EMPLOYMENT TRIBUNALS

Claimant		Respondent
Mr L Fras	**v**	**Casual Dining Group Limited**

RECORD OF A CLOSED TELEPHONE PRELIMINARY HEARING

Heard at: **Nottingham** **On:** **Tuesday 23 October 2018**

Before: **Employment Judge P Britton (sitting alone)**

Appearances
For the Claimant: **Ms M Wrona, Solicitor and Mr Tomas Gracka, Solicitor**
For the Respondent: **Mr M Foster, Solicitor**

JUDGMENT

1.The claims of sex discrimination whether it be direct or indirect in relation to the equal pay scenario are dismissed upon withdrawal.

2. Directions as to the remaining claims are hereinafter set out.

CASE MANAGEMENT SUMMARY

Introduction

1. This is the third case management discussion in this matter. The previous ones were heard first by me on 29 November 2017 and second by my colleague Employment Judge Camp on 27 June 2018.

2. I repeat that there has been a long history of none compliance of the Tribunal's directions in this matter by the Claimant and his representative. This came to a head on the last instance with an unless order issued by my colleague Employment Judge Ahmed on 19 September 2018. This did elicit a reply from the Claimant's representative Mitchell Brown Law penned by Marta Wrona. It set out a range of explanations not only including Mr Gracka's ill health, which the Tribunal was already aware of, but thence problems with others within the law firm business looking after the case. This explanation was singularly lacking in detail. Also deployed was that there had been problems getting instructions from the Claimant who is back in Poland. Also raised was what looked like a potential explanation based on language barrier.

3. As to the last point I am very much with the Respondent's solicitor's scepticism because after all at the heart of this case is whether or not Mr Fras was underpaid in comparison with female restaurant managers in the respondent chain, him having worked for them successfully over 5 years rising from a bartender to general manager of one of their restaurants in Derby. So how can it be that the language barrier is a significant factor given that history?

4. As it is, today I learnt that thankfully Mr Gracka is much recovered, although he doesn't feel well enough to undertake the day to day conduct of this case in terms of directions but intends to be the Claimant's advocate at the main hearing. Otherwise it seems Ms Wrona will have conduct of the case.

5. That then brings me on to that the Respondent has complied with Employment Judge Camp's directions, in particularly on the issue of the comparators and the data relating to pay etc. Only now on 22 October has the Claimant responded in asking that the Respondent confirm that 3 of the named managers worked as de facto managers at the Derby restaurant. I find this frustrating given that the point could not have been made clearer in the data and the accompanying letter as supplied by the Respondent's solicitors pursuant to Employment Judge Camp's orders. So I do not see the need for any further particularisation by the Respondent at this stage. What is needed is for the Claimant to now reply as per paragraph 2 of the letter of 22 October 2018. I do not accept that it is for the Respondent to disclose in the first instance, when it is the Claimant who says he knows of additional information but would prefer not to disclose it. After all the prima facie burden of proof is upon him. And therefore in terms of what he sets out in that first paragraph I am requiring that he disclose it; and because of the history of non compliance in this matter I am making that an unless order; the same applies to the requirement to provide a schedule of loss. The deadline **for that is 29 October**. I trust the Claimant has now got the message.

6. That brings me to the issues as Employment Judge Camp had set them out. He required the parties to confirm that it was agreed that he had accurately done so. The Respondent did so comply. The Claimant never did. As it is today Mr Gracka has accepted that Employment Judge Camp has indeed accurately set out the issues for determination at the hearing in due course.

7. This brings me to Employment Judge Camp's observation at paragraph 9 at page 2 of the published record of the TCMPH as to the incompatibility of purporting to bring a direct sex discrimination claim on a scenario where also relied upon is a breach of the equality clause in terms of not paying equal pay for equal work. This of course brings in Section 70(1) of the Equality Act 2010. As it is today Mr Gracka has confirmed that he accepts the reasoning of Employment Judge Camp and therefore the direct sex discrimination claim in terms of the equal pay claim is withdrawn. Thus it is dismissed. Therefore the case in that respect proceeds as an equal pay claim. It is based of course upon like work. The Respondent pleads that there was no disparity in pay as set out in the details to which I have already referred. It reiterated its defence in the amended response that it also filed in accordance with the directions of Employment Judge Camp. He made plain that any such amendment would be granted. Thus for the sake of completeness I hereby do so.

8. Otherwise there is no need for me to therefore rehearse again the issues as set out by Employment Judge Camp. I therefore hope that this case can now proceed without any further difficulties to the scheduled hearing commencing 29 April 2019.

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. The Claimant will provide his schedule of loss as already ordered by **29 October 2018**.[1] For the avoidance of doubt this is an unless order given the history of none compliance. I make it absolutely plain that unless that schedule of loss is so sent to the Respondent by that date and in a way that can be received by the Respondent by that deadline, then the claim in its entirety will be struck out.

2. The Claimant will provide the details as set out at the paragraph under the heading request for further information as set out in the Claimant's letter of 22 October 2018. This the Claimant will do **by Monday 5 November 2018**[2]. For the avoidance of doubt this again is an unless order. If there is none compliance then the claim will be struck out in its entirety.

3. Otherwise all orders as made by Employment Judge Camp remain save that **order 6.1 now becomes 12 November 2018**.

4. The Respondent wishes it to be recorded that it reserves its position as to wasted costs in terms of that which has occurred before today. The final observation I make is that the Claimant now knows that the writing is on the wall if he doesn't comply with all the deadlines that remain and terms of strike out.

NOTES

(i) The above Order has been fully explained to the parties and all compliance dates stand even if this written record of the Order is not received until after compliance dates have passed.

(ii) 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.

(iii) 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.

(iv) 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. Any further applications should be made on receipt of this Order or as soon as possible. The attention of the parties is drawn to the Presidential Guidance on 'General Case Management': https://www.judiciary.gov.uk/wp-content/uploads/2013/08/presidential-guidance-general-case-management-20170406-3.2.pdf

(v) The parties are reminded of rule 92: "*Where a party sends a communication to the Tribunal (except an application under rule 32) it shall send a copy to all other parties, and state that it has done so (by use of "cc" or otherwise). The Tribunal may order a departure from this rule where it considers it in the interests of justice to do so.*" If, when writing to the tribunal, the parties do not comply with this rule, the tribunal may decide not to consider what they have written.

[1] The Claimant has complied with this order.

[2] The Claimant has also complied with this order.

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Employment Judge Britton

Date:28 November 2018

Sent to the parties on:

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For the Tribunal:

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