



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs D Rozsas

v

Synnex Concentrix UK Limited

Heard at: Watford

On: 13 August 2018

Before: Employment Judge Bartlett (sitting alone)

Appearances

For the Claimant: Ms and Mr Rozsas (Claimant's Daughter and Husband)

For the Respondent: Mr S Stevens, Counsel

JUDGMENT

1. The claim is struck out in its entirety pursuant to the oral judgement given on 13 August 2018 as there are no claims which the tribunal has jurisdiction to consider.

WRITTEN REASONS

2. The preliminary hearing was listed to determine whether or not to strike out the claims or order a deposit on the basis that the Tribunal does not have jurisdiction or that the claims have no reasonable or little prospect of success.
3. The claimant was represented by her daughter and husband at the preliminary hearing. The Tribunal had initially taken the view that the claimant's claim was a Wages Act claim, however, following correspondence from the parties the above issue was set to be heard at the preliminary hearing.
4. The claimant lodged the ET1 on 8 December 2017. This is a brief and vague document; I find that it does not identify any claims which could be construed as falling within the jurisdiction of the Employment Tribunal. The claimant did identify that she felt that she was bullying and suffered stress.
5. The respondent was given further time to serve an ET3 due to issues with service. The ET3 was received on 6 March 2018 and in it the respondent

raised its position that the claimant had not made a complaint falling within the jurisdiction of the Employment Tribunal. This issue was raised repeatedly by the respondent in correspondence. At the preliminary hearing I sought to elicit the claimant's position from herself and her family as they were not legally represented.

6. At the preliminary hearing and for the first time the claimant raised potential claims of:
 - 6.1 Constructive dismissal;
 - 6.2 Whistleblowing (a claim under the Public Interest Disclosure Act 1998);
 - 6.3 Discrimination relating to harassment.
7. I considered that these were to be treated as an application to amend the ET1 because the ET1 could not be construed in a way as to encompass such claims.
8. I sought to elicit the claims the claimant was now making and the following is the most representative summary of the claim that I was able to establish:

Constructive dismissal

- 8.1 The claimant collapsed at work in October 2017 and employees of the respondent stood around and then went to seek her husband rather than coming to her aid.

Whistleblowing

- 8.2 In July or August 2017 complaints were made by the claimant about how she had been treated (which she claimed was bullying) and that she was treated differently and detrimentally to others by being told off after complaining about cold air conditioning and that one, unspecified colleague, told the claimant and her husband that they were not good for the team.

Discrimination

- 8.3 The protected characteristic relied on was disability. The conditions relied on giving rise to disability were depression, eye problems and headaches. The type of discrimination relied on was harassment and a failure to reduce workload as recommended by doctors.
9. In relation to (1) constructive dismissal and (2) PIDA, I must consider whether it was reasonably practicable for the claimant to have included those claims in their ET1 and in relation to (3) discrimination, I must consider whether it is just and equitable in all the circumstances to extend time.

10. The claimant and her family said that they had done considerable research immediately prior to this hearing such that they were able to define the claim more precisely today. However, they were not able to say why they could not have done this research earlier or before the ET1 was submitted. They thought they had defined the claim by describing the situation and using the terms 'bullying' and 'stress' which was discrimination in German law.
11. Mr Stevens was given the opportunity to make submissions and in summary he stated that there had been a considerable delay in the claimant articulating the claims; that even at the hearing today the claim had not been adequately identified, such that the respondent was still unclear as to what the claims could be.
12. In relation to constructive dismissal this was not linked to any form of discrimination but rather bullying and the collapse in October 2017. The ET1 states that the employment of the claimant started in April 2016 and as her employment ended in November 2017 she did not have the required two years' service to bring such a claim.
13. I find that even today almost nine months after the ET1 was lodged the claimant has not been able - even with my input – to clearly identify her claims.
14. I find it was reasonably practicable to identify constructive dismissal and a PIDA claim in the ET1 and no good reason has been presented why it was not. The research could and should have been carried out at the point before the ET1 was submitted not nine months later. I do not accept that the claimant's depression was a cause for this delay because the research was dated to have been carried out by her family members.
15. I find it is not just and equitable to allow the amendment in respect of the discrimination claim. Again, no good reason has been presented why the claimant could not have completed the research earlier. Further, the claimant has not been able to clearly identify the conditions giving rise to the claimant being considered disabled for the purposes of the Equality Act 2010; after some questioning by me depression, eye problems and headaches were identified. Such a lack of clarity in the claim beyond feeling badly treated and bullied makes it hard to establish that there may be discrimination that can be sufficiently defined for an ET claim. Simply feeling unfairly treated is not sufficient. In light of these considerations and the failure to raise the claim until the preliminary hearing I find that it is not just and equitable to allow the amendment.
16. For all of those reasons I reject the application to amend the ET1 to include a constructive dismissal claim, a claim based on PIDA and a discrimination claim.
17. The claimant confirmed at the preliminary hearing that she had no Wages Act claim.

18. The claim is struck out in its entirety as there are no claims which the tribunal has jurisdiction to consider.
19. After giving this judgment, the respondent made an application for costs under Rule 76 of the Employment Tribunal Rules of Constitution and Procedure 2014. This application was made on the basis that the claimant had no reasonable prospects of success as a result of my findings that the claimant had not put forward claims on which the Employment Tribunal had jurisdiction in her ET1. The amount of £450 representing counsel's Brief fee for the preliminary hearing was claimed.
20. I enquired about the ability of the claimant to pay costs. Her husband and daughter stated that they were unemployed and the claimant was unemployed. The only working individual in the household is their son who pays for everything such as the rent and they have no money at the end of the month; they have a shortfall. They said they had no assets in the United Kingdom.
21. I gave due consideration to Rule 76 and 84 of the Employment Tribunals Constitution and Rules of Procedure 2014. I decided not to make a Costs Order. Costs Orders are not the normal practice in Employment Tribunal Proceedings. This case involved lay individuals with little legal experience and the issues have been dealt with at the first preliminary hearing. In light of the claimant's constrained financial circumstances and inability to pay I will not make a Costs Order.

Employment Judge Bartlett

Date: 22 January 2019

Sent to the parties on: 5 February 2019

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For the Tribunal Office