



EMPLOYMENT TRIBUNALS

Claimant
Mr. J. Humphrey

v

Respondent
Forfarmers (UK) Ltd

JUDGMENT AND ORDER AT PRELIMINARY HEARING

Heard at: Bristol

On: 15th February 2017

Before: Employment Judge R. Harper

Appearances

For the Claimant: Ms. A. Patel
For the Respondent: Ms. Lunney

JUDGMENT

1. The Equal Pay claim is dismissed upon withdrawal. This does not prevent the claimant alleging the failure to make a pay increase in relation to the disability discrimination claim.
2. The claim of disability victimization is dismissed upon withdrawal. This does not impact on the remaining disability discrimination claims.

CASE MANAGEMENT SUMMARY

Listing the hearing

1. After all the matters set out below had been discussed, it was agreed that the hearing in this claim would be completed within 3 days. **It has been listed at Bristol Employment Tribunal, Civil & Family Justice Centre, 2 Redcliff Street, Bristol BS1 6GR to start at 10.00 am or so soon thereafter as possible on 17th, 18th and 19th July 2017. The parties confirmed that these dates were convenient. The parties are to attend by 9.30 am on each day.** The hearing may go short, but this allocation is based on the claimant's intention to give evidence and to call 1 further witness and the respondent's intention to call 2 – 3 witnesses. There were no special requirements for the witnesses save that the claimant may need regular breaks during the hearing.

2. The time will be used as follows:-

- 2.1. There will be **2 hours** tribunal reading time on the first morning;
- 2.2. By **4pm on 18th July 2017** at the latest the evidence and submissions will be completed;
- 2.3. A maximum total of **1 hour** (half each) for submissions on liability;
- 2.4. Approximately **2 hours** for the Tribunal to determine the issues which it has to decide and reach its conclusions;
- 2.5. **1 hour** for the Tribunal to give judgment, with reasons if possible;
- 2.6. **1 hour** for the Tribunal to identify issues relevant to remedy, hear further evidence if appropriate and reach its conclusions in respect thereof, if the claimant succeeds in whole or part.

Every time estimate must make a realistic allowance for pre-reading by the Employment Judge and, if required, the members. The time within which a case must be concluded will thus run from the beginning of the pre-reading. Should the period allowed for pre-reading prove inadequate, the time available in tribunal will be shortened correspondingly. The same principle will apply if too little time is allowed for the judge (and members) to read any written closing submissions.

The hearing may be actively case managed if necessary with the imposition of time limits to ensure that it is completed within the allocated time.

3 **Introduction and the issues**

- 3.1 The issues which will fall to be determined by the Tribunal will be set out in an Agreed List of Issues as ordered below. The claimant was employed between 24th October 2011 and 19th September 2016. The ET1 was filed, in time, on 14th December 2016
- 3.2 The claimant has had cancer. That is a deemed disability. The respondent accepts that the claimant was a disabled person with regard to cancer. However the claimant also asserts that for the presentation of his disability claim, and his “ordinary” unfair dismissal claim, it is important to demonstrate that he also suffers with the mental impairment of depression and stress. The respondent does not accept that the claimant is disabled with that mental impairment hence the Order below regarding the service of a report from the claimant’s GP plus relevant medical records together with an impact statement on the issue of alleged mental impairment.
- 3.3 The claim originally alleged Equal Pay. The cited comparator in box 2.3 of the Agenda was a male. The claimant is male. Under S. 64 EA 2010 the comparator must be a different gender to the claimant. After discussion it was agreed that the Equal Pay claim would be dismissed upon withdrawal since what was really being alleged was that a failure to award a pay increase was a detriment related to the claimant’s disability.
- 3.4 The tribunal sought clarification of the victimization claim. The claimant asserted that this was in relation to both PID disclosure and disability. The claimant was unable to point to a statutory section showing that it was possible to bring a victimization claim for PID. The claimant appeared to be

confusing S. 47B ERA 1996 with “victimization.” The claimant was unable to demonstrate that any of the protected acts in Section 27 Equality Act 2010 existed in relation to the disability discrimination victimization claim. The claimant decided therefore to withdraw the victimization claim.

- 3.5 The alleged protected disclosure for the PID claim relate to a lack of compliance with transport policy. The claimant was unable to tell the tribunal the exact date of such disclosure save that it was in **2015**. The claimant was dismissed with effect from 19th September **2016**. If the claimant is to succeed on this head of claim there will have to be actual and temporal proven linkage between the making of the alleged protected disclosures in 2015 and the detriment alleged by way of dismissal on 19th September 2016. Although it was not at all clear from the ET1 both sides seem to accept that in addition to an “ordinary” unfair dismissal claim the tribunal will have to deal with an allegedly automatic unfair dismissal claim under Section 103A ERA 1996. In that the only PID detriment alleged is the dismissal the claimant needs to consider his approach to such issue. It is not for the tribunal to advise either party.
- 3.6 It was specifically confirmed that the claimant did not raise with the respondent that he had allegedly made protected disclosures, at the disciplinary and appeal hearings.
- 3.7 At the tribunal’s instigation it was agreed that a Scott Schedule of allegations already made would help to clarify matters. This Schedule must not allege any further or new allegations. The claimant was unable to state during the hearing what PCP’s were relied upon save that it was alleged that duties could have been altered to allow for the claimant’s proper performance of his duties. This is not a PCP as so expressed. The case of **Rowan v. Environment Agency** stressed the importance of the PCP(s) being clearly pleaded so that both the respondent and the tribunal can understand them.
- 3.8 The harassment claim relates to words used towards the claimant that he would not be getting a pay increase upon his return to the workplace from suffering with cancer.

Remedies

3. If the claim or part of it succeeds the issue of remedy will be determined. The time allocated includes time for dealing with remedy. The claimant has indicated that compensation is being sought by way of remedy.

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. Further information on disability

- 1.1 By the 22nd March 2017, the claimant supply to the respondent the medical evidence – a GP's report and copies of the relevant medical records - which is relied upon to establish that the condition of a mental health impairment amounts to a disability as defined under the Equality Act 2010 ("the Act") together with a statement, limited to 750 words, as to the adverse effects the condition has on the claimant's ability to carry out normal day-to-day activities and the date on which the condition started.
- 1.2 By the 29th March 2017, the respondent notify the claimant and the tribunal whether on the basis of the evidence supplied it continues to dispute that the claimant is a disabled person for the purposes of the Act regarding the alleged mental impairment, and, if so, on what basis.

2. Scott Schedule

- 2.1 By the 1st March 2017, the claimant supply details to the respondent of the basis of the claims and the PCP's in a Scott Schedule including the dates, actions and names of those involved, sufficient for the respondent to understand the case it has to meet. This Scott Schedule is a schedule of allegations already made, not new allegations.
- 2.2 By the 15th March 2017, the respondent is to send to the claimant and to the tribunal the completed Scott Schedule

3. Disclosure of documents

- 3.1 On or before 22nd March 2017, the parties mutually to disclose documents relevant to the issues identified above by list and/or copy documents as appropriate. Documents to be disclosed are all relevant documents which are in the parties' possession, custody or control, whether they assist the party who produces them, assist the other party or appear neutral. This includes, from the claimant, documents relevant to all aspects of any remedy sought. Documents relevant to remedy include evidence of all attempts to find alternative employment.

4. Statement of remedy/schedule of loss

- 4.1 By the 1st March 2017, the claimant provide to the respondent and to the Tribunal, an itemised statement of the sums claimed by way of remedy (also called a schedule of loss) including details of any income (including state benefits) received after the end of employment.

5. Bundle of documents

- 5.1 By the 19th April 2017, a common set of core, relevant documents be agreed, assembled into a bundle, indexed and page numbered for use of the witnesses and the Tribunal, and limited without further direction to **150** single pages. This limit does not include the ET1, ET3, List of Issues, Schedule of Loss and any Scott Schedule. The bundle be prepared by the respondent, one set provided to the claimant and its contents agreed by the parties. The limit on the bundle size may not be exceeded by more than 5% without the express prior consent of the Tribunal.
- 5.2 The respondent is ordered to bring **4** copies of the bundle of documents to the Tribunal for use at the hearing, by 9.30 am on the day of the hearing.

6. Witness statements

- 6.1 By the 3rd April 2017, witness statements, including that of the claimant, be prepared and exchanged, these statements to form the primary evidence of the witnesses. These will be taken as read, subject to the discretion of the Tribunal. No witness will be permitted to give evidence without leave of the Tribunal unless a statement of evidence has been provided in accordance with this order.
- 6.2 The claimant's statement must include information to enable the Tribunal to deal with compensation or other remedy, if appropriate.
- 6.3 Statements should be typed and in **short** numbered paragraphs.
- 6.4 The witness statements be limited as follows –
- The claimant **3,000** words; claimant's witness **1,000** words
- The respondent's witnesses **6,000** words in total.
- Each statement must state the number of words it contains.** These limits may not be exceeded by more than 5% without the express prior approval of the Tribunal
- 6.5 Sufficient copies of the above be supplied to the Tribunal for use at the hearing by 9.30 am on the day of the hearing.

7. Chronology and cast list

- 7.1 By 09:30 on the first day of hearing the parties are to hand in to the tribunal,
- an agreed short neutral chronology;
 - an agreed cast list, listing in alphabetical order of surname, the full name and job title of all people from whom or about whom the Tribunal is likely to hear; and
 - written submissions plus any legal authorities.

8. List of Issues

By 15th March 2017 the parties are to provide to the Tribunal an Agreed List of Issues which, together with the Scott Schedule will provide the definitive template of the matters upon which the tribunal will have to make decisions.

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.

Employment Judge R Harper

Date: 15th February 2017

Sent to the parties on:

16 February 2017

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For the Tribunal:

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