



EMPLOYMENT TRIBUNALS

Claimant

Ms. A. Small

v

Respondent

R1: Maria Moxham

R2: Prospect Hospice

R3: Nigel Friend

R4: Warren Finney

R5: Richard Hammond

R6: Robert Tynan

JUDGMENT AND ORDER AT PRELIMINARY HEARING

Heard at: Bristol

On: 21st March 2017

Before:

Employment Judge R. Harper

Appearances

For the Claimant: Mr. M. Harris

For the Respondents 1,2,4,5,6: Ms. R. Brace

For Respondent 3: -

JUDGMENT

The claim of sex discrimination is dismissed upon withdrawal

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 **8** days. **It has been listed at Bristol Employment Tribunal, The Bristol Civil & Family Justice Centre, 2 Redcliff Street, Bristol, BS1 6GR, to start at 10.00 am or so soon thereafter as possible on 2nd, 3rd, 4th, 5th, 6th, 9th, 10th, 11th October 2017. The parties are to attend by 9.30 am.** The hearing may go short, but this allocation is based on the claimant's intention to give evidence and to call **8** further witnesses and the respondent's intention to call approximately **4** witnesses. There were no special requirements for the witnesses. However, one of the reasons for the longer time allocation is that English is the claimant's third language and although she does not need an interpreter it may be necessary to allow extra time for the claimant fully to understand everything. The large number of alleged detriment claims and

the need for a considerable length of judicial consideration time also was a reason for the longer allocation.

This hearing will deal with liability, and remedy if required.

2. There will also be a telephone case management hearing on 31st August 2017 at 10am. The parties are to dial using access code

3. The time will be used as follows:-

- 3.1. The first day will be a Tribunal reading day which will commence at 10am
- 3.2. By 4pm on day six (9th October 2017) the evidence and submissions are to have been concluded
- 3.3. A maximum total of one hour (half each) for submissions on liability;
- 3.4. Approximately 1 day for the Tribunal to determine the issues which it has to decide and reach its conclusions;
- 3.5. 3 hours for the Tribunal to give judgment, with reasons if possible;
- 3.6. 2 hours 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.

Introduction and issues

4. 4.1 All respondents attended through their representative except Mr. Friend who has not yet been served. R2 would not divulge Mr. Friend's last known residential address without a court order so such order has been made below. The claimant was adamant that Mr. Friend continues to be a respondent.
 - 4.2 The parties are to agree a List of Issues as per the Order below.
 - 4.3 Any time limit issues/jurisdiction will be considered at the final hearing
 - 4.4 The issue of whether the claimant was disabled will be determined at the final hearing not at a preliminary hearing.
 - 4.5 The claimant has Russian and Tibetan heritage.
 - 4.6 The parties submitted in their agendas that the final hearing would take 4 - 5 days or 2 – 3 days for a liability final hearing. Given that up to 14 witnesses are being called with a substantial number of allegations and considerable

documentation both time estimates were unrealistic. The Tribunal ordered that the final hearing, on liability and remedy should be listed for 8 days. Neither party attended the hearing with availability. Subsequent to the hearing they have both now done so and the hearing dates fixed to accommodate the dates supplied. The hearing dates will not be altered except in exceptional circumstances.

- 4.7 It was alleged that certain matters eg being placed on paid suspension, have arisen since the filing of the ET1. Rather than having to issue a new claim and then consolidate the two claims the Tribunal allowed the amendment. The Tribunal also allowed for an amended ET1 to set out the Protected Disclosures relied upon since there was a discrepancy between the protected disclosures in the ET1 and the ones set out in the claimant's agenda for this hearing. Provision was also made for an amended ET3.
- 4.8 The claimant indicated that she wished to withdraw the sex discrimination claim which has now been dismissed as above.
- 4.9 Neither party had brought their availability to list the case. The Tribunal indicated that the earliest it could accommodate such hearing was as from 1st September 2017. The parties were directed to provide their availability by 4pm on 23rd March 2017. [Now done]
- 4.10 The Judge indicated that R's 1,3,4,5,6 could only be held liable, if established, for the discrimination allegations not the whistleblowing and Working Time Regulation claims.
- 4.11 The cost of the copying of the bundles was ordered to be paid for equally. The claimant is a widow with a child aged 17; the main respondent is a charity. Both "sides" therefore had good reasons not to be fully responsible for the photocopying costs.
- 4.12 For the avoidance of doubt neither party wished to go down the route of jointly instructing a medical expert if the respondent does not accept that the claimant is disabled

Remedies

5. 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.

Judicial Mediation or Judicial Assessment

6. The parties are asked to notify the Tribunal in writing within seven days if they are interested in exploring the possibility of this case being considered for an offer of Judicial Mediation or Judicial Assessment. If both parties do so indicate, they will receive further notification from or on behalf of the Regional Employment Judge.

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. Further information on disability

- 1.1 By the 18th April 2017, the claimant supply the respondent with the medical evidence which is relied upon to establish that the condition of depression and anxiety 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 25th April 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, and, if so, on what basis.

2. Scott Schedule, Amended ET1, Amended ET3, List of Issues

- 2.1 By the 4th April 2017, the claimant to complete the Scott Schedule and serve upon the Respondents. The Scott Schedule is to make it clear what PCP's are relied upon in relation to each relevant allegation of discrimination.

By the same date the claimant is to serve an amended rider to the ET1 to include the amended allegations which have arisen since the issue of the ET1 until 21st March 2017 (the date of this Preliminary Hearing).

- 2.2 By the 18th April 2017 the respondents are to complete their part of the Scott Schedule and serve the completed document upon the claimant and the Tribunal.

By the same date the respondent is to serve an amended rider to the ET3, if so advised.

- 2.3 By the 28th April 2017 the parties are to file with the Tribunal an Agreed List of Issues. Only those tissues will be determined by the Tribunal at the final hearing.
- 2.4 For the avoidance of doubt the numbering of the respondents will always follow the numbering shown at the top of this document.

3. Disclosure of documents

- 3.1 On or before 28th April 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 4th April 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.
- 4.2 By the 18th April 2017, the respondent to serve upon the claimant a counter schedule of loss if so advised.

5. Bundle of documents

- 5.1 By the 31st May 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 single pages. This limit does not include the ET1, ET3, Schedule of Loss, List of Issues and 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. **The cost of copying the bundle to be borne equally between the parties.**
- 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 30th June 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 **5,000** words; each supporting witness for the claimant **1,000** words

The respondent's witnesses **13,000** 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 0930 on the first day of hearing the parties are to hand in to the Tribunal,

- an agreed short neutral chronology (first draft to be done by the claimant);
- 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 (first draft to be done by the claimant); and
- written submissions, if such are relied upon, together with any legal authorities.

8. Mr. Friend's address

By 4pm on 24th March 2017 the second respondent is to provide the last known residential address for Mr. Friend to the Tribunal to enable the proceedings to be served upon him. [This has now been provided to the Tribunal].

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: 24th March 2017

Sent to the parties on 24 March 2017
by email only
Mr JA Ongaro for the Tribunal Office