



EMPLOYMENT TRIBUNALS

Claimant: Mr T Wishart

Respondents: Peninsula Business Services Ltd

Heard at: London South **On: Monday, 22 May 2017**

Before: Regional Employment Judge Hildebrand

Representation

Claimant: In Person

Respondents: Mr R Hickford, Solicitor
Ms K Ford, Paralegal

RESERVED JUDGMENT

1. No strike out or deposit orders are made on this application.
2. The cases brought by the Claimant are to proceed to hearing.

REASONS

3. This preliminary hearing was convened following an open preliminary hearing on 21 April 2017. At that preliminary hearing Employment Judge Spencer ruled that the Claimant's unfair dismissal claim was not presented within the relevant time limit and the Tribunal had no jurisdiction to deal with it. Employment Judge Spencer also ruled that the Claimant's direct race discrimination and victimisation case was presented outside of the relevant time limit but it would be just and equitable to extend the time limit to allow the claim against the Respondent to be heard. The Employment Judge declined to extend time in respect of the claim 2403254/2016 against the Second Respondent. The Employment Judge ordered a further open preliminary hearing on 22 May 2017 with a time estimate of 3

hours to determine whether any of the three claims brought should be struck out on the grounds they had no reasonable prospect of success or alternatively whether a deposit should be ordered.

4. I was not provided with any oral testimony. I was provided with an agreed draft list of issues, a chronology, a skeleton argument from the Claimant, a skeleton argument from the Respondent and a witness statement from the Claimant. I was also provided with a bundle of authorities and a bundle of documents running to 275 pages.
5. A brief summary of the issues in the three cases is as follows:-

2302834/2015

6. In his first claim **2302834/2015** the Claimant currently claims direct race discrimination, harassment and victimisation. He asserted that the Respondent's recruitment to senior posts discriminated against black and ethnic minority staff. The Claimant had raised this for the first time on 1 April 2015.
7. The Claimant claimed that his e-mail of 1 April 2015 was a Protected Act. He claimed victimisation.

2300533/2016

8. In his second claim 2300533/2016 the Claimant made a claim of public interest disclosure against the Respondent. In this claim the Claimant recorded, in addition to the matters raised in his first claim, the concern that, at a preliminary hearing on 10 December 2015 at Croydon, Counsel for the Respondent had informed the Tribunal Judge that a Judge in Huntingdon had ordered a medical report about the Claimant to be produced. It appears the Claimant was not aware of any cases where the Respondent was instructed since his files were ordered to be returned to the Respondent on 6 August 2015. A letter handed to the Claimant on 10 December 2015 confirmed that the Judge in Huntingdon in the case for which he had previously had conduct had ordered the Respondent to provide a medical report in relation to his fitness. The Claimant e-mailed the Respondent in response to the letter of 10 December 2015 seeking an explanation to why a Judge in Huntingdon would have ordered a medical report to be prepared on the Claimant and requesting sight of any supporting documentation explaining why an order had been made and the terms of the order. The Claimant expanded upon his e-mail of 10 December 2015 in a letter on 21 December 2015. In that letter the Claimant explained in more detail what had taken place before the Employment Judge in Croydon on 10 December 2015. The Respondent applied for a stay because it was said a medical report was required to satisfy an order of an Employment Judge in Huntingdon. The Claimant made clear that the order for a medical report related to the postponement order made in Huntingdon. The Claimant stated:-

“This, on any analysis, suggests a tribunal judge was misled”.

9. The Claimant alleges that a number of detriments flowed from the matters which he raised set out above.

2413254/2016

10. In his third case the Claimant complains of direct race discrimination and public interest disclosure. The Claimant's primary cause of complaint dates from receipt of an e-mail on 1 April 2015 from the Assistant Head of Legal Services, Terry Clarke while the Claimant was on holiday and out of the country. Mr Clarke listed 10 cases which were identified as raising issues of concern. The e-mail confirmed these cases had not been raised before because Mr Clarke was having consultations with staff about redundancies. In reply to that e-mail the Claimant made a specific allegation of discrimination against ethnic minority staff by Mr Clarke. He stated:-

“There have been a number of concerns I have had over the previous months about your treatment of ethnic minority employees I have represented and their place in the organisation. The e-mails you sent I consider nothing more than bullying and intimidation.”

11. This claim stated that additional matters were raised to the concerns expressed in the letter of 1 April 2015 not long after the Claimant's response. Shortly thereafter the Claimant was informed that he remained at risk of redundancy. He also made at about this time an application for the post of litigation manager in May 2015. He was unsuccessful and he was notified on 11 May 2015 that Mr Robert Cater had been appointed to the post of litigation manager. In July 2015 the Claimant was informed that his grievances had been rejected. He appealed that decision.
12. On 7 July 2015 the Claimant was about to start jury service. The Respondent e-mailed him alleging a complaint had been received from another client which needed investigation. The Claimant pleaded this was entirely without foundation.
13. On 6 August 2015 the Claimant returned from annual leave and was suspended pending the outcome of a disciplinary hearing. The Claimant was off sick with work related stress from 13 August 2015 to 4 April 2016. Following further procedures on 24 May 2016 the Claimant was notified that he would be summarily dismissed for gross misconduct. He appealed against that dismissal. The appeal was rejected on 1 July 2016.
14. In summary the Claimant stated that what had happened to him stemmed from the attitude of the Respondent to any signs of dissent from staff. The

Claimant had assisted his ethnic minority colleagues and believed difficulties had arisen for him from that time.

15. The Claimant alleges that a number of detriments flowed from the matters which he raised set out above.
16. The Claimant submits that there are issues of fact to be determined in all three claims. In the context of the public interest disclosure claim the Claimant asserted that an e-mail of 1 December 2015 to the Employment Tribunal at Huntingdon was blatantly untrue.

The Respondent's Application

17. In an extensive skeleton argument supported by detailed references to the bundle the Respondent sought to demonstrate that the protected disclosure relied on by the Claimant failed to meet the statutory test. The Respondent says the claims stand no reasonable prospect of success. The Claimant would not be able to establish a prima facie case on discrimination. The Respondent considered the acts of detriment relied on by the Claimant could be readily refuted by the Respondent. In relation to the Claimant's claim regarding the failure to appoint him to the post of litigation manager and the Claimant's criticism of the Respondent's appointments process the Respondent referred to the detailed notes of the members of the panel interviewed the Claimant. Reference was made in the course of the hearing to the Respondent's grievance report prepared by Mr Potts.
18. The report in relation to the appointment process proceeds on the basis that the appointment of a number of individuals is to be viewed as an analysis of the quality of the appointment process. Mr Potts stated in one context at page 156:-

"In my view there is no evidence of any less favourable treatment of black and ethnic minority employees during the process or in respect of these appointments by Mr Clarke or by PBS (the Respondent) in general terms."

One of the individuals considered was appointed without any application or interview process. Mr Potts stated at page 156:-

"In this sense I cannot see that black and ethnic minority employees were treated less favourably than any of their colleagues as all employees were treated in the same way."

19. It is not appropriate in these reasons to give detail in the event of a refusal to strike out or order a deposit. In the context of race discrimination the Claimant has clearly raised his concern in relation to discrimination in the appointments processes and I have not been satisfied that the concern is demonstrated by the Respondent to be without substance. These are matters which have to be tried on the evidence.

20. In relation to public interest disclosure the Respondent states that the Claimant has merely made allegations. I believe that when those allegations are contextualised as set out above the case falls in a position where it would be inappropriate to determine whether allegations were made or facts were communicated at this preliminary stage. It cannot be satisfactory on a short preliminary hearing to consider in close detail 275 pages of documentation to demonstrate that the case is without substance. The mere volume of information produced indicates that there are important matters to be considered in this case and a significant dispute in relation to the core facts. I remind myself that the Claimant disclosed that he considered an Employment Tribunal Judge had been misled.

21. The case is accordingly to proceed to hearing. The parties are invited to agree appropriate directions within 14 days of promulgation of this order. If they are unable to do so the Tribunal will list a telephone preliminary hearing for further case management although ideally that should be avoided given that they have already been two preliminary hearings on these cases.

Regional Employment Judge Hildebrand

21 June 2017