



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs Zeinab El-Khateeb

v

Linslade Academy Trust

Heard at: Watford

On: 3 February 2017

Before: Employment Judge Southam

PRELIMINARY HEARING

Appearances

For the Claimant: Ms M Bernard, Solicitor

For the Respondent: Mr A McPhail, Counsel

JUDGMENT

BY CONSENT

The claimant having withdrawn her complaints about failure to make reasonable adjustments and discrimination arising from disability, those complaints are dismissed.

CASE MANAGEMENT SUMMARY

Listing the Hearing

1. After the matters set out below had been discussed and, where appropriate, agreed, the parties' representatives and I agreed that the claim would be listed for full merits hearing over four days, to be heard at **Watford Employment Tribunal, Radius House, 51 Clarendon Road, Watford, Hertfordshire WD17 1HP** on **25-28 September 2017**, starting each day at 10am, or as soon thereafter as possible. The parties are to attend by 9.30 am, at least on the first day. This allocation is based on the claimant's stated intention to call herself and one other (short) witness to give evidence, and the respondent's intention to call five witnesses.
2. The time is to be used as follows: the first two hours will be for tribunal reading of statements and important documents. Thereafter, the time until mid-morning on the third day is for cross-examination, tribunal questions and re-examination of all witnesses. Thereafter on the third and fourth

days, 1.5 hours are allowed for closing submissions (half each side), four hours for tribunal deliberation, one hour for the delivery of judgment and three hours to deal with remedy. The claimant must be ready to deal with what she seeks by way of remedy, if she succeeds, unless the parties agree between them that remedies should not be determined if the claimant succeeds, for instance because medical evidence is required and it has been agreed that such evidence should not be sought until the result of the remedy hearing is known.

The Claim

3. This claim was submitted to the tribunal on 19 November, 2016. The claimant submitted the claim having entered into early conciliation with ACAS by sending them the requisite information about the intended claim on 18 November 2016. The ACAS certificate of early conciliation was issued by email on the same day.
4. In the claim, the claimant indicated she was bringing complaints about discrimination on the grounds of race, disability, sex (both direct and indirect) and her status as a part-time worker. The aspect of her race that is engaged by this claim is that she originates from North Africa.
5. Subsequently, she withdrew the latter two complaints, and complaints about failure to make reasonable adjustments and discrimination arising from disability. She now proceeds only with complaints about direct discrimination on the grounds of race and disability. There was a judgment dismissing the complaints about sex discrimination and less favourable treatment of a part-time worker, but that judgment did not extend to the other complaints withdrawn. That omission is now rectified above.
6. The claimant states that she has been employed as a teacher in French from 1 September, 2010, that she has cancer and that she is disabled. She applied for the position of Head of Modern Languages on 26 May 2016. She is currently employed to work 80% of a week and has Fridays off in order to attend medical appointments. She contends that the post was advertised as a full-time post and that she was therefore at a disadvantage having regard to her contract. She also alleges that, the day after the internal advertisement post of Head of Modern Languages, the post of the colleague of the claimant who went on successfully to secure the position of Head of Modern Languages was itself advertised externally. The claimant was not successful in her application.
7. She makes a number of comments about the way in which assessment for the recruitment to that post was undertaken by the respondents. On the basis of the matters she alleges, the claimant alleges that she was directly discriminated against because of her race and disability. The claimant was informed on 24 June, 2016 that her application was successful. Insofar as it is necessary for her to do so, the claimant alleges that that matter, together with others in particular the raising of a grievance, amount to a continuing act, so that the claim is in time in respect of all matters

about which she complains. If she is wrong about that, she contends that the tribunal should exercise its discretion and consider any complaint in respect of which the claim was submitted out of time on the basis that it would be just and equitable to do so.

8. The respondents dispute the claim. They say that further particulars are required. They accept that the claimant is disabled. The individual complaints are all resisted and denied. They agree that the post of Head of Modern Languages was advertised as a full-time post, but say that they would have considered, as they did in the claimant's case, an application to work the post on a part-time basis. They also agree that the post of the ultimately successful applicant was itself advertised shortly after the advertisement of the post of Head of Modern Languages. The respondents give their response to the claimant's complaints in relation to the process and make various points about the individual complaints in resisting them, including those which are no longer pursued. They do not take any time point (nor did they today).
9. Today, the claimant indicated, through her solicitor, that the only complaint she wishes to pursue is a complaint about not being offered the position of Head of Modern Languages, although that is pursued as discrimination on the ground of race as well as on the ground of disability. The way in which she puts her case is illustrated by the formulation of the issues which follows.

The Issues

10. It was agreed that the issues the tribunal will have to determine are as follows.
 - 10.1 By appointing Mrs Inns to the position of Head of Modern Languages, did the respondent treat the claimant less favourably than they treated Mrs Inns?
 - 10.2 Is the case of Mrs Inns not materially different from the claimant's case?
 - 10.3 The claimant will seek to prove the following:
 - 10.3.1 That the respondent advertised the role of French and Humanities Teacher (the role previously occupied by Mrs Inns) on 27 May, 2016;
 - 10.3.2 That the respondent advertised the role of Head of Modern Languages as a full-time post;
 - 10.3.3 That the respondent told the claimant that the position of Head of Modern Languages was a full-time position, because of operational requirements;

- 10.3.4 That the respondent failed to reply to the claimant's emails of 10 and 16 June, 2016?
 - 10.3.5 That the respondent allocated class 6AH to the claimant for the purposes of the interview process;
 - 10.3.6 That the respondent gave the claimant inaccurate written feedback about her lesson; and
 - 10.3.7 That the respondent failed to provide the claimant with a copy of the points system.
- 10.4 Are there facts from which tribunal could properly conclude, that the reason the claimant was not appointed was either:
- 10.4.1 That she is from North Africa; and/or
 - 10.4.2 That she is disabled.
- 10.5 If the claimant has proved such facts, has the respondent shown that the claimant's North African origin or her disability were in no sense a reason for her not being appointed to the position of Head of Modern Languages?
- 10.6 If the claimant succeeds, is she entitled to a declaration, a recommendation or compensation?
- 10.7 Even if the claimant had not been subjected to discrimination, would she nevertheless have been appointed to the position of Head of Modern Languages?

Other Matters

- 11. I raised with the parties the possibility of this case being considered for an offer of Judicial Mediation. The parties may be interested. Even if Judicial Mediation is not offered or attempted, that does not prevent the parties from seeking to settle this dispute by other means. That could include seeking the assistance of ACAS, or the parties could enter into direct negotiations conducted on a Without Prejudice basis. In either case, nothing that is said in those negotiations may be repeated in the tribunal proceedings
- 12. I made the following case management orders.

ORDERS

Made pursuant to the Employment Tribunals Rules of Procedure 2013

- 1. **Schedule of Loss**

The claimant shall, by **17 February 2017**, send to the respondent and to the tribunal a schedule setting out the sums claimed, showing how those sums are calculated.

2. Disclosure of Documents

2.1 It is ordered that the parties will give mutual disclosure of documents relevant to all of the issues identified above by supplying a list so as to arrive on or before **3 March 2017**. This includes, from the claimant, documents relevant to the amounts she claims.

2.2 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.

2.3 The parties are reminded that they have a continuing duty of disclosure, so that, if further relevant documents come to light, or into the possession or control of a party after that date, they are to be disclosed.

2.4 Any request for copy documents from the list of another party shall be made by **10 March 2017**, and any copy documents so requested shall be supplied by the party requested to supply them by **17 March 2017**.

3. Bundle of Documents

3.1 It is ordered that the respondent has primary responsibility for the creation of the single joint bundle of documents required for the hearing.

3.2 To this end, the respondent is ordered to supply to the claimant a draft index to the bundle by **26 May 2017**.

3.3 The claimant is ordered to notify the respondent on or before **5 June 2017** of any additional documents to be included in the bundle at her request. These must be documents to which she intends to refer, either by evidence in chief or by cross-examining the respondent's witnesses, during the course of the hearing.

3.4 The respondent is ordered to provide to the claimant a full, indexed, paginated bundle on or before **19 June 2017**, and to bring five further copies of the bundle to the tribunal, for use at the hearing, on the first morning of the hearing.

4. Witness statements

- 4.1 It is ordered that oral evidence in chief will be given by reference to typed witness statements from parties and witnesses. The witness statements must be full, but not repetitive. They must set out in chronological order all the facts about which a witness intends to tell the tribunal, relevant to the issues as identified herein. They must not include generalisation, argument, hypothesis or irrelevant material. The claimant's statement must include an account of the matters which are relevant to the remedies she seeks.
- 4.2 The facts must be set out in numbered paragraphs and, if a witness intends to refer to a document, the page number in the bundle must be set out by the reference.
- 4.3 It is ordered that witness statements are exchanged so as to arrive on or before **17 July 2017**.
- 4.4 Each party is responsible for bringing to the Tribunal on the first morning of the hearing five further copies of the statements of the witnesses, including in the claimant's case, her statement, who will give evidence on that party's behalf.

CONSEQUENCES OF NON-COMPLIANCE

- 1. 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.
- 2. 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 under rule 19 or hold a pre-hearing review or a Hearing.
- 3. 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.

Employment Judge Southam

Date: 15/02/2017

Sent to the parties on:

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For the Tribunal Office