of the documents to be included in the bundle at their request. These must be documents to which they intend to refer, either by evidence in chief or by cross-examining the Respondent's witnesses, during the course of the hearing.
- 4.3 The Respondent is ordered to provide to the Claimant a full, indexed, page numbered bundle to arrive on or before **4pm on 28th July 2017**.
- 4.4 The Respondent is ordered to bring sufficient copies (at least five) to the Tribunal for use at the hearing, by 9.30 am on the morning of the hearing.

5. Witness statements

- 5.1 It is ordered that oral evidence in chief will be given by reference to typed witness statements from parties and witnesses.
- 5.2 The witness statements must be full, but not repetitive. They must set out all the facts about which a witness intends to tell the Tribunal, relevant to the issues as identified above. They must not include generalisations, argument, hypothesis or irrelevant material.

- 5.3 The facts must be set out in numbered paragraphs on numbered pages, in chronological order.
- 5.4 If a witness intends to refer to a document, the page number in the bundle must be set out by the reference.
- 5.5 It is ordered that witness statements are exchanged so as to arrive on or before **4pm on 18th August 2017**.

6. Schedule of Loss

- 6.1 The Claimant is ordered to provide to the Respondent an updated Schedule of Loss 14 days before the first day of the final hearing. The Respondent has leave to serve a counter schedule within 7 days of receipt of the updated Schedule of Loss.

7. The Final Hearing

- 7.1 The Claimant will call one witness and give evidence himself. The Respondent intends to call two witnesses. It is anticipated that a period of time may be set aside by the Tribunal conducting the final hearing of this case to consider the bundle of documents which is expected to be substantial. On that basis the agreed time estimate (to include time for submissions, deliberation and decision as well as the consideration of remedy if appropriate) was 4 days.
- 7.2 The final hearing of this case will therefore take place at the Employment Tribunals, Cambridge Magistrates Court, The Court House, 12 St Andrews Street, CAMBRIDGE, Cambridgeshire, CB2 3AX to commence on Monday 2nd October 2017 continuing on Tuesday 3rd October, Wednesday 4th October and Thursday 5th October as required.
- 7.3 The parties are to each bring to the final hearing 5 additional copies of the witness statements of the individuals upon whose evidence they rely (including any party themselves). The Respondent is to bring 5 additional copies of the bundle of documents to the final hearing.
- 7.4 The Respondent is to prepare a neutral chronology for agreement and deliver 4 copies of that chronology to the Tribunal on the morning of the hearing. There should also be an agreed cast list identifying (in alphabetical order by reference to surname) the individuals from whom the Tribunal will hear and/or about whom they will hear during the course of the proceedings together with notice of their role.

8. Identification of the Issues

- 8.1 The issues for the Tribunal to determine will be as follows:-
 - (1) Are any elements of the Claimant's claim to have suffered unlawful discrimination out of time.

- (2) If so, is it just and equitable to extend time in favour of the Claimant so as to allow those claims to proceed and/or are they part of a continuing series of acts the last of which was in time?
- (3) Was the Claimant dismissed within the meaning of Section 95(1)(a) of the Employment Rights Act 1996 as the Respondent maintains or under Section 95(1)(c) as the Claimant maintains?
- (4) What was the sole or principle reason for the Claimant's dismissal (the Respondent says that the Claimant was dismissed on the ground of redundancy, at his request through a voluntary redundancy procedure)?
- (5) In the light of the reason for dismissal found by the Tribunal did the Respondent act reasonably or unreasonably in treating that reason as a sufficient reason for dismissing the Claimant in accordance with the provisions of Section 98(4)?
- (6) If the Claimant was dismissed under Section 95(1)(a) is the reason why he applied for voluntary redundancy relevant to the question of the fairness of his dismissal and if so was the Claimant dismissed fairly applying the tests in Section 98(4)?
- (7) If the Claimant was unfairly dismissed what was the likelihood of the Claimant being fairly dismissed in any event, and in what timescale?
- (8) The Respondent admits that the Claimant is a disabled person within the meaning of Section 6 of the Equality Act 2010. The issues for the Tribunal to determine will be whether the Claimant was subjected to following conduct and whether or not such conduct amounts to direct discrimination under Section 13 of the Equality Act 2010 or Harassment under Section 26:-
 - (a) Conducting a pre-determined redundancy process so that the Claimant was identified as the person who would be chosen for redundancy before the commencement of the selection process.
 - (b) Dismissing the Claimant.
 - (c) Excluding the Claimant from management meetings.
 - (d) Disclosing personal information about the Claimant's disability and the reason for it.
- (9) In relation to the alleged pre-determination of the redundancy process and the Claimant's dismissal, and the exclusion from management meetings the Claimant relies on the two other Health and Safety Managers who were in the pool for potential redundancy with him as being actual comparators. In relation to the disclosure of personal information about his disability the Claimant relies upon a hypothetical non-disabled individual who the Claimant says would not

have had personal information about his medical situation and/or the reason for it disclosed by Mrs Miller.

- (10) It is noted that the Claimant seeks only compensation, he does not seek re-instatement or re-engagement in these proceedings.

Employment Judge Ord, Huntingdon.
Date: 25 May 2017

ORDER SENT TO THE PARTIES ON

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FOR THE SECRETARY TO THE TRIBUNALS

FAILURE TO COMPLY

NOTES: (1) Any person who without reasonable excuse fails to comply with an Order to which section 7(4) of the Employment Tribunals Act 1996 applies shall be liable on summary conviction to a fine of £1,000.00.

(2) Under rule 6, if this Order is not complied with, the Tribunal may take such action as it considers just which may include (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.

(3) You may apply under rule 29 for this Order to be varied, suspended or set aside.