



EMPLOYMENT TRIBUNALS

Claimant:
Mr A Manuwa

v

Respondent:
Tesco Stores Limited

PRELIMINARY HEARING

Heard at: Reading

On: 5 May 2017

Before: Employment Judge Gumbiti-Zimuto

Appearances

For the Claimant: Mr D Olawanle (Solicitor)

For the Respondent: Mr N Singer (Counsel)

JUDGMENT

1. The correct name of the respondent is Tesco Stores Limited. The title of these proceedings is therefore amended accordingly.
2. The claimant has withdrawn his complaints about a redundancy payment and holiday pay; the complaints are dismissed pursuant to rule 52 of the Employment Tribunals Rules of Procedure 2013.

CASE MANAGEMENT SUMMARY

Listing the full merits hearing

1. It was agreed that a full merits hearing should be listed with a time allocation of three days. It has been listed at **Reading Employment Tribunals, 30-31 Friar Street (Entrance in Merchants Place), Reading RG1 1DX** to start at 10.00 am or so soon thereafter as possible on **24 to 26 January 2018**. The parties are to attend by **9.30 am**.

Listing the preliminary hearing

2. It was further agreed that a preliminary hearing should be listed with a time allocation of one day. It has been listed at **Reading Employment Tribunals, 30-31 Friar Street (Entrance in Merchants Place), Reading RG1 1DX** to start at 10.00 am or so soon thereafter as possible on **19 October 2017**. The parties are to attend by **9.30 am**.

The complaint(s)

3. By a claim form presented on 2 February 2017, the claimant brought complaints of:-
 - 3.1 Constructive unfair dismissal;
 - 3.2 Direct race discrimination;
 - 3.3 Victimisation;
 - 3.4 A claim for a redundancy payment; and
 - 3.5 Holiday pay.

The respondent defended the claims.

4. The preliminary hearing has been listed to consider the following issues:-
 - 4.1 Whether the claimant's complaints concerning constructive dismissal should be struck out on the basis they have no reasonable prospect of success. In the alternative, whether the claimant should be required to pay a deposit as a condition of continuing with the complaints.
 - 4.2 Whether the claimant's complaints of direct discrimination on the grounds of race should be struck out on the basis that they have no reasonable prospect of success. In the alternative, whether the claimant should be required to pay a deposit as a condition of continuing with the complaints.
 - 4.3 Whether the claimant's complaints about victimisation should be struck out on the grounds they have no reasonable prospect of success. In the alternative, whether the claimant should be required to pay a deposit as a condition of continuing with the complaints.
 - 4.4 Whether the claimant's complaints of discrimination on the grounds of race and/or complaints of victimisation should be struck out on the grounds that the employment tribunal does not have jurisdiction to consider the complaints having regard to the time limits for the presentation of complaints contained in section 123 of the Equality Act 2010.

The issues

5. I now record that the issues between the parties which fall to be determined by the tribunal are as follows.
6. **Unfair dismissal claim**
 - 6.1 Was the claimant constructively dismissed or was the claimant dismissed on the grounds of redundancy?
 - 6.2 The claimant contends that he accepted a redundancy payment because the way that he was treated by the respondent amounted to a dismissal. The claimant contends that he was constructively dismissed and that the dismissal was unfair.

- 6.3 It is the respondent's case that the claimant was dismissed on the grounds of redundancy.
- 6.4 The claimant will says that the following matters amount to a breach of contract by the respondent:-
- (a) Naming the claimant as an accomplice to a black person found stealing at the store even though the claimant was on holiday.
 - (b) Accusing the claimant of theft of perfume.
 - (c) Accusing the claimant of not working effectively.
 - (d) The claimant being followed around the store by Adam Green.
 - (e) The respondent's failure to act when the claimant made a complaint about racism at the store on 5 February 2016
 - (f) Falsely accusing the claimant of taking money from the till.
 - (g) Despite the claimant's complaints about graffiti drawn on a toilet wall relating to the claimant, the respondent failed to take any action.
 - (h) The respondent's failure to deal with a grievance by the claimant on 17 September 2016 in a timely manner and further the respondent failed to hold a stage 2 meeting in respect of the grievance.

The claimant will say that he resigned as a result of the above mentioned breach/breaches.

- 6.5 It was not clear from what was said by the claimant when the claimant resigned his employment.
- 6.6 The claimant does not make any contention that there was any unfairness arising from the redundancy process or his selection for redundancy. The claimant's allegation of an unfair dismissal arises solely from his contention that he was constructively dismissed and that such a constructive dismissal was unfair because it was not for a potentially fair reason.
- 6.7 It is in issue between the parties whether the matters complained of by the claimant are capable of constituting a constructive dismissal.

7. Section 13: Direct discrimination on grounds of race

- 7.1 Has the respondent subjected the claimant to the following treatment falling within section 39 Equality Act 2010, namely:-

- 7.1.1 Accusing the claimant of being an accomplice to a thief (c. 2015). The claimant will contend that there were rumours spreading amongst staff at the store that he was an accomplice of a thief.
- 7.1.2 The claimant was alleged to have been involved in the theft of perfume (2015).
- 7.1.3 In a review, Adam Green and 'Olly' stated that the claimant was not working effectively (2015).
- 7.1.4 Adam Green (store manager) followed the claimant around the store. This occurred from 2015 and continued until 5 November 2016, (i.e. the date of termination of the claimant's employment).
- 7.1.5 On 5 February 2016, the claimant made a verbal report to Adam Green complaining about being referred as the "chief culprit". The respondent failed to take any action.
- 7.1.6 On 14 June 2016, Adam Green accused the claimant of feigning sickness.
- 7.1.7 On 20 June 2016, the claimant was accused of taking money from the till by Sarwat, checkout manager. The respondent failed to investigate the till shortage by checking CCTV footage.
- 7.1.8 Graffiti of the claimant was put up in disabled toilet. The claimant will contend that the respondent failed to take any action when the matter was reported. The claimant will contend that this was very different to the way that the respondent acted in a case involving another employee (Vicky Eastwood) in about February 2016.
- 7.1.9 The respondent failed to hold a Stage 2 meeting in respect of the claimant's grievance.
- 7.2 Has the respondent treated the claimant as alleged less favourably than it treated or would have treated the comparators? The claimant relies on a hypothetical comparator. In respect of the graffiti incident, the claimant relies on the comparator, Vicky Eastwood. The claimant was unable to be specific about the incident involving Vicky Eastwood but stated that it occurred in about February 2016.
- 7.3 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?
- 7.4 If so, what is the respondent's explanation? Does it prove a non-discriminatory reason for any proven treatment?

8. **Section 27: Victimisation.**

- 8.1 Has the claimant carried out a protected act? The claimant relies upon his complaint made on 5 February 2016.
- 8.2 If there was a protected act, has the respondent carried out any of the treatment set out below because the claimant had done a protected act?
- 8.2.1 The claimant was given more work by being assigned tasks to be performed on his own when they would usually be completed by a team.
- 8.2.2 The claimant was not permitted to take rest breaks.
- 8.2.3 The respondent failed to deal with the claimant's grievance in a timely manner.
- 8.2.4 The respondent failed to hold a stage 2 meeting in respect of the claimant's grievance.

Other matters

9. I made the following case management orders by consent.

ORDERS

Made pursuant to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013

1. **Amended response**

- 1.1 The respondent if so advised may provide an amended response. The amended response to be sent to the claimant and the employment tribunal **so as to arrive within 21 days of the date on which this case management order is sent to the parties.**

2. **Schedule of loss**

- 2.1 The claimant is ordered to provide to the respondent and to the Tribunal, so as to arrive on or before **19 May 2017** a properly itemised schedule of loss.
- 2.2 The claimant is ordered to include information relevant to the receipt of any state benefits.

3. By no later than **15 June 2017**, the respondent is to inform the claimant and the employment tribunal which allegations it seeks to ask the tribunal to strike out and/or make an order for a deposit.

4. Disclosure of documents – Preliminary Hearing

4.1 Any documents relevant to the preliminary hearing issues that remain live are to be disclosed by providing a list and copy documents by no later than **27 July 2017**.

5. Bundle of documents – Preliminary Hearing

5.1 The respondent is to produce the preliminary hearing bundle.

5.2 The parties are to agree an index to the preliminary hearing bundle by **10 August 2017**.

5.3 The respondent is to provide one copy of the preliminary hearing bundle to the claimant by **17 August 2017**.

6. Witness statements – Preliminary Hearing

6.1 Any witness evidence which either party wishes to rely on at the preliminary hearing should be exchanged no later than **28 September 2017**. There should be a simultaneous exchange of any witness evidence.

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 Gumbiti-Zimuto

Date: ...16 May 2017.....

Sent to the parties on: