



EMPLOYMENT TRIBUNALS

Claimant

Mr P Babhania

v

Respondent

Bridge Street Medical Practice (1)

Laura Gibson (2)

Sarah Gibson (3)

RECORD OF AN ATTENDED PRELIMINARY HEARING

Heard at: Leicester

On: Monday 3 December 2018

Before: Employment Judge Hutchinson (sitting alone)

Appearances

For the Claimant:

Mr Babhania, Husband and Representative

For the Respondent:

Mr R Chaudhry, Solicitor

JUDGMENT

The Employment Judge gave judgment as follows;

1. I decline to strike out the Claims or to make a deposit order.
2. I ordered that Laura Gibson and Sarah Gibson be joined as 2nd and 3rd respondents.
3. The claims of wrongful dismissal and whistleblowing detriment are withdrawn and dismissed

CASE MANAGEMENT SUMMARY/REASONS

Background and Issues

1. The claimant presented her claim to the Tribunal on 19 January 2018. She had been employed by the Bridge Street Medical Practice as a receptionist/administrator from the 24 July 2017 until 29 October 2017. She claimed;

- Unfair dismissal
- Age discrimination
- Race discrimination
- Whistleblowing detriment.

2. The Claim was accepted and served upon the respondents and listed for Hearing for 8, 9 and 10 October 2018. Case Management Orders were made which included that the claimant should provide a statement of remedy/schedule of loss by 25 April 2018.

3. The respondent filed their ET3 on 11 April 2018. They pointed out that the claimant did not have sufficient service to claim unfair dismissal under section 94 of the Employment Rights Act 1996. They denied the allegations of unfair dismissal, wrongful dismissal and age and race discrimination. They pointed out that the claimant had not provided sufficient details for them to be able to answer all the allegations.

4. On 23 April 2018, the claimant provided what she described as her request for remedy.

5. On 16 May 2018, my colleague, Employment Judge Millgate conducted a Closed Telephone Preliminary Hearing. It was unclear whether the claimant wished to proceed with claims of wrongful dismissal and whistle blowing and by agreement the Claim of unfair dismissal was dismissed on withdrawal because the claimant did not have sufficient service by having respect of the discrimination claims the claimant was ordered to provide further particulars of her claim. These were to be provided by 29 June 2018.

6. On 26 June 2018 the claimant requested an extension of time to provide these details and this request was granted.

7. The claimant then sought a further extension in a letter of 15 July 2018. The respondent objected to this request but this was granted by my colleague, Employment Judge Ahmed. The claimant was given a final extension of 14 days to 13 August 2018 and she was warned that if she failed to supply the further particulars of her Claim it would be struck out in its entirety without the need for any further order.

8. On 13 August 2018, the claimant wrote to the Tribunal. I have seen that letter. It does not comply with the Order requiring her to provide further particulars of her claims nor did it deal with the issue of whether the claimant wished to proceed with her wrongful dismissal and whistle blowing complaints.

9. The respondents wrote to the Tribunal on 14 August, saying that the Claims should be struck out because;

- The claimant had not complied with the Tribunal orders

10. The matter was referred to Employment Judge Ahmed who decided that there should be a Preliminary Hearing to consider whether the Claim should be struck out because of the failure to comply with the orders.

11. Originally that Hearing was going to take place on 13 September 2018, but had to be postponed because of the claimant's husband's work commitments. The Preliminary Hearing was then going to take place on 8 October and that had to be postponed because of lack of judicial resources.

12. The Hearing was rearranged for today.

13. I had written submissions from Mr Chaudhry who invited me to;
- strike out the Claim on the basis that the claimant had failed to provide adequate information as ordered by the Tribunal.
 - in any event, strike out the Claims because they have no reasonable prospect of success
 - alternatively, make a deposit order because the allegations contained in the complaint have little reasonable prospect of success.
14. Mr Chaudhry had helpfully provided not only a skeleton argument but a Hearing bundle which contained all the relevant documents that I needed to consider his applications.
15. My first task though was to identify the Claims. Dealing with them as they appear to be from the Claim Form I noted as follows:

Unfair Dismissal Claim

16. The Claim for unfair dismissal has already been dealt with and dismissed.

Wrongful Dismissal

17. We discussed this Claim. The claimant said that she had been paid one week's notice pay which is what she was entitled to under the terms of her contract. She agreed that this Claim should be withdrawn and dismissed.

Whistle blowing complaint

18. Having discussed the age and race discrimination claims we agreed that this was not a Claim of whistle blowing detriment or whistle blowing dismissal. The claimant is not pursuing any such complaint.

Age and Race Discrimination Complaints

19. The claimant told me that at the time of her employment she was 56/57 years old. She was at least 20 years older than any of the other receptionist administrators of which there were 6 of them. She was also the only non-white non-English person and therefore the only Asian person employed in that capacity by the Practice. She complained that she suffered less favourable treatment on the grounds of her age and race.

20. She pointed out that she was a highly qualified doctor's receptionist/administrator and had a great deal of experience and never had any problems in any previous employment.

21. The less favourable treatment that she relies on is;

(1) On 23 August, she was asked to sign a contract for 6 months instead of the 8 months she had been promised at the start of her employment. She says that this was less favourable treatment than another new receptionist called Natalie who was considerably younger than the claimant and was a white English person. The people who perpetrated this less favourable treatment were Laura Gibson and Sarah Gibson who themselves are white English.

(2) On 27 October 2017, she was asked to attend a meeting at about 3pm with Laura and Sarah Gibson. The meeting was disciplinary in nature and the claimant had not been told of it in advance or allowed to have a colleague attend with her.

22. There were 2 issues which Laura and Sarah Gibson relied upon;

(a) That the claimant had sent home a patient wrongly. They said that this had happened on 25 October 2017, and it related to a patient who was Chinese with her child. They referred to CCTV footage. They said that she should have sent another English patient home. The claimant says that the recording and the allegations was concocted by Sarah and Laura Gibson and that Dr McGill had made a comment about the claimant being incoherent and confused. The claimant says that this was racist and ageist.

(b) On another date it was alleged that 2 patients called Sarah had been booked in at the same time and that the patients had been waiting in the upstairs waiting area together. The 2 patients were both waiting to see Dr Cannon. He had called one of the patients in saying the name Sarah and one of them had stepped forward. He did not establish the proper identity of that patient and he put the notes in respect of his attendance upon her on the wrong record. The claimant was wrongly blamed for this.

23. The claimant says that these acts were discriminatory i.e. amounted to less favourable treatment than would have been meted out to the other 5 white English receptionists and administrators working at the Practice. The claimant informed me of several examples which showed inconsistent less favourable treatment and in particular;

(1) In September 2017, serious complaints were made by patients in respect of 2 of the white English receptionists named Lisa and Laura. They had been speaking loudly and unprofessionally about Georgina who was another receptionist. All the staff had received an e mail about this from Sarah and Laura Gibson. No action was taken against either of the receptionists despite the serious nature of the incident.

(2) At the end of September 2017, a patient Vahiveh Sedghi had been consulting the Practice about her pregnancy. She suffered a miscarriage and the Practice were aware of it. She received a letter from the Practice sent from Lisa a white English receptionist calling her in for a further meeting with regard to the progress of her pregnancy. This caused the patient a great deal of upset but there was no investigation into the negligence of the white English receptionist.

(3) In August/September 2017 one of the doctors, Dr Jessell had conducted a smear test. A laboratory had rejected the smear test because the swab was out of date. Reception staff are responsible for making sure that the swabs when they are issued to the doctors are not out of date and one of the other receptionists being Laura who is white English had been responsible for this mistake. Again, no action had been taken in respect of her relating to this.

(4) Again, in August/September 2017 one of the other receptionists (the claimant is not aware of her name) had not placed the unused flu vaccines in the refrigerator and these had to be discarded as a result. Again, no action was taken in respect of that receptionist/administrator who was white English.

24. The claimant says in respect of all the allegations that she would not have been treated in that way if she had been younger, white and English.

The Respondent's Submission to strike out/make a Deposit Order

25. I heard Mr Chaudhry in respect of this after I had clarified the nature of the claimant's claims. He rightly pointed out to me that his application was made under Rule 37 of the Employment Tribunals Rules of Procedure 2013. He said;

- That the claims had no reasonable prospect of success
- There had been non-compliance with the orders of the Tribunal.

26. He said that if I did not agree with him in respect of the strike out that I should order the claimant to pay a deposit as many of the allegations/arguments in the Claim had little reasonable prospect of success.

27. He referred me to a number of cases namely;

- **HMPS v Dolbey** [2003] IRLR 694
- **Hassan v Tesco's Stores** UK EAT/0098/16//BA
- **Anyanwu v South Bank Students' Union** [2001] IRLR 205

28. I am satisfied that I should not strike out the claimant's Claims of age and race discrimination. The reasons are as follows;

(1) Whilst the claimant has not complied with the terms of the Orders made in this case I take into account that she is acting in person and has little or no knowledge of the Tribunal's system. She has tried her best to provide the information that she should provide and I am satisfied that she simply did not know what she was required to do. There was no wilful refusal to carry out instructions.

(2) Having obtained the particulars of her Claim which I have outlined above, I am satisfied that the claimant does have an arguable case and that it should proceed. This is a case that can only be determined on hearing the evidence in deciding whether the claimant has received less favourable treatment on the grounds of her age or race.

29. I considered whether I should make a deposit order but I am satisfied that making an order is not appropriate in the circumstances of this case. It does not appear to me that the claims have little reasonable prospect of success and there do appear to be grounds (prima facie at least) for her to make her complaints.

30. I reminded the claimant that it is important that in future she should ensure that she complies with the orders and that if she is unsure she should write in to the tribunal.

Further Respondents

31. Laura and Sarah Gibson no longer work for the Practice. I do not know the basis of the respondent's defence but it might be argued that they were not acting in the course of their employment or indeed that the statutory defence apply. I am satisfied that they should be joined in as 2nd and 3rd respondent and served with the proceedings c/o the respondent's Practice who will then forward the claims on to them.

Wrongful Dismissal Claim

32. That Claim is now withdrawn and dismissed.

Whistle Blowing Claims

33. Those Claims are also withdrawn and dismissed.

Judicial Mediation

34. I discussed with the Parties the possibility of judicial mediation. The claimant is interested in judicial mediation and the respondent's will consider their position and come back to me in the next 14 days. If they are so interested I will then set up a Judicial Mediation hearing.

Listing the Hearing

35. We agree that the case should be listed for 3 days. The Hearing will now be heard by an Employment Judge sitting with members at **5A New Walk, Leicester, LE1 6DE on Monday 29 April 2019, Tuesday 30 April 2019 and Wednesday 1 May 2019** at 10am each day or as soon thereafter on each day the tribunal can hear it. It has been given a time allocation of 3 days and if the parties feel that this isn't sufficient they should inform the tribunal as soon as possible. The first 2 hours will be reading time and the parties are to attend on the first day at 12 noon.

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. Amended response

The respondent shall provide an amended Response to the claimant and to the Tribunal by **14 January 2019**.

2. Statement of Remedy/Schedule of Loss

2.1 The claimant is ordered to provide to the respondent and the tribunal so as to arrive on or before **11 February 2019**, a properly itemized statement of remedy also called a schedule of loss.

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

3. Disclosure of documents

- 3.1 The parties are ordered to give mutual disclosure of documents relevant to the issues identified above by list and copy documents so as to arrive on or before **11 February 2019**. This includes, from the Claimant, documents relevant to all aspects of any remedy sought.
- 3.2 Documents relevant to remedy include evidence of all attempts to find alternative employment: for example, a job centre record, all adverts applied to, all correspondence in writing or by e-mail with agencies or prospective employers, evidence of all attempts to set up in self-employment, all pay slips from work secured since the dismissal, the terms and conditions of any new employment.
- 3.3 This order is made on the standard civil procedure rules basis which requires the parties to disclose all documents relevant to the issues which are in their possession, custody or control, whether they assist the party who produces them, the other party or appear neutral.
- 3.4 The parties shall comply with the date for disclosure given above, but if despite their best attempts, further documents come to light (or are created) after that date, then those documents shall be disclosed as soon as practicable in accordance with the duty of continuing disclosure.

4. Bundle of documents

- 4.1 It is ordered that the Respondent has primary responsibility for the creation of the single joint bundle of documents required for the hearing.
- 4.2 To this end, the Claimant is ordered to notify the Respondent on or before **18 February 2019**, of the documents to be included in the bundle at their request. These must be documents to which they intend to refer, either by evidence in chief or by cross-examining the Respondent's witnesses, during the course of the hearing.
- 4.3 The Respondent is ordered to provide to the Claimant a full, indexed, page numbered bundle to arrive on or before **4 March 2019**.
- 4.4 The Respondent is ordered to bring 4 copies to the Tribunal for use at the hearing, by 9.30 am on the first morning of the hearing.

5. Witness statements

- 5.1 It is ordered that oral evidence in chief will be given by reference to typed witness statements from parties and witnesses.
- 5.2 The witness statements must be full, but not repetitive. They must set out all the facts about which a witness intends to tell the Tribunal, relevant to the issues as identified above. They must not include generalisations, argument, hypothesis or irrelevant material.

- 5.3 The facts must be set out in numbered paragraphs on numbered pages, in chronological order.
- 5.4 If a witness intends to refer to a document, the page number in the bundle must be set out by the reference.
- 5.5 It is ordered that witness statements are exchanged so as to arrive on or before **1 April 2019**.
- 6.6 The parties are ordered to bring 4 copies to the Tribunal for the use at the Hearing by 9.30am on the first morning of the Hearing.

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 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 Hutchinson

Date:17 December 2018

Sent to the parties on:
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For the Tribunal:
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