



EMPLOYMENT TRIBUNALS

Claimant: Mr A Osunde

Respondent: Milton Pubs and Taverns Limited

Heard at: Manchester

On: 25 June 2018

Before: Employment Judge Hill

REPRESENTATION:

Claimant: In person

Respondent: Miss R York, Solicitor

JUDGMENT ON PRELIMINARY HEARING

1. Following a preliminary hearing held on 26 April 2018, today's hearing was listed, the purpose of which was to consider:
 - A. The claimant's claims and whether sufficiently clarified;
 - B. Any application from the respondent to strike out any of the claimant's claims;
 - C. Any objection by the respondent to the claimant amending his claim, if amendment is required; and
 - D. To make any further case management orders.
2. At the beginning of the hearing it became apparent that a letter has been sent to the parties on 19 June 2018 stating that the hearing today had the purpose

of determining whether any of the claimant's claims should be listed for a Preliminary hearing to decide if they should be struck out and not that the strike out application would be heard today. After a discussion with the parties it was clear that the claimant was not ready to deal with the issue of strike out today.

3. I therefore decided that I was unable to proceed with the strike out application due to the confusion regarding the purpose of the hearing, which was not the fault of either party.
4. It also became apparent that neither the Tribunal nor the respondent had received the claimant's further particulars for each of his discrimination claims. The claimant explained that he had completed 3 'spread sheets' setting out the details of his claims but the tribunal and the respondent had only received on 'spread sheet' in respect of his race discrimination claim.
5. The Claimant was unclear what had happened to the other two spread sheets setting out details in respect of his sex and age discrimination claims and it appeared that he wished to withdraw his disability discrimination claim. I therefore looked at his claims in total and went through each of his claims as set out in his ET1 and following the last PHR as set out below:

Unfair dismissal

6. This complaint was struck out by Employment Judge Porter on 8 March 2018.

Redundancy Payment

7. This claim was withdrawn by the claimant and is dismissed.

Notice Pay

8. The claimant accepts that he has received payment from the respondent on 3 May 2018 and is withdrawn by the claimant and is dismissed.

Holiday Pay

9. The claimant accepts that he received all his holiday pay from the respondent in December 2018 and is withdrawn by the claimant and is dismissed.

Failure to provide a statement of main terms and conditions

10. The claimant confirmed that this claim was still being pursued.

Race discrimination

11. The claimant confirmed that this claim was still being pursued.

Sex Discrimination

12. The claimant confirmed that this claim was still being pursued.

Age Discrimination

13. The claimant confirmed that this claim was still being pursued.
14. There was a discussion with the parties as to whether the claimant should be given time to provide the missing 'spread sheets' setting out the detail of his claims in respect to the discrimination elements. The respondent suggested that the detail that had been provided in respect of the race discrimination element was still inadequate and that to allow the claimant further time to send in the information may mean that it still will not have sufficient detail to deal with the allegations.
15. It was therefore agreed that we would spend the time today and set out the claimant's allegations for each of the discrimination claims. I explained to the claimant that the respondent was entitled to know the detail of the claims against it in order to be able to properly defend itself. The claimant understood and agreed to verbally provide the detail of his claims. The Tribunal spent a long time trying to obtain information from the claimant and trying to get him to be specific. I explained several times to the claimant that the respondent intended making an application for strike out of all his claims on the basis that they had no reasonable prospect of success and that it was important that he provided specific information. The claimant was unable to provide the detail necessary but I recorded what information could be obtained and advised that the case would be listed for a further Preliminary Hearing at which the application for strike out would be heard. I also explained to the claimant that the allegations set out below would be the allegations considered at the next hearing.
16. The claimant added three additional allegations today that had not been referred to before. The Respondent argued that those allegations were out of time and would make a separate application in respect of those allegations.

Race Discrimination

17. Allegation 1. In or around September 2017 the trainee chef (who was an agency worker) called the claimant a 'nigger'. The claimant complained to the head chef, Michael, but does not know what happened.
18. Allegation 2. The claimant was required to do more cleaning work than others specifically cleaning floors and walls. The claimant alleges that this happened every day he was on shift. He says these events were witnessed by Rebecca, Chloe and

Michael. The claimant accepted that other people also did cleaning but that he had to do more. The claimant was unable to provide any details of comparators he could not remember their names; he could not describe them other than they were white.

19. Allegation 3. The claimant gave details of a new incident that he had been on a break making a telephone call to his wife and he was asked to come back to work by Chloe. The claimant alleges that this was done because he was black and he was treated differently.

Sex Discrimination

20. Allegation 1. The claimant alleged that Rebecca Henderson made advances towards him almost every shift and that he raised concerns about Rebecca with his regional manager Kim. The claimant cannot remember when he spoke to Kim, but recalls that she said 'don't worry' and that she would sort it out. The claimant's stated that the following events happened which demonstrates that Rebecca harassed him although the claimant is unable to specify when they took place.

- a. Asking the claimant about his wife;
- b. Talking to the claimant about her boyfriend – the claimant said that he gave her advice about it;
- c. Asking the claimant to sit with her;
- d. Asking the claimant if he wanted tea or food;
- e. Hugging the claimant and commenting on his muscles.

21. The Claimant had made an allegation previously that Rebecca had asked him to remove his wedding ring. The claimant stated to day that this was not said by Rebecca but by Michael, the head chef. The claimant alleges that Michael did not ask any women to remove their wedding rings.

Age Discrimination

22. The claimant alleges that the staff in the kitchen called him the oldest man in the kitchen and made jokes about his age. The claimant could not recall who had said it or what was said and could not give the names of any witnesses.

23. The claimant also made an allegation that Kim and Rebecca would ask him to lift heavy loads if they could not do it. The Claimant was unable to say why he considered this amounted to age discrimination and agreed with the respondent that it was because he was stronger than they were.

24. The Respondent argued that none of the claims had a reasonable prospect of success and that the following claims were entirely new and out of time:

- a. Race – Chloe calling him from his break.
- b. Sex – Rebecca telling him about her boyfriend.
- c. Age – being asked to lift heavy items.

Further Case Management Orders

25. A further Preliminary Hearing to be listed for 10.00 am on 12 September 2018 for 3 hours in order to consider:

- a. The respondent's application to strike out the claimant's claims;
- b. Whether a deposit order should be made;
- c. Whether the claims referred to in paragraph 24 are out of time.

26. The respondent shall submit an amended response to include the allegations referred to in paragraph 25 above, 7 days after receipt of this order.

Employment Judge Hill

Date 11 July 2018

JUDGMENT AND ORDERS SENT TO THE PARTIES ON
9 August 2018

FOR THE TRIBUNAL OFFICE

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employmenttribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

- (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.**