



EMPLOYMENT TRIBUNALS

Claimant: Ms M Nicholson

Respondent: Keychange-Unlocking Women's Potential (A charity limited by guarantee) and others.

RECORD OF A PRELIMINARY HEARING

Heard at: Sheffield **On:** 28 January 2018

Before: Employment Judge Rostant

Appearances

For the claimant: Mr White of counsel

For the respondent: Mr Anderson of counsel

JUDGEMENT

I find that by 6 February 2018 or soon after the claimant met the definition of disability in S 6 Equality Act 2010.

REASONS

1. The issue before me at the preliminary hearing was whether or not the claimant met the definition of disability. The first complaint of discrimination is dated as 6 February 2018 and the last 7 July 2018. For reasons given in full to the parties at the preliminary hearing I found that the claimant did meet the definition of disability at least for the majority of that period.
2. However, I was unable to be precise as to the start date albeit I did not consider that the evidence showed it could be any earlier than 6 February 2018. The reason for doubt was the basis on which I found that the claimant did meet the definition. The claimant has PTSD. I found that she has not suffered substantial adverse effect for a total of 12 months. However I did find that since there had been a period of substantial adverse effect in 2013/14 and another in 2018, the evidence established that this was a recurring condition. I accepted the claimant's evidence that situations of significant conflict were likely to trigger the symptoms of PTSD. The claimant's witness statement did not say when she considered those symptoms had become significant as a result of the conflict at the heart of this case. The claimant's medical notes do not help on that point either. Absent more detailed evidence about when the claimant believed that

the conflict work and become significant I was unable to be certain that it had started as early as 6 February which is the first date on which a discriminatory act is said to have occurred. However, it is evident from what is complained of about by the claimant shows that if that was not already the case by 6 February it was shortly thereafter. It will be for the full tribunal to decide finally.

CASE MANAGEMENT SUMMARY

Final hearing

- (1) This case will be set down for hearing for eight days starting the **1st July 2019**. It will be heard before a full tribunal in **Sheffield** and will be confined to the issue of liability the claimant proposes to give evidence herself and to call for witnesses the five individual respondents will give evidence.
- (2) The parties should seek to complete evidence and submissions on liability by the end of seventh day hearing leaving the eight day or the tribunal's reserved deliberations. The tribunal will set a further date for a prospective remedy hearing before the parties leave.
- (3) The parties are required to attend on the first day of hearing by not later than 9:30 am.
- (4) The claimant and the respondents **must** inform the Tribunal as soon as possible if they think there is a significant risk of the time estimate being insufficient and/or of the case not being ready for the final hearing.

The claim

- (5) The claimant was employed by the respondent, from [date] until dismissal with effect on [date]]. By a claim form presented on [date], following a period of early conciliation from [date] to [date], the claimant brought complaints of [].

The issues

- (6) The issues between the parties which potentially fall to be determined by the Tribunal are as follows:
 - (i) The claimant has produced a Scott schedule setting out the details of 34 separate complaints. All of the complaints are of disability discrimination. Some of the complaints are of harassment related to disability some of direct discrimination. The Scott schedule does not however say on what basis the claimant contends that the evidence shows that she has been treated differently to a person without her disability and that the reason for that difference of treatment is the fact of her disability. Nor does the Scott schedule set out on what basis the claimant says that the treatment complained of relates to her disability.
 - (ii) I observed to the claimant that her witness statement must deal explicitly with these issues. Should it not deal with these issues the claimant runs the risk of failing the obligation to discharge the burden of proof resting upon her in section 136 Equality Act 2010.

- (iii) The respondents contends as a matter of fact that none of the individual respondents knew the claimant had a disability. The respondents would wish to contend therefore that both the claims of direct discrimination and harassment must fail on the issue of knowledge.
- (iv) In any event the respondent contends that the matters complained of cannot be made out on the facts and all that the claimant cannot discharge the burden of proof to show a causal link between the acts complained of and a disability or, in the case of the harassment complaints to show that the unwanted the alleged unwanted conduct meets the definition of harassment or is related to disability.
- (v) Since the claimant contends that the alleged acts or at any rate those acts which occurred prior to her resignation amounted to fundamental breaches of the contract of employment permitting her to resign and contend that she was constructively dismissed, the claimant's witness statement must also identify which of those acts she contends was the final straw.

Other matters

- (7) The respondents contend that the first respondent is insolvent and has been so since March 2018. It follows that, if that is correct, the first respondent, which is now no longer active, would have ceased employing the claimant on or shortly before her resignation anyway. If that is so then the claimant's claim for damages is likely to be significantly limited. The raising of this issue has prompted an order for early specific disclosure (see below).
- (8) 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)...*". **If, when writing to the tribunal, the parties don't comply with this rule, the tribunal may decide not to consider what they have written.**
- (9) The parties are also reminded of their obligation under rule 2 to assist the Tribunal to further the overriding objective and in particular to co-operate generally with other parties and with the Tribunal.
- (10) The following case management orders were made.

ORDERS

Made pursuant to the Employment Tribunal Rules of Procedure

1. Early specific disclosure.

- 1.1 By not later than 18 March 2019 the respondents are ordered to disclose to the claimant any documents that they would wish to rely on to establish the financial state of the first respondent at the date of the claimant's resignation. Those copy documents shall be accompanied by a statement from the third

respondent Ms E Bormida dealing with her knowledge of that matter from her position as Treasurer of the Board of Trustees.

2. Complaints and issues

- 2.1 The parties must inform each other and the Tribunal in writing **within 14 days of the date this is sent to them**, providing full details, if what is set out in the Case Management Summary section above about the case and the issues that arise is inaccurate and/or incomplete in any important way.

3. Statement of remedy / schedule of loss

- 3.1 The claimant must provide to the respondent by 4 March 2019 a document – a “Schedule of Loss” – setting out what remedy is being sought and how much in compensation and/or damages the tribunal will be asked to award the claimant at the final hearing in relation to each of the claimant’s complaints and how the amount(s) have been calculated.
- 3.2 If any part of the claimant’s claim relates to dismissal and includes a claim for earnings lost because of dismissal, the Schedule of Loss must include the following information: whether the claimant has obtained alternative employment and if so when and what; how much money the claimant has earned since dismissal and how it was earned; full details of social security benefits received as a result of dismissal.
- 3.3 The parties are referred to: the Presidential Guidance on pension loss at www.judiciary.gov.uk/wp-content/uploads/2013/08/presidential-guidance-pension-loss-20170810.pdf;
If the claimant is claiming for loss of pension, the Schedule of Loss must include the following information:
 - 3.3.1 precisely how much is being claimed and on what factual and arithmetical basis

4. Documents

- 4.1 On or before 26 March 2019 the claimant and the respondents shall send each other a list of all documents that they wish to refer to at the final hearing or which are relevant to any issue in the case, including the issue of remedy. They shall send each other a copy of any of these documents if requested to do so by 9 April 2019.

5. Final hearing file

- 5.1 By 30 April 2019, the parties must agree which documents are going to be used at the final hearing. The respondent must paginate and index the documents, put them into one or more files and provide the claimant with a copy of the file by the same date. The file should only include documents relevant to any disputed issue in the case that won’t be in the remedy file referred to below and should only include the following documents:

- the Claim Form, the Response Form, any amendments to the grounds of complaint or response, any additional / further information and/or further particulars of the claim or of the response, this written record of a preliminary hearing and any other case management orders that are relevant. These must be put right at the start of the file, in chronological order, with all the other documents after them;
- documents that will be referred to at the final hearing and/or that the Tribunal will be asked to take into account.

In preparing the file, the following rules must be observed:

- unless there is good reason to do so (e.g. there are different versions of one document in existence and the difference is relevant to the case or authenticity is disputed) only one copy of each document (including documents in email streams) is to be included in the file
- the documents in the file must follow a logical sequence which should normally be simple chronological order.

6. Remedy file

- 6.1 The claimant must prepare a paginated file of documents (“remedy file”) relevant to the issue of remedy and in particular how much in compensation and/or damages they should be awarded if they win their claim and provide the respondent with a copy of it by 4 June. The documents must be arranged in chronological or other logical order and the remedy file must have an up to date schedule of loss at the front of it.

7. Witness statements

- 7.1 The claimant and the respondent shall prepare full written statements containing all of the evidence they and their witnesses intend to give at the final hearing and must provide copies of their written statements to each other on or before 4 June. No additional witness evidence will be allowed at the final hearing without the Tribunal’s permission. The written statements must: have numbered paragraphs; be cross-referenced to the files; contain only evidence relevant to issues in the case. The claimant’s witness statement must include a statement of the amount of compensation or damages they are claiming, together with an explanation of how it has been calculated.

8. Final hearing preparation

- 8.1 By not later than 9.30 a.m. on the first day of hearing, the following parties must lodge the following with the Tribunal:
- 8.1.1 Four copies of the files, by the respondent and the claimant];
 - 8.1.2 Four copies of the witness statements by whichever party is relying on the witness statement in question;

9. Other matters

- 9.1 The above orders were made and explained to the parties at the preliminary hearing. All orders must be complied with even if this written record of the hearing is received after the date for compliance has passed.
- 9.2 Anyone affected by any of these orders may apply for it to be varied, suspended or set aside. Any further applications should be made on receipt of these orders or as soon as possible.
- 9.3 The parties may by agreement vary the dates specified in any order by up to 14 days without the tribunal's permission except that no variation may be agreed where that might affect the hearing date. The tribunal must be told about any agreed variation before it comes into effect.
- 9.4 **Public access to employment tribunal decisions**
All judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.
- 9.5 **Any person who without reasonable excuse fails to comply with a Tribunal Order for the disclosure of documents commits a criminal offence and is liable, if convicted in the Magistrates Court, to a fine of up to £1,000.00.**
- 9.6 **Under rule 6, if any of the above orders 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.**

Employment Judge Rostant

Dated: 28 January 2019