



EMPLOYMENT TRIBUNALS

Claimant

Mr. J. Mullins

Respondent

v St George's University Hospitals NHS
Trust

PRELIMINARY HEARING

Heard at: London South Croydon

On: 14 August 2017

Before: Employment Judge Sage

Appearances

For the Claimant: Did not attend

For the Respondent: Mr Jones Solicitor

JUDGMENT

The Claimant's claim for unfair dismissal is struck out on the grounds it has no reasonable prospect of success.

CASE MANAGEMENT SUMMARY

Listing the hearing

1. After all the matters set out below had been discussed, this matter has been listed for a preliminary hearing for **1 day** on the **17 November 2017** commencing at 10.00am to consider the following matters:
 - 1.1. Whether the Claimant was, at the relevant time a Disabled person.
 - 1.2. To consider the issues in the case if they had not been agreed;
 - 1.3. To make any case management orders in this matter;
 - 1.4. To list the case for a substantive hearing and
 - 1.5. To consider any further orders that may be necessary.

The parties are to attend by 9.30.

The complaint(s)

2. By a claim form presented on 7 June 2017, the claimant brought complaints of unfair constructive dismissal, age, race, disability, sex and religion and belief discrimination, breach of contract and unauthorised deduction from wages.

3. The respondent defended the claims. They submitted that the Claimant was a bank worker working from the 2 September 2016 until the 14 February 2017. They state that the Claimant was not an employee and had not accrued 2 years' service to claim unfair dismissal. The respondent will also submit that some of the factual claims are out of time and they deny that they are capable of amounting to continuing acts. Although the Claimant states that he is claiming disability discrimination, they do not admit to disability and puts the Claimant to strict proof. All claims are denied.

The issues

4. I now record a draft outline of the issues between the parties. However, as the Claimant did not attend the hearing this is not an agreed list, it is merely an outline of the issues. The parties are **ordered** to agree the issues by the **6 November 2017** and to provide a copy of the agreed issues to the Tribunal.

5. *Unfair (Constructive) dismissal claim*

- 5.1. This has been struck out as the Claimant has not accrued 2 years service and therefore cannot claim unfair dismissal (see section 108 Employment Rights Act 1996).

6. *Disability*

- 6.1. Does the claimant have a physical or mental impairment, namely **this is to be confirmed by the Claimant**?
- 6.2. If so, does the impairment have a substantial adverse effect on the claimant's ability to carry out normal day-to-day activities?
- 6.3. If so, is that effect long term? In particular, when did it start and:
 - 6.3.1. has the impairment lasted for at least 12 months?
 - 6.3.2. is or was the impairment likely to last at least 12 months or the rest of the claimant's life, if less than 12 months?

N.B. in assessing the likelihood of an effect lasting 12 months, account should be taken of the circumstances at the time the alleged discrimination took place. Anything which occurs after that time will not be relevant in assessing this likelihood. See the Guidance on the definition of disability (2011) paragraph C4.

- 6.4. Are any measures being taken to treat or correct the impairment? But for those measures would the impairment be likely to have a substantial adverse effect on the claimant's ability to carry out normal day-to-day activities?

7. *Section 26: Harassment on grounds of [this is to be confirmed by the Claimant]*

- 7.1. Did the respondent engage in unwanted conduct as set out in the Respondent's draft list of issues at paragraph 4.10?

- 7.2. Was the conduct related to the claimant's protected characteristic?
- 7.3. Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?
- 7.4. If not, did the conduct have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?
- 7.5. In considering whether the conduct had that effect, the Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

8. Section 13: Direct discrimination on grounds of sex, age, perceived religious faith and gender

- 8.1. Has the respondent subjected the claimant to the following treatment falling within section 39 of the Equality Act 2010, as set out in the Respondent's draft agenda at paragraphs 4.1-4.8.
- 8.2. Has the respondent treated the claimant as alleged less favourably than it treated or would have treated the comparators? The claimant relies on the following comparators Ms Pearson and the Claimant will need to confirm comparators for some pleaded acts of discrimination.
- 8.3. If so, has the claimant proved primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of the protected characteristic?
- 8.4. If so, what is the respondent's explanation? Does it prove a non-discriminatory reason for any proven treatment?
- 8.5. In respect of age discrimination does the respondent show that the treatment was a proportionate means of achieving a legitimate aim?

9. Reasonable adjustments: section 20 and section 21

- 9.1. Did the respondent apply the following provision, criteria and/or practice ('the provision') generally, namely those set out in the Respondent's agenda at paragraph 5.1
- 9.2. Did the application of any such provision put the claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled?
- 9.3. Did the respondent take such steps as were reasonable to avoid the disadvantage?

10. Time/limitation issues

- 10.1. The Respondent asserts that any act or omission which took place before 9 February 2017 is potentially out of time, so that the tribunal may not have jurisdiction.
- 10.2. Does the claimant prove that there was conduct extending over a period which is to be treated as done at the end of the period? Is such conduct accordingly in time?
- 10.3. Was any complaint presented within such other period as the employment Tribunal considers just and equitable?

11. Breach of contract

- 11.1. It is not in dispute that the Claimant resigned without giving notice to the Respondent.
- 11.2. The Respondent denies they acted in breach of contract and will state that all payments were made to the Claimant
- 11.3. How much notice does the Claimant contend is owed to him and why?

12. Remedies

- 12.1. If the claimant succeeds, in whole or part, the Tribunal will be concerned with issues of remedy.
- 12.2. There may fall to be considered a declaration in respect of any proven unlawful discrimination, recommendations and/or compensation for loss of earnings, injury to feelings, breach of contract and/or the award of interest.

Judicial mediation

13. The Respondent was not interested in mediation.

Other matters

14. It is noted that the Claimant has informed the Tribunal (in the handwritten document produced on the 14 August 2017 and copied to the Respondent) that his representative be removed from the record. The Claimant is reminded that legal advice and assistance may be obtained from organisations such as the CAB, local Law Centres and the Free Representation Unit (FRU).

15. I made the following case management orders:

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. Amended response/Further information

- 1.1 The Claimant is ordered to respond to the Respondent's request for further particulars which is set out in highlighted text in the Respondent's draft list of issues. The response is to be sent to the Respondent, with a copy to the Tribunal, on or before the **29 August 2017**.
- 1.2 The Respondent is given leave to serve an amended ET3 by the **18 September 2017**.

2. Disclosure of documents

- 2.1 There will be no general order for disclosure until after the preliminary issues have been considered in the hearing listed above (to determine whether the Claimant was at the relevant time a disabled person under the Equality Act and any other orders that may be relevant after the Claimant has responded to the request for further particulars of his claim).
- 2.2 The Claimant is ordered to disclose by list and copy so as to arrive with the respondent by **9 October 2017** all medical records held by the claimant's GP from the date of the car accident to date, including notes, whether manual or on computer, of attendances by the claimant, referrals to other medical or related experts, reports back from such experts, copies of X rays, test results or other examinations and so on. At the same time, the Claimant is ordered to serve on the Respondent, with a copy to the Tribunal, a Disability Impact Statement.

3. Statement of remedy/schedule of loss

- 3.1 It was noted that the claimant had sent a schedule to loss to the tribunal but failed to send a copy to the Respondent. A copy of this document was provided to the Respondent in the hearing. The Claimant is reminded that all documents sent to the Tribunal must also be copied to the Respondent, at the same time.

4. Medical and expert evidence/admissions re disability

- 4.1 The respondent is ordered by **6 November 2017** to notify the claimant and the Tribunal whether, having considered the medical records, it concedes that the claimant is or was at the material time a disabled person, identifying the disability and the period and/or the extent of any remaining dispute on these issues.
- 4.2 If disability is not conceded or there is some relevant continuing dispute, the matter will be considered at a 1 day hearing listed above.

5. Bundle of documents

- 5.1 It is ordered that the respondent has primary responsibility for the creation of the single joint bundle of documents required for the preliminary hearing.

- 5.2 The respondent is ordered to provide to the claimant a full, indexed, page numbered bundle to arrive on or before **23 October 2017**.
- 5.3 The respondent is ordered to bring sufficient copies (at least three) to the Tribunal for use at the hearing, by 9.30 am on the morning of the hearing.

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 Sage

15 August 2017