



EMPLOYMENT TRIBUNALS

Claimant

Mr M Ismail

v

Respondent

One Stop Recycling Limited

OPEN PRELIMINARY HEARING

Heard at: Birmingham

On: 23 March 2017

Before: Employment Judge Dimbylow

Appearances:

For the claimant: Mr R Whitfield, Lay Representative

For the respondent: Mr G Bealey, Employment Law Consultant

JUDGMENT

1. Upon the claimant's application to amend his claim to include a claim for trade union victimization

The application is refused and is dismissed.

2. Upon the claimant's application to amend his claim to include a claim for race discrimination

The application is refused and is dismissed.

3. The claims which presently continue to hearing are: (1) unfair dismissal, (2) disability discrimination, (3) breach of contract over notice, and (4) holiday pay.

4. The claim is listed for a further Open Preliminary Hearing (OPH) and the final hearing as further detailed below.

Note: Reasons for the decision having been given orally at the hearing, written reasons will not be provided unless a written request is received from either party within 14 days of the sending of this record of the decision.

CASE MANAGEMENT SUMMARY

Listing the hearing

1. We agreed that the hearing in this claim would be completed within 7 days. It has been listed at Birmingham Employment Tribunal to start at 10am or so soon thereafter as possible on 19, 20, 21, 22, 25, 26 and 27 September 2017. The parties are to attend by 9.30 am. The hearing may go short, but this allocation is based on the on the claimant's intention to give evidence and call 2 further witnesses and the respondent's to call 3. An interpreter for the Kurdish Sorani dialect will be required. A detailed timetable can be agreed after the OPH referred to below.
2. There will be an OPH commencing at 9:45am on 16 June 2017 with a time estimate of one day before an Employment Judge sitting alone to determine whether the claimant was a disabled person within the meaning of the Equality Act 2010, and if so when the claimant was a disabled person and the nature of the disability. A Kurdish Sorani interpreter will be required.
3. I made the following case management orders by consent.

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

Amendment to previous orders and case management

- 1.1. The date for compliance by the claimant referred to in order 1.4 made by Employment Judge Kelly on 6 December 2016 is amended to 4pm on 20 April 2017. Unless the claimant complies with this order the complaint of disability discrimination will stand dismissed without further order. I made this order on the application of the respondent, and taking into account the fact that the claimant has failed to comply with other orders of the tribunal.
 - 1.2. The date for compliance by the respondent with order 1.5 made by Judge Kelly on 6 December 2016 is now to be by 4pm on 11 May 2017.
 - 1.3. If the OPH is not required on 16 June 2017 to determine the disability issue, a CPH will take place with a time estimate of two hours commencing at 9:45am on the same date. The Judge will define the remaining issues; and give tailor-made directions for the main hearing in September 2017.
 - 1.4. The claim for holiday pay is still a live claim, the previous withdrawal being set aside.
2. **Disclosure of documents for the whole case**
- 2.1. 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 by 4pm on 6 April 2017. This includes, from the claimant, documents relevant to all aspects of any remedy sought.
 - 2.2. 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.

- 2.3. 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.
- 2.4. 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.

3. Statement of remedy/schedule of loss

- 3.1. The claimant is ordered to provide to the respondent and to the Tribunal, so as to arrive by 4pm on 6 April 2017, a properly itemised statement of the remedy sought (also called a schedule of loss).
- 3.2. The claimant is ordered to include information relevant to the receipt of any state benefits.

4. Bundle of documents for the OPH issue only

- 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 by 4pm on 18 May 2017 of the documents to be included in the bundle at his request. These must be documents to which he intends to refer, either by evidence in chief or by cross-examining the respondent's witnesses, during the OPH.
- 4.3. The respondent is ordered to provide to the claimant a full, indexed, page numbered bundle to arrive by 4pm on 25 May 2017.
- 4.4. The respondent is ordered to bring sufficient copies (at least three) to the Tribunal for use at the hearing, by 9.30 am on the morning of the OPH.

5. Witness statements for the OPH issue only

- 5.1. It is ordered that oral evidence in chief will be given by reference to typed witness statements from parties and witnesses. The respondent indicated that it would not be calling any witnesses. The claimant indicated that he would be relying upon his impact statement(s) only.
- 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 preliminary issue 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. The claimant shall bring three copies of his statement to the OPH.

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 or hold a preliminary hearing 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.

Signed by Employment Judge Dimbylow

On 23 March 2017

Sent to the parties on:

24 March 2017.