



EMPLOYMENT TRIBUNALS

Claimant: Mr A Ullah
Respondent: B & Q Plc
Heard at: Nottingham
On: 17 August 2018
Before: Employment Judge Ahmed (sitting alone)

Representation

Claimant: In Person
Respondent: Mr D Piddington of Counsel

JUDGMENT

1. The application by the Claimant to amend his claim is refused.
2. The application to strike out the complaints of discrimination and an unlawful deduction of wages as being out of time is refused.
3. The application to strike out the complaints of race and discrimination by reason of religion and/or belief as having no reasonable prospect of success is refused.
4. The Claimant is ordered to pay a deposit of £500 as a condition of continuing the proceedings save in relation to the allegation of race and religious discrimination concerning the events of 27 November 2017.
5. Case management orders in relation to the final hearing are set out below.

REASONS

1. This Preliminary Hearing has been listed to deal with the issues identified by Employment Judge Heap in her order made on 21 June 2018 and sent to the parties on 22 June 2018.
2. The Claimant brings complaints of direct race discrimination, direct discrimination based on the protected characteristic of religion or belief (hereinafter 'religious discrimination'), harassment because of race, harassment because of religion or belief and an unlawful deduction of wages.
3. Mr Ullah continues to be employed by the Respondent. He is now based

at the Leicester branch where he appears to be well settled. His complaint are in respect of matters whilst he was working at the Loughborough Store under the line management of Ms Angela Peel. At the earlier Preliminary Hearing Mr Ullah indicated an intention to apply for an amendment of his present claim. He made the application to amend on 19 July 2018. He wishes to add three further incidents which he says took place on 7 September 2017, 26 January 2018 and 28 February 2018. The application to amend is resisted. The Respondent makes applications to have the complaints struck out as out of time or not having any reasonable prospects of success. In the alternative it applies for a deposit order.

4. Having regard to the guidance in **Selkent Bus Company v Moore** [1996] IRLR 836, the application for an amendment is refused. My reasons are as follows:-

4.1 The amendment seeks to add significantly new matters to the present claim. It is not a re-labelling exercise. Mr Ullah is seeking to add entirely new causes of action, in particular of victimisation;

4.2 The Claimant would now be out of time for all of the allegations if he was to bring a fresh claim. Two of the allegations predate the presentation of the ET1. There is no satisfactory explanation, despite the Claimant being given every opportunity to provide one today, as to why he did not include the alleged incidents on 7 September 2017 and 26 January 2018 when he could easily have done so. The ET1 was presented on 27 February 2018;

4.3 The application for an amendment has been made late without any satisfactory explanation for the delay. The Claimant was told by Employment Judge Heap at the hearing on 22 June 2018 to make any amendment application as soon as possible. He did not do so until 18 July thus compounding earlier delays. There is no explanation for the delays. The Claimant was advised by a trade union representative throughout an internal grievance. He is well aware of time issues. Despite a fairly lengthy and detailed ET1, these new allegations were not included in the earlier claim when they could have been. To allow the amendment will put the full merits hearing, which is listed for January 2019, in jeopardy as there may not be enough time to consider new and extensive allegations. The balance of hardship clearly favours the Respondent.

The application to strike out the discrimination and unlawful deduction of wages complaints as out of time

5. The claim for unpaid wages is on the face of it out of time. The discretion to extend is under the “not reasonably practicable” test. The Claimant claims he has not been paid outstanding wages owed some time ago and the deduction is continuing. Mr Piddington argues that this cannot be a continuing act as any deduction would have been a long time ago. I am not certain that it is as clear cut as that. It is possible that the deductions, if any, are continuing or an act extending over a period. The issue requires more detailed consideration after evidence. I shall not strike out the wages claim. Any out of time point in relation to the wages claim shall be dealt with at the final hearing.

6. There are 8 allegations of discrimination which are alleged to have taken place on the following dates: 14 October 2016, 1 August 2016, 25 August 2016, 24 August 2016, 30 August 2016, 6 September 2017, 7 September 2017 and 27 November 2017. They are helpfully set out in a table at paragraph 17 of Mr Piddington’s submissions. It is unnecessary to set them all out here.

7. In relation to the complaints of discrimination, it would not be appropriate to strike those out at this Preliminary Hearing. There are a number of authorities which make it clear that discrimination complaints should not be struck out at a preliminary stage without appropriate findings of fact.¹ The facts are not agreed. I do not consider it appropriate to make the decision on the out of time point today including the allegation as to 27 November 2017 which appears on the face of it to be just one day out of time without more detailed facts at this preliminary hearing. The time point will therefore be determined at the final hearing after hearing all the relevant evidence.

Striking out the discrimination complaints as having no reasonable prospect of success

8. There is also considerable authority to the effect that discrimination complaints should not be struck out at Preliminary Hearings if there are fact-sensitive issues to determine.² In particular it would not be appropriate to strike out the central allegation in this case which relates to 27 November. The complaint there is that Mr Ullah had a job interview as a Trading Manager for the Loughborough store. The interview was undertaken by Ms Peel. Mr Ullah covertly recorded the interview on his mobile. His transcript in the bundle today is not agreed. I make no finding as to whether the transcript is accurate. Mr Ullah alleges that in the interview Ms Peel used the word 'terrorist' in relation to the Claimant. The context as to how that word was used will be a matter to determine at the final hearing.

Deposit order

9. Whilst I am satisfied that the claim should not be struck out as having no reasonable prospect of success, it is proper to make a deposit order as the complaints (with the exception of the allegation relating to the events of 27 November 2017 set out in paragraph 8 above) have little reasonable prospect of success. It is appropriate to make an order for a deposit for the remainder of the discrimination allegations of both race and religious discrimination.

10. Having read the relevant documents and heard submissions today, it seems to me that the nub of the Claimant's case relates to the interview on 27 November 2017 with Ms Peel. The rest of the allegations appear to have little or no connection with the Claimant's race or religion. At this stage it is difficult to see how the Claimant will be able to establish a prima facie case of discrimination.

11. As to the amount of the order, Mr Ullah's financial means are limited. He does not have any savings other than a small sum he has earmarked for a deposit on a house he is in the process of buying. He is hoping to exchange contracts very shortly. It would not be appropriate to take that into account since that would act as a deterrent to him continuing these proceedings. He confirms that he would be able to pay a deposit of £500 quite apart from the deposit on the house. I take into consideration the guidance in **Hemdon v Ishmail** [2017] ICR 486 that a deposit should not have the potential to restrict right of access to a fair trial. An order of £500 will not have that effect in my view.

¹ See for example: **Arthur v London Eastern Railway Limited** [2007] IRLR 58, paragraphs 33- 35

² See for example: **Ezsias v North Glamorgan NHS Trust** [2007] IRLR 603.

12. The deposit orders are apportioned as follows:-

13.1 Direct race discrimination: £150.

13.2 Direct religious discrimination: £100.

13.3 Racial harassment: £150.

13.4 Religious harassment: £100.

Total: £500.

13. I make it clear that the allegation in relation to 27 November 2017 is not the subject of the deposit order.

Employment Judge Ahmed

Date: 12 September 2018

JUDGMENT SENT TO THE PARTIES ON

FOR THE TRIBUNAL OFFICE

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