



# EMPLOYMENT TRIBUNALS

**Claimant:** AA

**Respondents:** 1. R Limited  
2. AB  
3. BB  
4. AC  
5. AD

**HELD AT:** Manchester **ON:** 15 June 2017

**BEFORE:** Regional Employment Judge Robertson  
(sitting alone)

**REPRESENTATION:**

**Claimant:** In person  
**Respondents:** Ms S Hubbard, solicitor

## JUDGMENT ON RECONSIDERATION

1. The Tribunal's Judgment ("the Judgment") given on 24 February 2017 and sent to the parties on 23 March 2017 is varied on reconsideration under rules 70-72 of the Employment Tribunals Rules of Procedure 2013, as set out below.
2. Paragraph 1 of the Judgment is confirmed.
3. As to paragraph 2 of the Judgment:
  - (a) The strike out of the claimant's complaints of unlawful direct discrimination because of the protected characteristic of sex and unlawful harassment related to the protected characteristic of sex, contrary to sections 13, 26 and 40 of the Equality Act 2010, is revoked;
  - (b) The strike out of the claimant's complaint of unlawful victimisation, contrary to sections 27 and 39 of the 2010 Act, is confirmed.
4. Paragraph 3 of the Judgment is varied such that the second and fourth respondents, identified as AB and AC, are reinstated as respondents but by consent, the third and fifth respondents, identified as BB and AD, remain dismissed from the proceedings.
5. Paragraph 4 of the Judgment is revoked.
6. Paragraphs 5 and 6 of the Judgment are confirmed.

7. Pursuant to rule 39 of the Employment Tribunals Rules of Procedure 2013, the claimant is ordered as a condition of being permitted to proceed with the complaints set out below to pay deposits as follows, on the ground that the complaints have little reasonable prospect of success:

- (a) In respect of the complaint of unlawful direct discrimination, as set out at paragraphs 7 and 8 of Annex B to the Tribunal's Case Management Orders made on 20 January 2017, the sum of £250;
- (b) In respect of the complaint of unlawful harassment related to sex, as set out at paragraphs 9 and 10 of Annex B, the sum of £100; and
- (c) In respect of the complaint of breach of contract, as appears at paragraph 3 of Annex B, the sum of £50.

8. Payment of the above deposits shall be made within 21 days of when this document is sent to the parties.

9. Case Management Orders for the continuing good conduct of the proceedings are given in a separate document.

## REASONS

1. The claimant, identified as AA, has applied to the Tribunal by way of a document dated 6 April 2017 for reconsideration of my Judgment in this case which was given at a Preliminary Hearing on 24 February 2017 and sent to the parties on 23 March 2017.

2. At this Reconsideration Hearing the claimant has appeared in person, supported by her father, and the respondents have been represented by Ms S Hubbard, solicitor. I have considered the claimant's detailed application and her and Ms Hubbard's oral submissions.

3. The claimant has forcefully contended that the conduct of the fourth respondent, her former husband, towards her and, to a lesser extent, the second respondent, should be viewed through the prism of what she describes as an abusive and controlling relationship in which she, as the female partner, was treated at work as weaker and controllable because she is female. She says that the fourth respondent would not, and did not, behave towards any male colleagues as he behaved towards her and what happened to her, particularly the incident on 24 May 2016, the subsequent threat to her job and the eventual notice of redundancy, were part of a process of removing her from employment because she would not conform.

4. In my earlier Judgment, I concluded that the claimant's complaints of unlawful direct sex discrimination and harassment had no reasonable prospect of success and should be struck out. I refer to paragraphs 56 to 71 of my Reasons.

5. Notwithstanding the claimant's forceful submissions, I am of the view that these complaints are unlikely to succeed, for the reasons I gave at paragraphs 56 to 71. However, I am mindful of the warning given to Employment Tribunals in **Balls v Downham Market** and **Chandhok v Tirkey**, which I referred to at paragraph 9 of my earlier Reasons, and I have concluded on reconsideration that I cannot say that the

complaints have no realistic prospect of success such that they should be struck out. In my view, they have little reasonable prospect of success, for the reasons I have given, but the appropriate action is to revoke the strike out judgment and to replace it with a deposit order under rule 39.

6. Further, in regard to the complaint of unlawful harassment, I have concluded that I should not have struck out the complaint on the basis that the claimant had no reasonable prospect of success in establishing that the claim had been presented within time. I have concluded that I did not afford the claimant proper opportunity to address the issue within a time limit hearing and the judgment should be revoked. The issue of the time limit, which concerns the claimant's allegations of harassment in respect of events on 24 and 31 May 2016, will now be decided at the full merits hearing of the case. However, I remain of the view that the allegations have little reasonable prospect of success and I have made a deposit order under rule 39 accordingly.

7. In respect of the claimant's complaint of breach of contract, the claimant contends that her behaviour on 2 August 2016 was in the context of a mental breakdown which led to her being sectioned a few days later, on 9 August 2016. Whilst it seems to me that the Tribunal is likely to conclude that the claimant was guilty of conduct entitling the respondent employer to dismiss her without notice, the circumstances surrounding her behaviour on 2 August 2016 are such that I cannot say that the complaint has no reasonable prospect of success and so I revoke the strike out order and substitute for it a deposit order under rule 39.

8. Finally, despite the claimant's submissions, I have concluded that the strike out of the victimisation complaint, and the deposit order under rule 39 which I made for her unfair dismissal complaint, for the reasons given at paragraphs 72 to 85 and 87 to 93 respectively, were correct and I confirm those decisions.

9. The claimant has told me that she remains dependant on family support for living expenses and could afford to pay a deposit of £250 but not £500. I have made deposit orders totalling £400, in addition to the deposit I made previously, which I believe she can afford.

10. I remind the claimant that if she pursues her complaints, but they are dismissed by the Tribunal for the reasons I have given, she may lose the deposit paid by her and will be at increased risk of being found to have acted unreasonably such that a costs order might be made against her. She would benefit from objective assessment of the strength of her claims and I have urged her to seek independent legal advice.

11. The consequence of my decision is that the current second and fourth respondents, AB and AC, are reinstated as individual respondents to the claim. However, the claimant has told me that she does not wish to proceed against the third respondent, BB, or fifth respondent, AD, personally and accordingly they remain dismissed as respondents from the proceedings.

12. I have made Case Management Orders separately for the continuing good conduct of the proceedings

Regional Employment Judge Robertson

Date 16 June 2017

JUDGMENT AND REASONS  
SENT TO THE PARTIES ON

28<sup>th</sup> June 2017

FOR THE TRIBUNAL OFFICE