



EMPLOYMENT TRIBUNALS

Claimant
Mr A James

v

Respondent
Diverse Dining Limited

PRELIMINARY HEARING

Heard at: Watford

On: 22 May 2018

Before: Employment Judge Jack

Appearances:

For the Claimant: Mr Hugh O'Shea, Union Representative
For the Respondent: Mr John Brotherton, Solicitor

JUDGMENT

1. The claim for union victimisation is dismissed on withdrawal.

CASE MANAGEMENT SUMMARY

Final Hearing

1. All issues in the case including remedy will be determined at a final hearing before an Employment Judge sitting with members at the **Employment Tribunal in Watford** on the **10/11/12 of December 2018**. The first two hours of the hearing will be for reading in time for the tribunal and for any preliminary matters to be dealt with the parties and their representatives but not necessarily any other witnesses must attend by **9.30 am** on that day. The time estimate of the hearing is three days based on the claimant's intention to give evidence and call a potential four further witnesses and the respondent's to call three witnesses and on the following provisional timetable:-
 - (i) Two hours reading in;
 - (ii) One and a half days oral evidence;

- (iii) One hour for submissions and one day for the tribunal's determination judgment and if the tribunal reached the question of remedy.

The complaint(s)

- 2. The claimant makes four claims. The first is of unfair dismissal, the second is of race discrimination, the third is of the distribution of cash tips and the fourth is whether there are any arrears of holiday pay.

The issues

- 3. The issues between the parties which fall to be determined by the tribunal are as follows.-

Unfair dismissal

- 4. Was the dismissal unfair? In particular:-
 - 1. What was the reason for the dismissal? The respondent says misconduct. The claimant says that breaches of the Alcohol Regulations were frequent and that misconduct was not the real reason instead the dismissal was a continuation of the racial discrimination alleged against the respondent;
 - 2. Was a fair procedure followed? The claimant says the investigation was insufficiently rigorous in that the claimant's defence was not properly investigated in particular no adequate investigation of the instruction given by Mr Ibrahim to Amir Patel was carried out.
 - 3. Did dismissal fall within the band of reasonable responses of a reasonable employer? The respondent's primary case is that breach of the Alcohol Regulations was gross misconduct. Its secondary case is that the claimant's behaviour coupled with a previous written warning justified dismissal.
- 5. The claimant's case is that the instructions allegedly given by Mr Ibrahim to Mr Patel effectively set the claimant up. The respondent also says that the claimant breached his suspension. The claimant says he was merely exercising his Trade Union rights to speak to his representative.
- 6. If the claimant was unfairly dismissed and the remedy is compensation:-
 - (a) If the dismissal was procedural unfair what adjustment, if any, should be made to any compensatory award to reflect the possibility that the claimant would still have been dismissed had a fair and reasonable procedure been followed or whether he would have been dismissed in any event. See Polkey v Dayton Services [1987] UKHL8.
 - (b) Would it be just and equitable to reduce the amount of the claimant's basic award because of any blameworthy or culpable

conduct before the dismissal pursuant to section 122(2) of the Employment Rights Act 1996 and if so to what extent?

- (c) Did the claimant by blameworthy or culpable actions cause or contribute to the dismissal to any extent and if so by what proportion if at all would it be just and equitable to reduce the amount of any compensatory award pursuant to section 123(6) of the Employment Rights Act 1996?

Racial Discrimination

7. Was the claimant racially discriminated against by comments allegedly made by Mr Ibrahim?
8. Were the instructions allegedly given by Mr Ibrahim to Mr Patel a continuing of Mr Ibrahim's alleged prejudice against the claimant?

Cash tips

9. The claimant says that cash tips were not distributed to staff including to himself. The respondent says they need time to investigate this allegation.
10. The issues are did the claimant have a right to a share of the tips? Did the respondent have a right to the tips or to a share thereof?

Holiday pay

11. Are there any arrears of holiday pay?

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. Amended response

- 1.1 The name of the respondent is amended to Diverse Dining Limited.

2. Judicial Mediation

- 2.1 The parties are to write to the tribunal by the **12 June 2018** to request judicial mediation if the parties wish to mediate.

3. **Schedule of loss**

3.1 The claimant is to produce a schedule of loss by the **5 June 2018** to be updated by the **23 November 2018**.

3.2 The claimant is ordered to include information relevant to the receipt of any state benefits.

4. The respondent is by the **5 June 2018** to state what its policy in relation to tips is and was in all material times and to state its case on the amount which would have been paid to the claimant if he succeeds in shown an entitlement to tips.

5. **Documents**

5.1 On or before the **19 October 2018** the claimant and the respondent shall send each other a list of all documents that they wish to refer to at the final hearing or which are relevant to any issue in the case including the issue of remedy. They shall send each other a copy of any of these documents if requested to do so.

5.2 In addition, the claimant is to provide the respondent by the **5 June 2018** with copies of all tape recordings taken by the claimant which are relevant to this action.

6. By the **9 November 2018** the parties must agree which documents are going to be used at the final hearing. The respondent must paginate and index the documents, put them into one or more files (the bundle) and provide the claimant with a hard and an electronic copy of the bundle by the same date. The bundle should only include documents relevant to any disputed issues in the case and should only include the following documents:-

- The claim form, the response form, any amendments to the grounds of complaint or response, any additional further information and/or further particulars of the claim and of the response, this written record of a preliminary hearing and any other Case Management Orders that are relevant. These must be put right at the start of the bundle in chronological order with all the other documents after them;
- Documents that will be referred to at the final hearing and/or that the Tribunal will be asked to take into account. In preparing the bundle the following rules must be observed:-
- Unless there is a good reason to do so, for example there are different versions of one document in existence and the difference is relevant to the case or the authenticity is disputed, only one copy of each document including documents in e-mail streams is to be included in the bundle;
- The documents in the bundle must follow a logical sequence which would normally be simple, chronological order.

7. **Remedy bundle**

7.1 The claimant must prepare a paginated file of documents (the remedy bundle) relevant to the issue of remedy and in particular how much in compensation and/or damages he should be awarded if he wins his claim and provide the respondent with a hard and electronic copy of it by the **9 November 2018**. The documents must be arranged in chronological or other logical order and the remedy bundle must have an up-to-date schedule of loss at the front of it.

8. **Witness statements**

8.1 The claimant and the respondent shall prepare full written statements containing all the evidence they and their witnesses intend to give at the final hearing and must provide copies of their witness statements to each other on or before the **23 November 2018**. No additional witness evidence will be allowed at the final hearing without the tribunal's permission.

8.2 The written statements must have numbered paragraphs, be cross-referenced to the bundle containing any evidence relevant to its use in the case.

8.3 The claimant's witness statement must include a statement of the amount of compensation or damages that he is claiming together with an explanation of how it has been calculated.

9. **Final Hearing Preparation**

9.1 On the day of the hearing the parties must lodge with the tribunal four copies of the respondent's bundle, four copies of the claimant's bundle, four hard copies of the witness statements. In each case the party producing the bundles or the witness statements to produce those copies.

10. This matter is to be listed for a final hearing on the **10/11/12 December 2018** subject to neither party applying by the **19 June 2018** to vacate those trial dates.

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 Jack

31.5.2018

Sent to the parties on:

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For the Tribunal:

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