



EMPLOYMENT TRIBUNALS

Claimant: Mrs L Jarrett

Respondent: Care UK Clinical Services Limited

Heard at: East London Hearing Centre

On: Monday 16th December 2019

Before: Employment Judge McLaren (sitting alone)

Representation

For the claimant: Mr Jarrett (claimant's spouse)

For the respondent: Mr A Ross (Counsel)

JUDGMENT

1. **The claim for unfair dismissal is dismissed as the claimant does not have qualifying service and the tribunal has no jurisdiction to hear this claim. The claim for race discrimination continues. The tribunal has jurisdiction to hear this matter because no qualifying service is required.**
2. **The respondent's application for a deposit order is refused.**

REASONS

Jurisdiction

1 This morning's hearing was listed to consider whether or not the claimant's claim for unfair dismissal should be struck out due to insufficient qualifying service.

2 The dates of the claimant's employment were not disputed to any material effect and it was agreed that she had less than two years continuous employment with the respondent.

3 The claimant's ET1, which was issued on the 16th of August 2019, identified at box 8 that this was a claim for unfair dismissal. The claimant had not checked to

indicate that her claim was one of discrimination. The additional information provided at box 15 did, however, make reference to ethnicity.

4 The document ends with the statement that the claimant believed what had happened to her was very unfair and then lists 10 issues or questions concluding with question 9, "would they judge others of my colleagues as harshly or automatically assume the worst?" Followed by question 10 "Is it because of my ethnicity?"

5 On 11 October 2018 the employment tribunal warned the claimant that her complaint of unfair dismissal could be struck out on the basis that she had less than two years employment and asked her to provide reasons in writing why that should not happen by 25 October 2019. The claimant did not respond to this. In front of me today Mr Jarrett, who is assisting his wife, explained that they believed that as the claimant had not worked for two years there was nothing they could say and it was for that reason they had not provided a response.

6 The tribunal then wrote to the parties on 25th of November identifying that the matter should be listed for a preliminary hearing open to consider whether the claim for unfair dismissal be struck out because of insufficient qualifying service. It also requested that by 9 December the claimant was to specify the ethnicity she was referring to in her claim, whether she was making a claim of ethnicity-based dismissal and, if so, she was asked to give full details of the claim.

7 The claimant did not respond to this instruction prior to the deadline, but on 11 December the claimant's husband wrote to the employment tribunal explaining that they had been on holiday for two weeks. In that letter it was stated that the deadline for a response expired before their return to the UK. Before me this morning Mr Jarrett again explained that they had been on holiday, but said they had been back on 29 November but there was insufficient time to respond to the employment tribunal's letter. They have been trying to get legal advice to help them but had been unable to afford this.

8 Mr Jarrett explained that during his wife's employment with the respondent there had been a number of incidents but she had chosen not to, as he described it "play the race card", and had instead raised these matters informally and in accordance with the internal procedure. She was then dismissed for a genuine mistake and she considered that the reason her point of view was not believed and she was held to have had malicious intent, rather than having made a mistake, was because of her ethnicity. Mr Jarrett made reference to different treatment being given to black people generally in society and gave as an example individuals accused of crimes.

9 Mr Ross, on behalf of the respondent, submitted that question 10 on the unfair dismissal claim was raised in the context of unfair dismissal not race discrimination. He also referred me to notes of the appeal hearing, particularly page 72, 73 and page 81 of the respondent's bundle prepared for today's hearing.

10 In these the claimant was asked about her claim for ethnicity discrimination and provided no particulars. Mr Ross also referred me to the employment tribunal correspondence and in particular the letter of 25 November when Employment Judge

Burgher asked the claimant to specify her ethnicity and to provide details which had not been answered. He pointed out the inconsistency between the response from the claimant and the dates Mr Jarrett gave in person today.

11 His submission was that the claimant had been given an opportunity to set out her claim in the appeal hearing, had been put on notice through a strikeout letter that a claim for unfair dismissal alone may not succeed and had not responded to this and further had not responded to the express request by the employment tribunal made on 25 November. His submission was that this all added up to there being no claim for race discrimination. This was a claim for unfair dismissal only.

Request for deposit order

12 In the alternative, Mr Ross asked that I take the opportunity this morning, so as to avoid any further costs to the respondent, of making a deposit order. If I was minded to conclude that a claim for race discrimination had been brought from the outset, then the very lack of particulars indicated that it was an insubstantial claim and there was little prospect of success.

13 I was reminded that the claimant needed to do more than make a simple assertion that the treatment she received was because of race and that the obligation was on the claimant to provide some facts from which an employment tribunal could infer discrimination.

14 This was a case where the claimant was doing no more than make a statement that treatment was because of ethnicity, she had failed to provide any facts or particulars and this was the very sort of case in which a deposit order should be made.

Conclusion

15 Having considered the submissions made to be by both parties and reviewed such of the documents to which I was referred by the respondent's counsel, I concluded that the claimant had, from her appeal onwards, consistently raised the same point. That is that she considers that it was because of her ethnicity that the respondent attributed a motive to her actions, rather than accept she made a mistake.

16 I am satisfied that the ET1 makes this point and therefore the claimant has raised a claim of discrimination to the employment tribunal. She does not need any qualifying service to bring this claim. She cannot bring a claim for unfair dismissal, but she is able to bring a claim for race discrimination citing a discriminatory motive for her dismissal.

17 I have considered the application for a deposit order. Rule 39 provides that where at a preliminary hearing the Tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of success, it may make an order requiring a party to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument.

18 Even if a tribunal concludes that a claim or allegation has little reasonable prospect of success, it does not mean that a deposit order must be made. The tribunal

retains a discretion in the matter and the power to make such an order under rule 39 has to be exercised in accordance with the overriding objective to deal with cases fairly and justly, having regard to all of the circumstances of the particular case.

19 On the facts before me the claimant has not particularised her case. I accept that she has been asked to do so and has not yet complied I also accept, however, that the claimant's explanations for not doing so are reasonable.

20 Considering the overriding objective, I concluded that it is appropriate to allow the claimant an opportunity to set out her case before any view is taken on its prospects of success. I am simply not in a position to make any decision on that in the absence of further details about what the claim actually is.

21 For this reason, the respondent's application for a deposit order is denied.

Employment Judge McLaren

18 December 2019