

IN THE SOUTH LONDON EMPLOYMENT TRIBUNAL

B E T W E E N:

MR DEEPAK KUMAR

Claimant

and

GUY'S AND ST. THOMAS' NHS FOUNDATION TRUST

Respondent

RESPONDENT'S LIST OF ISSUES

Age Discrimination

The Claimant's age was 54 when appointed.

1. Did Mr Bankes say to the Claimant in or around November 2014, words to the effect of he was looking for a successor [for him] and therefore [the Claimant] did not fit into his criteria?
 - 1.1 Was this comment related to age?
 - 1.2 Did this amount to harassment for the purposes of section 26 EqA 2010? Did Mr Bankes' alleged comment have the purpose or the effect or both of creating an adverse environment as set out in section 26(1)(b) and if it did have this effect was it reasonable for it to do so.
 - 1.3 Did this alleged comment amount to Direct discrimination under section 13 EqA 2010? Did Mr Bankes make this alleged comment to the Claimant because of the Claimant's age? Was the alleged comment less favourable treatment than Mr Bankes would have treated a younger comparator?
 - 1.4 Is the allegation time-barred under s.123 Equality Act 2010? Did the alleged comment form part of conduct extending over a period up to 15 May 2016? If not, is it just and equitable for the Tribunal to extend time?
2. Did Mr George say to the Claimant in or around November-December 2014..... that the Claimant was ".... An old dog learning new tricks"
 - 2.1 Was this comment related to age?
 - 2.2 Did this amount to harassment for the purposes of section 26 EqA 2010? Did Mr George's comment have the purpose or the effect or both of creating an adverse environment as set out in section 26(1)(b) and if it did have this effect was it reasonable for it to do so.
 - 2.3 Did this alleged comment amount to direct discrimination under section 13 EqA 2010? Did Mr George make this alleged comment to the Claimant because of the Claimant's age? Was the alleged comment less favourable treatment than Mr George would have treated a younger comparator?
 - 2.4 Is the allegation time-barred under s.123 Equality Act 2010? Did the alleged comment form part of conduct extending over a period up to 15 May 2016? If not, is it just and equitable for the Tribunal to extend time?

3. Did the changes in the Claimant's role from a Clinical Fellow within the elective orthopaedics / hip surgery specialising in "Young Adult Hip" to a Specialist Registrar Role amount to less favourable treatment when compared with Mr Jonathan Hutt?
 - 3.1 Was this treatment because of the Claimant's age under section 13?
 - 3.2 Was this treatment a proportionate means of achieving a legitimate aim as set out in section 13(2) EqA 2010? The Respondent asserts that the legitimate aim was to rectify the mistake in the Claimant's contract and to ensure that he continue to be employed by the Respondent until August 2015. The Respondent asserts that changing the Claimant's role to that of Specialist Registrar Role (which the Respondent asserts he agreed to) was a proportionate means of achieving this aim, in that it allowed him to remain employed on the same terms and conditions, whilst still obtaining valuable experience to assist with his training and professional development.
 - 3.3 On what date or over which period did this change take place?
 - 3.4 Did the Claimant resign, in circumstances in which he was entitled to do so without notice, because of the Respondent's alleged discriminatory conduct?
 - 3.5 Is the allegation time-barred under s.123 Equality Act 2010? Did the variation to the Claimant's contract occur at a point of time or did it form part of conduct extending over a period up to 15 May 2016? If it is out of time, is it just and equitable for the Tribunal to extend time?

Race Discrimination

The Claimant's race is Asian (Indian).

4. Did the changes in the Claimant's role from a Clinical Fellow within the elective orthopaedics / hip surgery specialising in "Young Adult Hip" ("the Hip Fellowship") to a Specialist Registrar Role amount to less favourable treatment when compared with Mr Jonathan Hutt?
 - 4.1 Was this treatment due to the Claimant's race under section 13?
 - 4.2 On what date or over which period did this change take place?
 - 4.3 Was the Claimant entitled to terminate his employment by reason of the Respondent's alleged discriminatory conduct?
 - 4.4 Is the allegation time-barred under s.123 Equality Act 2010? Did the variation to the Claimant's contract occur at a point of time or did it form part of conduct extending over a period up to 15 May 2016? If it is out of time, is it just and equitable for the Tribunal to extend time?

Breach of Contract

5. Was it an express/implied term of the Claimant's contract of employment that the Hip Fellowship was to last for a 12 month period?
 - 5.1 If so, was the Respondent entitled to vary any such term, whether by reason of variation or mistake?
 - 5.2 If so, did the Claimant accept any such variation, either expressly or impliedly by his conduct?
 - 5.3 Alternatively was there a breach of that contractual term?

- 5.4 If so, is the Claimant entitled to bring a claim for damages related to the early termination of the Fellowship or is such a claim prohibited as it falls within the "Johnson exclusion area?"
- 5.5 Did the Respondent have a right to terminate the contract with one month's written notice as set out in the unsigned contract of 22 October 2014? If so, was the Specialist Registrar role offered as an alternative to such dismissal?
- 5.6 If the Tribunal have jurisdiction to hear the complaint of breach of contract, what loss, if any, flows from that breach?

Section 1 ERA

- 6. Did the Respondent fail to provide a written statement of particulars of employment as required by section 1(1) Employment Rights Act 1996.
 - 6.1 Did the Respondent fail to provide the section 1 statement within two months after the commencement of employment, in breach of section 1(2) of the Employment Rights Act 1996?
 - 6.2 At the time these proceedings were issued, was the Respondent in breach of its duty in section 1(1) of the Employment Rights Act? If so, does the Claimant have a claim under s.38 of the Employment Act 2002.
 - 6.3 If so, has the Employment Tribunal found in favour of the Claimant?
 - 6.4 If so, has the Employment Tribunal made an award in respect of the claim to which the proceedings relate?
 - 6.5 Is it appropriate to award the minimum award of 2 weeks' capped pay or the maximum award of 4 weeks' capped pay?

Grievance Procedure

- 7. Did the Claimant comply with the ACAS Code of practice by raising a grievance, including raising it without unreasonable delay and making efforts to attend a meeting? Which claims issued does the grievance raised relate to?
 - 7.1 If the Claimant failed to comply with the ACAS Code, as above, was such failure an unreasonable failure?
 - 7.2 Did the Respondent address the Claimant's grievance in line with the ACAS Code of practice, including dealing with it without unreasonable delay?
 - 7.3 If the Respondent failed to comply with the ACAS Code, as above, was such failure an unreasonable failure?
- 7.4 Should the Claimant's compensation in respect of the claims to which the grievance relate and/or in relation to any claims about which he failed to raise a grievance be increased or decreased by up to 25%?