



EMPLOYMENT TRIBUNALS

Claimant

Mr N Sarai

v

Respondent

LHR Airports Limited

PRELIMINARY HEARING

Heard at: Watford Employment Tribunal

On: 27 November 2018

Before: Employment Judge Smail

Appearances:

For the Claimant: In person

For the Respondents: Mr J French-Williams, Solicitor

JUDGMENT

1. The claim of unfair dismissal is dismissed having been presented out of time.
2. The claimant's claim of religious discrimination was presented in time.
3. If the claimant wishes to proceed with his allegation that he was subject to discrimination on the grounds of religion, he must pay a deposit of £500. This is the subject of a separate document. If the deposit is paid then the following case management orders are made.

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. Disclosure of documents

- 1.1 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 **31 January 2019**. This includes, from the claimant, documents relevant to all aspects of any remedy sought.

- 1.2 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.
- 1.3 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.
- 1.4 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.

2. **Statement of remedy/schedule of loss**

- 2.1 The claimant is ordered to provide to the respondent and to the Tribunal, so as to arrive on or before **31 January 2019**, a properly itemised statement of the remedy sought (also called a schedule of loss).
- 2.2 The claimant is ordered to include information relevant to the receipt of any state benefits.

3. **Bundle of documents**

- 3.1 It is ordered that the respondent has primary responsibility for the creation of the single joint bundle of documents required for the hearing.
- 3.2 The respondent is ordered to provide to the claimant a full, indexed, page numbered bundle to arrive on or before **28 February 2019**.
- 3.3 The respondent is ordered to bring sufficient copies (at least five/three) to the Tribunal for use at the hearing, by 9.30 am on the morning of the hearing.

4. **Witness statements**

- 4.1 It is ordered that oral evidence in chief will be given by reference to typed witness statements from parties and witnesses.
- 4.2 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.

- 4.3 The facts must be set out in numbered paragraphs on numbered pages, in chronological order.
- 4.4 If a witness intends to refer to a document, the page number in the bundle must be set out by the reference.
- 4.5 It is ordered that witness statements are exchanged so as to arrive on or before **29 March 2019**.

5. Listing of full merits hearing

- 5.1 After all the matters set out below had been discussed, we agreed that the hearing in this claim would be completed within 2 days. It has been listed at **Watford Employment Tribunal, 2nd Floor, Radius House, 51 Clarendon Road, Watford WD17 1HP** to start at 10.00am or so soon thereafter as possible on **6 and 7 June 2019**. The parties are to attend by **9.30 am**.

5. Other matters

- 5.1 The respondent is ordered to prepare a cast list, for use at the hearing. It must list, in alphabetical order of surname, the full name and job title of all the people from whom or about whom the Tribunal is likely to hear.
- 5.2 The claimant is ordered to prepare a short, neutral chronology for use at the hearing.
- 5.3 These documents should be agreed if possible.

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, 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.
- 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.

REASONS

- 1. This is a preliminary hearing the purpose of which is to establish whether any of the claimant’s claims are in time and, if not, whether in the case of unfair dismissal it was reasonably practicable for him to have presented his claim in

time and whether in the case of his religious discrimination claim, it would be just and equitable to extend any claim that was out of time.

2. The claimant was employed as a Security Officer at Terminal 3 at Heathrow. He was employed in that position between 15 May 2008 and 17 November 2017. He was dismissed for gross misconduct in the form of aggressive behavior to colleagues, principally. He brought an appeal against the dismissal on 22 January 2018. The claim form was presented on 9 April 2018. On the face of things that makes the claim, in respect of the dismissal, out of time.
3. The relevant dates are that the effective date of termination was 17 November 2017. Accordingly, the ordinary three-month deadline would be 16 February 2018. ACAS were contacted on 5 February 2018, their certificate was 2 March 2018, meaning the deadline, under the ACAS Conciliation Rules adjustments, was 2 April 2018 for the presentation of the claim. The claim actually being presented on 9 April 2018 means that, certainly in terms of unfair dismissal, the presentation was seven days late.
4. A preliminary hearing took place on 12 July 2018. The claimant did not attend and Employment Judge Bedeau ordered that today would be a preliminary hearing specifically on the question of time. At order 3 of the Case Management Orders that he made that day the Judge ordered that the claimant shall prepare and serve a witness statement on the respondent's representatives relevant to the above issue, being the issue of time limits, by not later than 4pm, 6 November 2018. The claimant did not comply with that. He did serve an email witness statement on 23 November 2018 but that addressed matters of unfairness of the original dismissal. It did not address why the claim was presented late. Notwithstanding that and with the agreement of Mr French-Williams, on behalf of the respondent, we nonetheless heard evidence.
5. The claimant's explanation was that he had throughout been represented by his trade union. In the month of March, he was away in India, although he was in contact with his union and, indeed, he received the ACAS Certificate by email when he was in India. He says that he returned to England on 30 March 2018 and was told by Mr Boyle, his trade union officer, that he had between one and a half and two weeks to file a claim. In fact, he only had two or three days.
6. The tribunal has previously received an email from Mr Boyle, because Mr Boyle was copied in to correspondence. Mr Boyle, by email dated 13 July 2018, wrote the following:

I received an email on Tuesday 10 July from Eversheds in regard to this case. I was unaware that I was meant to attend this hearing [on 12 July].

I was not given any notice by Mr Sarai and have a message from him to confirm it. I was the union representative that dealt with the appeal of this case by Heathrow Airports Limited, back in December 2017. I informed Mr Sarai after the appeal was turned down and ACAS process was exhausted that I would be having no further involvement in his case but could help him with advice on the next step eg ET1 form etc. I told him to get in touch with a solicitor. I believe that when he filled out the ET1 form he put my name as representative as I was his trade union representative at his former place of work. Apologies for any confusion and time wasted.

7. Mr Boyle has not been called to give evidence today and there is no statement from him addressing the issue of late presentation. All we have on that is the explanation from the claimant that it seems he was given wrong advice about the time limit for presentation.
8. I do not find as a fact that that advice was given to the claimant. I do not need to do so because it is clear to me that it was reasonably practicable for the claimant to present a claim in time because he had had dealings with a trade union and had been represented by a trade union. All of that goes to show that he had the resources to establish the time for presentation of the claim.
9. If it is right that Mr Boyle gave that wrong advice, then the claimant can sue the union for loss of opportunity of bringing a claim for unfair dismissal. So, if he is right, he has that remedy against the union.
10. As I say, I do not make a finding of fact that such advice was given to him because I have not heard, for example, from Mr Boyle and I also take note of the fact that the claimant did not put in a witness statement dealing with the circumstances of lateness. Had he put in such a statement he would have had to go on record with what he was saying against the union. That then might have led to further enquiries. So I do not need to find as a fact that such advice was given.
11. It is clear to me though that it was reasonably practicable for the claimant to put the claim in time. Accordingly, his unfair dismissal claim fails for having been presented out of time.
12. I now turn to the issue of discrimination on the grounds of religion. It is right to say that there is not much in the claim form on this matter. In the claim form at the additional information section, there is this sentence: "Why is there no mention in my dismissal and appeal of any investigation about my turban. On my appeal outcome Mr Willis never mentions this once". Earlier in his claim form he says that walking away from an incident with Mr Siddique and Sunita, he heard Sunita mention his turban. So, there are references to the turban and an alleged failure to establish potentially mitigating circumstances, it seems to me, about reference to his turban during the course of the altercations that led to his dismissal. The significance of the appeal being mentioned here is that the appeal date was 22 January 2018 meaning that this allegation is, of itself, in time. That is to say a failure on the appeal to look in to why there was no investigation about the turban. As the claimant says, Mr Willis, in the appeal outcome, never mentions this once. So, it does seem to me that on the face of it the claim form does include an allegation referable to religion, namely a failure to investigate the potential mitigating circumstances about reference to his turban. That allegation is in time.
13. However, the allegation troubles me to this extent, it does not figure in the grounds of appeal set out in the notice of appeal from the dismissal. It does not figure as an express matter. What I do have is this list:
 - Inconsistencies in some of the statements;

- Sharing of statements between staff;
 - Member of staff who wrote a statement against me coming to my home;
 - Not hearing sufficiently my side of the story, including the statement of Harry Kooner;
 - Didn't take into account that Sunita's statement talked a lot about Kavita and Manoj which had nothing to do with the incident;
 - A lot of emphasis on smoking in a no smoking area although 20 to 30 people are smoking outside including Mohammed Sidiqqe.
 - The relationship out of work between members of Human Resources.
 - Also, there are other conflicting interest which I wish to discuss.
14. So, turban, being a Sikh, and any mitigating aspect of those matters are not in those grounds of appeal. Similarly, in the statement that was emailed in to the tribunal on 23 November 2018, the claimant goes into detail about criticisms of his dismissal but, as far as I can tell, there is no express reference to a failure to consider the mitigating effect of provocative comments in relation to the fact that the claimant wears a turban.
15. Following further argument, and taking into account the Claimant's means, it is appropriate to make the religious discrimination claim subject to a deposit on the grounds that it has only little reasonable prospects of success and I exercise my discretion to award a deposit. It is appropriate for the Claimant to be on a costs warning in the event that the Tribunal ultimately finds that the decision to dismiss him and reject his appeal was not tarnished by religious discrimination at all.

Employment Judge Smail

Dated: 31 December 2018

Sent to the parties on:

.....7 January 2019

For the Tribunal:

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