



EMPLOYMENT TRIBUNALS

Claimant: Mr F Murray

Respondents: 1. North West Boroughs Health Care NHS Foundation Trust
2. Ms E Mitchell
3. Ms J Critchley
4. Ms J Nakamuli

HELD AT: Liverpool

ON: 26 January 2018

BEFORE: Employment Judge Barker

REPRESENTATION:

Claimant: In person

Respondents: Mr Warnes, Consultant

JUDGMENT

1. The claimant's application to add Ms A Jones as a named respondent to these proceedings fails and is dismissed;
2. The claimant's application to strike out the entirety of the respondents' response fails and is dismissed; and
3. By consent, the claimant's application to add complaints of constructive unfair dismissal and detriment on the grounds of having made protected disclosures is allowed. By consent, the respondent is permitted to make consequential amendments to its response.

A case management discussion was conducted at the conclusion of the hearing and is recorded separately.

REASONS

1. The purpose of this hearing was to determine three issues, as follows:

- a. Whether Mr Murray would be permitted to amend his claim and whether the Respondents would be permitted to amend their response;
- b. Whether Mr Murray would be permitted to add three more of the respondent's staff as individual respondents to his claim; and
- c. Whether Mr Murray's application to have the whole of the respondents' response struck out would succeed.

2. Previous case management hearings and preliminary hearings have taken place on 6th September 2017 before Employment Judge Franey and on 20 November 2017 before Employment Judge Horne.

Issue 1: Further amendments to the claim and response

3. At the conclusion of the hearing on 20 November, Judge Horne set down this further preliminary hearing to determine several outstanding matters, including the application by Mr Murray to add the Schedule of issues set out in Judge Horne's reserved judgment of 30 November 2017 and relating to complaints of detriment on the ground of protected disclosure contrary to s47B Employment Rights Act 1996 to Mr Murray's claim.

4. Mr Sweeney informed me that the Respondents consented to the Schedule being added to Mr Murray's complaints before the Tribunal, and therefore this issue did not fall to be determined at this hearing.

5. Mr Murray has also now resigned from the First Respondent's employment, and did so on 22 November 2017. He wishes to add a complaint of constructive unfair dismissal to his claim. The Respondents do not contest this application.

6. The Tribunal therefore grants Mr Murray permission to include both the Schedule of whistleblowing detriment complaints and also a complaint of constructive unfair dismissal to his claims against the Respondents and grants the Respondents permission to amend their response in consequence.

Issue 2: Mr Murray's application to add further individual respondents

7. In relation to the application to add three further respondents, Mr Murray wished to add Tracey Hill, John Fairhurst and Abbey Jones. It is his case that all three were involved in the complaints detailed in the Schedule, and which related to alleged detriments on the grounds of protected disclosures.

8. Mr Sweeney, in his submissions to the Tribunal on this point, noted that in relation to the discrimination issues, the First Respondent had pleaded the statutory defence in that, should the Tribunal find that any of their employees discriminated against Mr Murray, the First Respondent will say that it took all reasonable steps to prevent the employee(s) from doing those acts. In such circumstances where the First Respondent was successful in pleading the statutory defence, Mr Murray would be left without a remedy unless the alleged individual discriminators were additional respondents. It was. Mr Sweeney noted, therefore understandable that in relation to acts of discrimination, Mr Murray wished to add individuals as named respondents.

9. However, Mr Sweeney correctly noted that this statutory defence does not apply in relation to detriments on the ground of protected disclosure. Therefore, the same need did not arise in relation to Ms Hill, Ms Jones and Mr Fairhurst. Mr Sweeney also correctly raised the issue of the Tribunal's overriding objective in Rule 2 of the Employment Tribunals Rules of Procedure 2013, which included dealing with the issues in ways which are proportionate to complexity and importance of the issues, and saving expense where appropriate.

10. Mr Murray, having considered Mr Sweeney's submissions, withdrew his request to add Ms Hill and Mr Fairhurst as respondents.

11. Mr Sweeney indicated that it was possible that all three individuals would be called as witnesses at the final hearing in any event.

12. In relation to Ms Jones, Mr Murray told the Tribunal that she was involved in his grievance appeal, the results of which were not known to him at present. The First Respondent had sent a notification letter to Mr Murray very recently, but he had not received it yet. Mr Murray told the Tribunal that Ms Jones was therefore not solely involved in matters relating to whistleblowing and may have acted in a discriminatory way against him.

13. It was noted that, as Mr Murray did not yet know the outcome of his grievance appeal, he did not yet know whether any of Ms Jones' actions could have been said to be discriminatory. At present, he had no grounds to add her as an individual respondent to the claim on this basis.

14. Therefore, on the facts as currently known and as currently pleaded, Ms Jones (in common with Ms Hill and Mr Fairhurst) does not need to be joined as an individual respondent and indeed it would not be proportionate to the complexity and importance of the issues involved to do so.

Issue 3: Mr Murray's application to have the Tribunal strike out the response

15. Mr Murray's grounds for this application were, in summary, that he suspected a manipulation of the letter that had been sent out by the First Respondent in relation to his first welfare meeting, in that Ms Mitchell had ensured that she would carry out the meeting herself. His submission was that this had tainted this meeting and all the internal meetings after that, so that the Respondents should not be allowed to defend his claims.

16. The power of the Tribunal to strike out a response is set out in Rule 37 of the 2013 Rules of Procedure and includes the grounds that the response

“(a) ...is scandalous or vexatious or has no reasonable prospect of success;

(b) that the manner in which the proceedings have been conducted by or on behalf of the... respondent has been scandalous, unreasonable or vexatious;

(c) for non-compliance with these Rules or with an order of the Tribunal;

(d) that it has not been actively pursued; and

(e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the... response”

17. It was discussed with Mr Murray that the grounds of his application related solely to the Respondents' behaviour in relation to internal meetings carried out during his employment. By contrast, the strike-out application would be considered in relation to the Tribunal proceedings and the Respondents' conduct of them, and the issues in their response. No grounds have been put forward by Mr Murray that could fall within any of the grounds in Rule 37. Therefore, Mr Murray's application for strike-out fails and is dismissed.

Case Management

18. There then followed a case management discussion at which orders were made for the future good conduct of the proceedings, which orders and discussion is recorded separately.

Employment Judge Barker

Date 26 January 2018

ORDER SENT TO THE PARTIES ON

2 February 2018

FOR THE TRIBUNAL OFFICE

(1) Any person who without reasonable excuse fails to comply with an Order to which section 7(4) of the Employment Tribunals Act 1996 applies shall be liable on summary conviction to a fine of £1,000.00.

(2) Under rule 6, if this Order is not complied with, the Tribunal may take such action as it considers just which may include (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.

(3) You may apply under rule 29 for this Order to be varied, suspended or set aside.

[AF]