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THE EMPLOYMENT TRIBUNALS

Claimant: **Miss B Blanquet**

Respondent: **Servest Group Ltd**

Heard at: **East London Hearing Centre** **On: 19 June 2017**

Before: **Employment Judge C Hyde (sitting alone)**

Representation

Claimant: Mr A Durango (Cleaners and Allied Workers Union)
Interpreter: Ms A Rodenas (Spanish/English)

Respondent: Mr B Gray (Counsel**)**

OPEN PRELIMINARY HEARING JUDGMENT

The Judgment of the Tribunal is that:

1. The unlawful deductions from wages and breach of contract complaints were struck out forthwith.
2. The Claimant's application to amend her claim was refused.
3. The discrimination claims under the Equality Act 2010 were struck out on the ground that the complaints were presented out of time and the Tribunal did not have jurisdiction to determine them.

REASONS

1. Written reasons for the above Judgment are provided pursuant to a request by the Claimant by email sent on 2 July 2017. The reasons are provided only to the extent that the Tribunal considers it necessary to do so for the parties to understand why they have won or lost, and only to the extent that it is proportionate to do so.

2. This was an open preliminary hearing following a closed preliminary hearing which took place on 20 March 2017 before the same Tribunal. The purpose of the open preliminary hearing was set at that hearing in March as was the date for this hearing. The purpose was to determine whether the Claimant's complaint was brought in time so

that the Tribunal had power to determine it. In addition, the Tribunal made orders for clarification of her claim and for other preparation for this hearing. The deadline for the provision of clarification of the claim was not adhered to and on the following day by email the Claimant sought to provide amended particulars of her claim. She did not clarify in that document which were the new allegations and whether any of the original allegations was being withdrawn.

3. The Respondent had been given permission to provide amended grounds of resistance in answer to the clarification of the claim. They provided those amended grounds as directed but made the point that the Claimant had attempted to raise further points and had not addressed some important aspects of the Tribunal's order for clarification. In particular, the Orders directing the Claimant to provide clarification of her claim, were set out in section 1 of the Order.

4. The Claimant had failed to provide clarification about her discrimination complaints (paragraphs 1.1 and 1.2). Further she did not address the Tribunal's direction for confirmation that there was no unlawful deduction of wages claim; and the Tribunal had directed that if she was indeed pursuing such a claim that she was to provide details of any alleged unlawful deductions (para 1.5). As she had not complied with that Order and she had stated during the closed preliminary hearing on 20 March 2017 that there were no unlawful deductions, the Tribunal considered it appropriate to strike out that claim.

5. The substantive matters I had to consider therefore were whether to allow the Claimant to amend her claim and then to decide whether the race and sex discrimination complaints were out of time and if they were out of time, whether to exercise the discretion given to the Tribunal to extend time for those claims to proceed nonetheless.

6. Because of the issues to be decided I heard evidence from the Claimant who had prepared a witness statement which was marked C1. As the Claimant had no questions to put to the Respondent's witness Mr Russell, he merely verified the witness statement dated 14 June 2017 and which was marked R3. In addition, the parties had agreed on a bundle of documents which ran to about 130 pages which was marked R1. Finally Mr Gray on behalf of the Respondent prepared a skeleton argument setting out the Respondent's position and that document was marked R2.

7. In support of the propositions and the arguments that he was making in his skeleton on behalf of the Respondent, Mr Gray attached copies of the cases of ***Chandhok v Tirkey*** [2015] IRLR 195, ***Virdi v Commissioner of Police of the Metropolis*** [2007] IRLR 24 and ***Ali v Office of National Statistics*** [2005] IRLR 201.

8. I turned first to the question of the amendment application. The difficulty the Claimant faced was that against the background of a claim which was presented some several months after she was first notified of the matter she complains about (27 May 2016), she then failed to put forward the matters that she now wishes to complain about in the proposed amendment.

9. Her claim form was presented on 19 November 2016. She then was informed that the Tribunal would be holding a closed preliminary hearing to identify the issues and manage the case by notice dated 1 December 2016. A date in mid-February 2017 was

fixed. The Respondent could not make that date and asked for a postponement which was granted. Eventually the closed preliminary hearing took place on 20 March 2017. At that delayed hearing on 20 March, the Claimant still put forward the case as set out in her claim form, and did not seek to amend to add the complaints in the proposed amendment application. It was only in response to the Tribunal's Order for clarification of the claim that some further quite substantial proposed amendments were contained in the email of 11 April 2017.

10. The Tribunal has already noted that the email of 11 April 2017 did not address some of the questions the Tribunal had asked which were essential to consideration of her case as set out in her claim form. The Tribunal also noted that the proposed amendment did not set out some of the heads of claim appropriately, such that the legal elements of those claims were addressed. In other words, in relation to the complaints in the proposed amendment, the Claimant had not pleaded or set out her case correctly so that the Tribunal and the Respondent could understand how she sought to argue it. Thus for example where she seeks to allege indirect discrimination she has failed to identify the provision, criterion or practice which she says was applied generally and with which compliance by her was difficult.

11. Then when one also looks at the way in which some of the new allegations are put, they either widen or change quite substantially the initial allegations. By way of example the Claimant initially said quite plainly in her claim form that she believed she was treated worse because she was Spanish and because she was a woman and that the employees who were chosen to work what she considered were the more favourable hours/shifts were predominantly Latin American men and that they were chosen by Latin Americans. She apparently proposes to widen that case in her witness statement referring to more favourable treatment given to non-European comparators. That case goes even further than the proposed amendment which also maintained that they were Latin American managers favouring Latin American employees. So even at this stage there did not appear to be the degree of clarify that would be required about the way in which the case was being put to give the Tribunal any confidence that this would not be a disproportionate and inappropriate amendment to allow.

12. Another example is in relation to the connection with her hours being cut and not receiving training. There was no suggestion of any issue relating to training in the claim form and this has emerged subsequently in the witness statement. To the extent that the Claimant says it was raised in a letter at page 101 which predates the claim form, that in a sense makes her position more difficult because if she was aware of that as an issue prior to presenting the claim form although she did not put it in the letter at page 101 in quite the way that she is putting it now, she could have included that point in some way in the factual account that she set out at page 7 of her claim form. No reference was made to it in the claim form.

13. Further, she now says that although the non-Europeans were treated more favourably she herself has identified one European Mr Docherty who is British who did not have his hours cut. She says her hours were cut because she was a woman, but she described in her statement a former female colleague called Tina who also did not have her hours cut.

14. These were examples of the difficulty that the Claimant faced in trying to assemble a coherent case of discrimination which would lead the Tribunal to consider it

appropriate to allow an amendment.

15. There was some cross-over in terms of the points relating to the amendment and the time points so I addressed the issue of whether the claim had been presented in time or not, before reaching a conclusion on the application to amend.

16. I identified in the closed preliminary hearing the issue which the Claimant had to address in terms of time limits and that was that the time limits were said by the Respondent at that stage to run from the date of the decision not the date of the implementation of the decision which was in June 2016. I was satisfied based on the authority of ***Virdi*** above that the time limits do indeed run from the date of the decision. There maybe circumstances obviously when the decision is made but the person affected is not aware that the decision has been made until sometime later when clearly she could rely on that delay as grounds for the Tribunal extending time. But here the position was confirmed in a letter at page 98 of the bundle to the Claimant. The Claimant was informed that the decision has been made in terms of the hours that she would need to work and she was told of this at the final consultation meeting on 27 May 2016. That was then confirmed to the Claimant in a letter dated 1 June 2016. I am not sure exactly when it was given to the Claimant and how it was conveyed to her but what is not disputed is that on 7 June the Claimant had signed to confirm her acceptance of the work on the hours that were contained in that letter and that appears at page 100 of the bundle.

17. Thus it appeared to me that given the effect of the ***Virdi*** case that the claim was indeed presented out of time. The Claimant's position at this hearing continued to be that the claim had been presented in time. She therefore had not presented to the Tribunal any grounds for a failure to meet the relevant deadline. Further compounding her position is that she clearly was in receipt of advice while this issue of the working hours was being considered during her employment before the new hours came into effect. She readily accepted that she had been getting advice from prior to April 2016. By then there had been various appeal hearings. I was referred to the notes of one such meeting in July 2016 which confirmed that her union representative was aware of the option of recourse to Employment Tribunals.

18. The early conciliation was started by the Claimant on 16 September 2016 but that would have been started out of time in accordance with my decision that the time started to run from the 27 May so therefore the Claimant cannot take the benefit of an extension of time. The early conciliation ran until the certificate was given on 19 November 2016. If the Claimant had wanted to argue as she sets out in her witness statement that she was awaiting the outcome of the appeal hearing which was not notified to her until a letter dated 5 October after a hearing or a meeting on 26 June 2016, that does not really assist because the Claimant then waited for a further six weeks before presenting the claim on 19 November 2016.

19. In considering the application to amend, I had in mind the applicable principles as set out in the case of ***Selkent Bus Co v*** Moore and as are also contained in the Presidential Guidance on amendments. The Law relating to time limits in discrimination complaints was set out in section 123 of the Equality Act 2010 and the case law which has arisen under it, and earlier equivalent statutory provisions in particular the case of ***British Coal Corporation v Keeble*** [1997] IRLR 336.

20. In all the circumstances, my judgment was that the application to amend the claim was refused and the sex and race discrimination claims were dismissed on the ground that the Tribunal had no jurisdiction to determine them because they were presented out of time and it was not just and equitable to extend time.

21. The Claimant was also ordered on 20 March to clarify the breach of contract claim which I was told was a reference to notice pay and to clarify whether she accepted that she worked and was paid for the notice period. Once again as no details have come forward in relation to that and there is nothing in the witness statement that I have been taken to by the Claimant which would suggest that she did not work that notice period, I also considered it appropriate to strike out that claim for non-compliance with the Tribunal's Order, and due to a lack of particulars about that claim.

Employment Judge Hyde

6 July 2017