



EMPLOYMENT TRIBUNALS

Claimant

Mr N Ratcliffe

AND

Respondent

RG Partnership Limited

HEARD AT: London Central

ON: 7 August 2018 and in
Chambers 5 October 2018

BEFORE JUDGE: Employment Judge Hemmings

Representation

For Claimant: Mr J England (Counsel)

For Respondent: Mr R Lassey (Counsel)

RESERVED JUDGMENT – PUBLIC PRELIMINARY HEARING

The Judgment of the Tribunal is:

- (1) To dismiss the claim of Harassment, the Claimant having withdrawn that claim against the Respondent and
- (2) To refuse the Respondent's applications for Strikeout, Deposit and Costs Orders.

REASONS

Background

1. This is the third Preliminary Hearing in this matter, the Claimant having been a litigant in person prior to this Hearing, namely a first Hearing in private for Case Management purposes held on 3 April 2018, in which, amongst other things, the Employment Judge directed clarification to be made of opaque Grounds of Claim within the Claim Form, followed by a second Hearing in public on 25 June 2018 to consider Strikeout and Deposit Order applications made by the Respondent in the context of a continuing lack of clarity about the claims.

Hearing Agenda

2. The applications in June in respect of the claims of harassment and failure to make reasonable adjustments were postponed to today's Hearing and made the subject of an Order to provide Further and Better Particulars.

3. Further, the Respondent, having received the Claimant's Further and Better Particulars dated 3 August 2018, has made a further application for Strikeout, Deposit and Costs Orders to be made.

Documentation

4. The Tribunal had before it the papers in respect of the earlier hearings, the record of the outcomes of those hearings, Further and Better Particulars dated 3 August 2018 from the Claimant, an application dated 6 August 2018 from the Respondent for Strikeout, Deposit and Costs Orders to be made against the Claimant or his representative, and an Opening Note helpfully prepared by Counsel for the Claimant, the Claimant having now arranged legal representation, together with a copy of the decision of the EAT in Hemdan v Ishmail [2017] IRLR 228 referred to in that Note.

Withdrawal of Harassment Claim

5. The Claimant, through Counsel as recorded in his Note, is no longer pursuing a claim of Harassment. Accordingly, the Tribunal dismisses that claim upon such withdrawal.

6. SUBMISSIONS

The Hearing was conducted on the basis of submissions from both sides referenced to the documents before the Tribunal

The submissions of Counsel for the Respondent were grounded in the helpful and comprehensive terms of the application-email from his instructing solicitors which he addressed and reinforced.

The submissions of Counsel for the Claimant were grounded in his Opening Note with specific reference to the decision in *Hemdan* which he handed up.

7. THE LAW

Referencing the applicable principles of law, and put concisely as required by the Rules, the leading case in respect of applications to amend remains the EAT decision in Selkent Bus Co Ltd t/a Stagecoach Selkent v Moore [1996] IRLR 661

8. CONCLUSIONS

- (1) It is apparent from the Claimant's Claim Form that the allegations he makes, underpinning his complaints to the Employment Tribunal, relate to being pressurised to undertake work whilst on sick leave and being subjected to threats about his future.
- (2) The Tribunal is satisfied that the specific email and the specific telephone call referred to in the Claim Form are intended by the Claimant to be illustrative examples, not an exhaustive listing of the incidents relied upon of the kind which one would expect if an employment lawyer had drafted the Grounds of Claim.
- (3) The purpose of the Case Management Orders made in April and June were for the Claimant to expand the way in which he, as a litigant in person, had summarised briefly his concerns in his Claim Form in order to provide, in fairness to the Respondent and to assist the Tribunal Panel, a definitive list of every action, or every failure to act, which the Claimant intends to rely upon in order to establish at the Final Hearing the claims that he has been treated unlawfully by the Respondent.
- (4) The PCPs relied upon by the Claimant do not appear to be entirely free from difficulty and will require careful consideration and legal assessment by the Tribunal Panel should this matter proceed to a Final Hearing. They will be fact-sensitive and this Tribunal is not willing to strikeout the claims on the basis contended by the Respondent nor willing to conclude that there is little reasonable prospect of success, warranting deposit orders. That conclusion, however, should not be misinterpreted by the Claimant as encouragement in respect of the merits of his claims.

- (5) It is evident that these claims are complex, factually and legally and require careful and expert legal stewardship by those who advise the Claimant.
- (6) The claim under section 21 of the Equality Act 2010 that the Respondent failed to comply with a section 20 duty to make adjustments may proceed to a Final Hearing.
- (7) The Respondent's applications to Strikeout, alternatively for a Deposit Order, and an Order for Costs against the Claimant or his representatives is refused.
- (8) Before this case can proceed to trial there is one remaining preliminary issue to be resolved, namely the disputed question as to whether or not the Claimant was at the relevant times a person with a disability within section 6 of the Equality Act 2010.
- (9) The Tribunal makes separate Case Management Orders and Directions designed to resolve that issue, and to fix a trial date for the Final hearing as soon as practicable thereafter.

Employment Judge Hemmings

Date 24 October 2018

JUDGMENT AND REASONS SENT TO THE
PARTIES ON

26 October 2018

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FOR THE TRIBUNAL OFFICE