



EMPLOYMENT TRIBUNALS
London Central Region
Heard by CVP on 10/2/2022

Claimant: Dr R Al Jehani

Respondent: Royal Free Hampstead NHS Foundation Trust (1)
University College London (2)

Before: Employment Judge Mr J S Burns

Representation

Claimant: Ms S Firth (Counsel)

First Respondent: trainee observer

Second Respondent: Mr G Mitchell (Solicitor)

JUDGMENT

The Second Respondent's application to strike out the claims against it and in the alternative for deposit orders to be made against the Claimant regarding those claims, is dismissed.

REASONS

1. At the beginning of the hearing I disclosed a personal family connection to an employee in the Second Respondent's ILDH. Having been given time to discuss the matter with their lawyers, the Claimant and Second Respondent consented to my continuing to deal with the OPH.
2. The background and main facts are well summarised in paragraphs 26 to 33 of a Record of a Case Management discussion (Summary of Discussions leading to Orders) issued on 17/9/21 following a CMPH on 19/8/21. On that occasion the judge listed the OPH today to consider the following issues namely whether;
 - *the tribunal has jurisdiction to hear the claims against the second respondent. The relevant questions are contained in points 1 – 11 of the list of issues attached to this order as they apply to the second respondent; OR*
 - *the claimant's claims against the second respondent should be struck out on the grounds that there are no reasonable prospects of her succeeding to establish the tribunal has jurisdiction to hear the claims; OR*
 - *the claimant should be ordered to pay any deposits on the grounds that there are little reasonable prospects of her succeeding to establish the tribunal has jurisdiction to hear the claim.*
3. The previous judge listing today's OPH noted that "*It will be up to the judge allotted to conduct the preliminary hearing to decide whether some or all of the questions contained in points 1– 11 of the list of issues be determined as against the second respondent as discrete issues or should be heard at the final hearing.*"
4. After reading and considering the Claimant's and Prof M Pinzani's witness statements, an OPH bundle of 312 pages and the Claimant's and R2's written and oral submissions, I decided not to hear oral evidence and not to decide any discrete preliminary issues including those in paragraphs 1-11.
5. My reasons for so deciding were that in order to deal with such issues I would have to consider a wide range of evidence about a detailed and complicated case and make far-reaching findings of fact which may then hamper the subsequent full Tribunal which subsequently had to deal with the matter in more detail as a whole. As the First Respondent was not taking any active role in the OPH, it would be unfortunate to make findings of fact which might impact on

the First Respondent later. I also considered that in a case such as this it would be best for a full tribunal rather than a judge sitting alone to determine any Claimant argument that it would be just and equitable to extend time for any discrimination claims, should the Claimant find it necessary to make such an argument.

6. Accordingly, I told the parties that I would deal with R2's application to strike out/obtain a deposit order only, and that I would do so without oral evidence.
7. Any strike-out application should be considered taking the Claimant's case at its highest.
8. The first main argument by R2 is that the claims against it are all out of time. However the Claimant claims she suffered a series of whistleblowing detriments and/or a discriminatory continuing act ending with an event (the termination of her employment with R1 and the termination of her parallel honorary contract with R2 both on 4/9/2020) which event is clearly in time. Hence this is certainly not a case in which the whole claim taken at its highest, is late. If earlier discriminatory acts are out of time the Claimant has a detailed argument set out in her witness statement about why, in her submission, it would be just and equitable to extend time for those to be considered.
9. The other main argument relied of at this stage by R2 relates to the Claimant's status, both up to 2018 and between 2018 and 2020. In my view the Claimant's contentions that (i) in relation to R2 she was an employee, worker or a contract worker, as defined in the ERA and EA such that she has standing to sue R2 (as well as having been an employee of R1); and (ii) that she had an honorary contract with R2 which endured to 4/9/2020, are both reasonably arguable at the very least.
10. It is not in dispute that the Claimant made protected disclosures and that she complained about sex and race discrimination from an early date and long before her dismissal/termination of her placement at UCL.
11. A discrimination claim should not be struck out except in a clear case. I think the same conservative approach should be taken to whistleblowing claims. This is not such a clear case.
12. For similar reasons I am not persuaded that the Claimant's claims have little reasonable prospect of success, so making a deposit order would be inappropriate also.

J S Burns Employment Judge
London Central
10/2/22
For Secretary of the Tribunals
Date sent to parties
11 Feb. 22
