



EMPLOYMENT TRIBUNALS

Claimant
Miss M Padam

v

Respondent
Leicestershire County Council

RECORD OF A CLOSED TELEPHONE PRELIMINARY HEARING

Heard at: Leicester

On: Thursday 11 October 2018

Before: Employment Judge P Britton (sitting alone)

Appearances

For the Claimant: Mr G Blakey, Retired Solicitor

For the Respondent: Ms G Walsh, In-house Solicitor

CASE MANAGEMENT SUMMARY

JUDGMENT

1. The claim based upon disability discrimination is dismissed upon withdrawal.
2. As to the remaining claims, directions are hereinafter set out.

Introduction and issues

1. The claim (ET1) was presented to the Tribunal on 12 June 2018. Ms Padam had been assisted in its preparation. I detect that this may have been Mr Blakey. The narrative is fully pleaded. The problem is that it does not label in terms of reliance on the Equality Act 2010 provisions engaged or as to why. This obviously needs rectification which I will address by way of an order for further and better particulars to which I shall come.

2. The second point to make is that the Claimant has now resigned the employment and left working for the Respondent on 31 August 2018. She was going to bring a second claim carrying on matters so to speak on from the current pleaded events scenario and including bringing a claim for constructive unfair dismissal. I pointed out relying of course on the authority of **Prakash v Wolverhampton City Council EAT 0140/06** that she doesn't need to do that. She can simply plead an amended claim to bring in the new matters. For the avoidance of doubt I therefore grant that amendment in the sense of the amended pleading for which I make a direction will be accepted as an amendment.

3. As to the scenario, the Claimant who has long experience as a community support worker primarily in Nottinghamshire, joined the Respondent's employ on 20 June 2016. She was at that stage in the domiciliary review team but pleads that circa 31 July 2017 she was moved to older adults; something she had not worked in

for many years. Thereafter she was not provided with an induction, training or support. Into the equation comes that from circa 12 September 2017 she pleads that in particular her Line Manager Sarah Davies (SD) therefore acted unfairly in raising concerns about her performance and which culminated in the meeting on 1 December 2017 at which the Claimant was told she was being placed under the capability management procedure.

4. What the Claimant pleads is that this series of events constituted unlawful discrimination against her and in particular on the grounds of race. As to that issue the Claimant was born in Uganda. The family left because of the troubles created by Idi Amin. First they went to Kenya and then they came to this country many years ago.

5. From the reference to her qualifications etc it is to me obvious that she has full grasp of the English language both spoken and written. What she pleads is that inter alia for SD to inter alia criticise her performance in terms of poor spelling and grammar is unlawful discrimination against her as a person of East African Indian ethnicity but she doesn't say why. And I have no idea as to the composition of the team within which she worked or the wider net of Respondent employees and as to whether other employees were placed under the capability process for poor performance during the appropriate period and as to what their race/ethnicity might be.

6. Today Mr Blakey has told me that Leicestershire County Council unlike Leicestershire City Council does not have a proportionate ethnic mix, and that the team the Claimant worked in was predominantly white with only 2 non white persons being employed during the period and only it seems on a temporary basis; but this needs to be put in a structured further particularisation.

7. She then pleads victimisation because of events on 1 December 2017. Cross referencing to the response (ET3), the Claimant accused SD and her colleague Andrea Woodford (AW), who was also managing the performance management, of racism because of what was occurring. SD and AW were sufficiently upset that they then raised a complaint to their Line Manager about the Claimant's behaviour towards them and including that prior to that meeting the Claimant had been heard making derogatory remarks about them to other employees, including that they were racist and that she was going to use a solicitor. The upshot of all of that is that the Head of Service, Jackie Wright, began to investigate the complaints against the Claimant. On 18 December the latter went off sick never to return, certified with work related stress and anxiety. On the 13 April 2018 she raised a grievance about what had occurred, and thus the Respondent was dealing with a complaint and a counter grievance. It appointed Peter Davis of corporate HR to investigate.

8. Inter alia the Claimant pleads that his occupational health reference, which was inter alia focussing on whether the Claimant was fit to participate in the grievance investigation, constitutes a further example of racism/victimisation. As a judicial observation I note that the cited narrative as to what Mr Davis (PD) was asking OH to provide an opinion on appears to meet best practice.

9. I established today that although an occupational health report did eventually get produced, the Claimant was objecting in terms of the circulation list in relation to the Respondent; I gather that consequently the OH report was not published and thus the Respondent never received it. I gather the PD investigation was never completed but that will become clearer in due course.

10. To bring matters up to date, the Claimant having moved to London and married resigned the employment effective 31 August 2017. She is about to embark on new

work having recovered to that extent from her anxiety/depression. It may be that this is currently to be on a lower salary.

11. There had been a claim based upon disability discrimination but that has now been withdrawn and therefore it is dismissed.

12. As to the race discrimination based claims, insofar as the Claimant might seek to argue that the treatment of her caused her to become mentally unwell, that of course would be something that the Tribunal could consider in terms of remedy; but of course medical opinion would be needed on the issue if the Claimant succeeds on liability.

13. But the first fundamental of course is that all of this claim needs to be properly particularised. Second there needs to be time allowed for the filing of the amended claim. I factor in that Mr Blakey has only limited time in which to assist the Claimant and of course she is now in London. Thus I am providing a generous period for the provision of the amended claim. The Claimant has yet to provide a schedule of loss and of course that should now occur: I provide a date for that as well. Finally I will provide a time for the reply to the further and better particulars and the amended claim.

14. At present the Respondent makes application that on the pleaded scenario the Tribunal should consider striking out the claim or aspects of it or the ordering of a deposit on the basis that the claims have either:-

- (a) No reasonable prospect of success or;
- (b) only little reasonable prospect of success.

13. I can see that there are clear factual conflicts in this case which would normally require findings of fact by the Tribunal at the main hearing scheduled for October 2019, but on the other hand this is an issue that can be reserved until the claims are clearer in terms of particularisation. Therefore I am parking the issue for the time being.

14. Against that background I am making the following orders for directions.

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. The Claimant will supply and serve a schedule of loss upon the Respondent by Friday **30 November 2018**.

2. By the **same date** the Claimant will present to the Tribunal her amended claim to include the period post the first claim and culminating in her departure from the employment.

3. By **Friday 9 November 2018** the Respondent will have served its request for further and better particulars, focussing of course on what heads of the Equality Act are engaged and why. The Claimant will reply to that by the same deadline as otherwise provided namely **30 November 2018**.

4. The Respondent will then reply to both the amended claim and the further and better particular replies by **Friday 18 January 2019**.

The discovery process

5. The orders I now give replace those previously given:-

5.1 By Friday **8 February 2019** by way of first stage discovery the Respondent will have sent to the Claimant a proposed trial bundle index which will be double spaced.

5.2 By **Friday 22 February 2019** the Claimant will reply thereto, placing at the appropriate space and by way of brief description any additional document to be in the trial bundle. If she has the document she will send a copy with her additions to the trial bundle index. If she doesn't have the document but believes that the Respondent has it in its custody or control and that it is relevant and necessary to the issues, she will again that plain and that she requires the Respondent to place the document in the trial bundle.

5.3 By not later than **Friday 22 March 2019**, a single bundle of documents is to be agreed. The Respondent shall have the conduct for the preparation of the bundle for the hearing. The bundle is to be bound, indexed and paginated. The bundle should only include the following documents:

- the Claim Form, the Response Form, any amendments to the grounds of complaint or response and case management orders if relevant;
- documents which will be referred to by a witness;
- documents which will be referred to in cross-examination;
- other documents to which the tribunal's attention will be specifically drawn or which they will be asked to take into consideration.

In preparing the bundle the following rules must be observed:

- unless there is good reason to do so (e.g. there are different versions of one document in existence and the difference is material to the case or authenticity is disputed) only one copy of each document (including documents in email streams) is to be included in the bundle
- the documents in the bundle must follow a logical sequence which should normally either be simple chronological order or chronological order within a number of defined themes e.g. medical reports, grievances etc
- correspondence between the Tribunal and the parties, notices of hearing, location maps for the Tribunal and other documents which do not form part of either parties' case should never be included.

Unless an Employment Judge has ordered otherwise, bundles of documents should not be sent to the tribunal in advance of the hearing.

Witness statements

6. By not later than **Friday 19 April 2019**, the parties shall mutually exchange the witness statements of all witnesses on whom they intend to rely on. The witness statements are to be cross-referenced to the bundle and will be the witness's main evidence. The Tribunal will not normally listen to witnesses or evidence not included in the exchanged statements. The Claimant's witness statement must include an updated statement of the amount of compensation or damages she is claiming,

together with an explanation of how it has been calculated. Witness statements should not routinely include a précis of any document which the Tribunal is to be asked to read. Witnesses may of course refer in their witness statements to passages from the documents which are of particular importance, or to the inferences which they drew from those passages, or to the conclusions that they wish the Tribunal to draw from the document as a whole.

8. **Caveat:** The Claimant may wish to call reluctant witnesses who may not want to provide witness statements. Obviously if that be the case, the exchange order cannot cover them. The issue of those witnesses can be discussed at the Preliminary Hearing which I am ordering.

7. There will then be an **attended Preliminary Hearing at Leicester on Thursday 16 May 2019, starting at 10:00 am** currently with a one day time estimate. The provisional agenda will be:-

7.1 To discuss the pleadings as they then are.

7.2 Deal with any applications that the Respondent may have made and for that matter if there are any, any counter applications.

7.3 To discuss the current time estimate and the issue of whether there are witnesses that the Claimant's wants to call but who are unwilling to attend without for instance a witness summons.

7.4 To consider whether any extra days need to be added to the already listed three day hearing before a full Tribunal between 7 and 9 October 2019 at Leicester and whether there needs to be provision for such as reading in.

8. The Claimant has moved to London. It is **essential** that she immediately informs this Tribunal of the address to which henceforth service upon her by the Tribunal and indeed the Respondent is to be made.

Judicial Mediation

90. I raised this with the parties. They must inform the Tribunal as soon as possible if they are both willing to enter into the process. I would only observe that although there may be conflicts in this case, given the Claimant has left the employment and is now living in London and with a new job, that this appears suitable for Judicial Mediation.

NOTES

- (i) **The above Order has been fully explained to the parties and all compliance dates stand even if this written record of the Order is not received until after compliance dates have passed.**
- (ii) **Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.**

- (iii) The Tribunal may also make a further order (an “unless order”) providing that unless it is complied with, the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice or hold a preliminary hearing or a hearing.
- (iv) An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative. Any further applications should be made on receipt of this Order or as soon as possible. The attention of the parties is drawn to the Presidential Guidance on ‘General Case Management’:
<https://www.judiciary.gov.uk/wp-content/uploads/2013/08/presidential-guidance-general-case-management-20170406-3.2.pdf>
- (v) The parties are reminded of rule 92: “*Where a party sends a communication to the Tribunal (except an application under rule 32) it shall send a copy to all other parties, and state that it has done so (by use of “cc” or otherwise). The Tribunal may order a departure from this rule where it considers it in the interests of justice to do so.*” If, when writing to the tribunal, the parties do not comply with this rule, the tribunal may decide not to consider what they have written.

Employment Judge Britton

Date: 28 November 2018

Sent to the parties on:

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For the Tribunal:

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