



THE EMPLOYMENT TRIBUNALS

Claimant

Mr P Blackburn

Respondent

HMRC

JUDGMENT OF THE EMPLOYMENT TRIBUNAL PUBLIC PRELIMINARY HEARING

HELD AT NORTH SHIELDS

ON 21 April 2017

EMPLOYMENT JUDGE Shepherd

Appearances

For the Claimant: **Mr Mugliston**

For the Respondent: **Ms Callan**

JUDGMENT

1. The respondent's application for a deposit order to be made requiring the claimant to pay a deposit pursuant to 39 of the Employment Tribunal's (constitution and rules of procedure) Regulations 2013 is refused.
2. The application that the claim or any part of the claim is struck out on the basis that the Tribunal does not have jurisdiction to hear it is refused.

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. The claimant's application to amend the claim to include an allegation that the matters referred to in paragraph 23 to 24 in the attachment to the ET1 claim form amount to an act of harassment is allowed without the need for further service.
2. The substantive hearing remains listed for seven days at the North Shields Hearing Centre commencing Thursday, 6 July 2017 to Friday, 14 July 2017 as provided for in the orders sent to the parties on 3 March 2017. The first day will be a reading day and the parties' representatives should ensure that the bundle of documents and witness statements are available for the Tribunal to read by 9:30am on 6 July 2017 together with the agreed chronology and a suggested reading list.

REASONS

1. The claimant was represented by Mr Mugliston and the respondent was represented by Ms Callan.
2. This Public Preliminary Hearing was listed to consider whether all or any part of the claimant's claim should be struck out as having no reasonable prospect of success and, in the alternative, whether the claimant should be ordered to pay a deposit as a condition of continuing the claim on the grounds that there is little reasonable prospect of success. Also, whether the claim or any part of the claim has been presented out of time meaning that the Tribunal has no jurisdiction to hear it unless it is considered just and equitable to extend time.
3. I heard evidence from Peter Blackburn, the claimant and I had sight of a preliminary hearing bundle consisting of 25 pages.
4. The pleadings in this matter have evolved over time and were still not entirely clear. Mr Mugliston took instructions from the claimant and provided a list of allegations. The position was still not entirely clear at this stage. In particular, the allegations which were contained within paragraphs 23 and 24 in the attachment to the ET1. These had been included by the claimant when he was not represented. There had then been a request for further information and the claimant had obtained legal representation and, in the response to the request for further information it had been indicated that the claimant did not allege that the allegations amounted to discrimination. This was with regard to the response

to a freedom of information request which had been alleged to be a deliberate omission and discriminatory.

5. The claimant was wholly unable to explain why his solicitors, acting under his instructions, had withdrawn those alleged acts of discrimination. He had now instructed Mr Mugliston to include them within the list of allegations. As they had been withdrawn in the response to the request for further and better particulars, it was necessary to consider this as an application to amend. I considered the factors set out in the case of **Selkent Bus Company v Moore 1996 ICR 836** in this regard. I have considered the balancing exercise. The nature of the allegations were already known to the respondent and the balance of hardship and injustice would be greater to the claimant than the respondent. There was little prejudice to the respondent as the allegation had already been pleaded earlier.
6. Both parties agreed that any claims in relation to acts or omissions prior to 18 September 2016 are potentially out of time unless the claimant can demonstrate that they constitute acts/omissions continuing as an act extending over a period including an act on or after 18 September 2016. It was alleged that the acts of discrimination were ongoing. However, the only act or omission stated to have occurred after 18 September 2016 was the deliberate withholding of documents following a Subject Access Request in October 2016. In those circumstances, I am satisfied that it is just and equitable to allow the amendment to include that allegation.
7. In accordance with the principles set out by the Court of Appeal in the case of **Commissioner of Police of the Metropolis v Hendricks 2003 ICR 530**, it is arguable that the allegations made by the claimant are acts of continuing discrimination as distinct from a succession of unconnected acts and, in those circumstances, I do not find that the tribunal has no jurisdiction to hear all or part of the claims of discrimination. That will now be a matter for the Tribunal at the substantive hearing together with any consideration of an extension of time on just and equitable grounds in respect of any of the claims which may be out of time.
8. With regard to the applications in respect of the prospects of success, Ms Callan, on behalf of the respondent, made it clear that the application to strike out pursuant to rule 37 of the Employment Tribunals (constitution and rules of procedure) Regulations 2013 was not pursued. Therefore, the issue I had to consider was whether there was little reasonable prospect of success and whether the claimant should be ordered to pay deposit as a condition of continuing with the claim or part of the claim.
9. The claimant was employed by the respondent from 19 July 1999. He remains in employment as an Administrative Officer. He moved from the Debt Management and Banking Department to the Child Benefits Office on 14 September 2015. He

was on annual leave that time and commenced work in the new department on 12 October 2015.

10. The claimant has a chronic back condition and the respondent accepts that this constituted disability pursuant to section 6 of the Equality Act 2010.
11. The respondent alleges that the claimant was provided with reasonable adjustments in the form of specialist equipment and an arrangement for regular breaks before the transfer and these remained in place after the transfer.
12. The claimant alleges that there was a refusal to enter into a dialogue regarding reasonable adjustments and he provided further allegations in respect of a number of failures to make reasonable adjustments, harassment and victimisation.
13. The claimant remains in the respondent's employment. He has been off sick since July 2016.
14. The particulars of claim are confusing and the position has not been entirely clarified by the reply to the request for further and better particulars. Mr Mugliston has provided a further list of allegations following instructions from the claimant. However, the issues remain confusing.
15. As stated above, the claimant was wholly unable to explain why some allegations had been withdrawn in the reply to request a further and better particulars but had now reappeared in the allegations listed today. The claimant's evidence was vague. He had difficulty explaining the nature of some of his claims. At times it was clear that he did not follow questions that were asked of him and his evidence was, on occasion, incoherent.
16. This is a claim of disability discrimination. It is fact sensitive. It was clear at this hearing that the claimant had raised a total of around 24 allegations of failure to make adjustments, harassment and victimisation. There will be significant disputes with regard to issues of fact. The claimant has indicated that the effects of his medication which he takes to manage his back problem are that he suffers from memory problems and high levels of fatigue which affects his ability to concentrate. This was apparent during this preliminary hearing, particularly, towards the end of his evidence, the claimant was unable to concentrate and provide coherent answers.
17. There are numerous allegations, there will be central facts in dispute. The case is fact sensitive and requires a full examination in order that a Tribunal can determine the case. I am not satisfied that there is little reasonable prospect of the claims succeeding and I make no order that the claimant should pay a deposit.

18. I note that Mr Mugliston, on behalf of the claimant has conceded that the allegations contained within paragraph 3 and 13 are no longer pursued as acts of discrimination.
19. There is an order that the parties should provide an agreed list of issues to the Tribunal by 5 May 2017 and it is essential this is done.
20. In the circumstances, the respondent's application for a deposit order is refused and it has not been established that the Tribunal lacks jurisdiction to hear the claim or any part of the claim as being out of time.

Employment Judge Shepherd
Date: 26 April 2017.

Sent to the parties on:
27 April 2017
M.M.Richardson