



## EMPLOYMENT TRIBUNALS

Claimant  
Mr A Rashid

v

Respondent  
Greenyard Fresh UK Limited

### RECORD OF A CLOSED TELEPHONE PRELIMINARY HEARING

Heard at: Nottingham

On: Friday 15 February 2019

Before: Employment Judge P Britton (sitting alone)

#### Appearances

For the Claimant: In Person  
For the Respondent: Mr M Bloom, Solicitor

## JUDGMENT

1. The claim of race discrimination is dismissed upon withdrawal.
2. The claim that proceeds to hearing is that of unfair dismissal.
3. Directions are hereinafter set out.

## CASE MANAGEMENT SUMMARY

### Introduction

1. The claim (ET1) was presented to the Tribunal on 21 September 2018. It had been prepared by the Claimant himself. He set out how he had been employed since 21 March 2003 and at the time of putting his claim in he was under suspension. He had ticked however the boxes for unfair dismissal and race discrimination. Subsequently a response was filed, prepared for the Respondent by its solicitors. By the time it was presented the Claimant had been dismissed without notice on 27 September 2018. The circumstances as to why that had occurred were fully set out the justification for summary dismissal being gross misconduct.

2. Mr Bloom does not disagree with me that from the Response, the Respondent was working on the premise that there was in fact a claim for unfair dismissal. In due course the Claimant wrote into the Tribunal and this was on 31 December 2018. He set out in detail why he considered his dismissal to be unfair and also made plain that he was withdrawing the race discrimination claim.

3. Thus the first thing I have done today is to place this case procedurally on its correct path. Insofar as it is therefore needed I amend the claim to read that that which remains is a claim of unfair dismissal on the basis that it can be so amended apropos the authority of **Prakash** in terms of events post the original claim. Mr Bloom does not oppose that approach. Thus it means that the case that proceeds is one of unfair dismissal.

4. The case had been listed for 3 days before a full Tribunal at Lincoln to take place on Monday 25 November 2019 thence followed by Tuesday 27 and Thursday 28 November. Directions have already been given.

5. However, as the remaining claim is one which can be heard by a Judge sitting alone I proposed to the parties that it be moved forwards. I also suggested that we use the Leicester Tribunal Hearing Centre because the Claimant resides in Peterborough as indeed does the Respondent's solicitor, and albeit the Respondent is based in Spalding, Lincolnshire it is actually easier to get from Spalding to Leicester than it is to Lincoln. Also it means that we can of course hear the case over the two days which I now consider will be sufficient without any break in the sitting days which might occur if the matter was relisted at Lincoln due to logistical issues.

6. Neither party disagreed with my proposal.

7. I then went on to give directions for the hearing having relisted the same at Leicester. I explained them carefully to the Claimant. Accordingly I make the following directions.

## **ORDERS**

### **Made pursuant to the Employment Tribunal Rules 2013**

1. The case is hereby **relisted to be heard by a Judge sitting alone at the Leicester Employment Tribunal Hearing Centre, Kings Court, 5A New Walk, Leicester LE1 6TE on Monday-Tuesday 20-21 May 2019** commencing at 10:00 am prompt on each day.

2. For the purposes of the hearing the following directions apply:-

2.1 By way of first stage discovery the Respondent will send to the Claimant by Friday 8 March 2019 a double spaced, chronological proposed trial bundle index.

2.2 By Friday 22 March 2019 the Claimant will have done the following. First he will have considered that trial bundle index and if there is any additional document that he requires to be in the bundle, he will make an entry at the appropriate space in the index. He will then send it back to the Respondent's solicitors. When doing so, if he has the relevant document he will send a copy to the Respondent's solicitor for inclusion in the trial bundle. If he does not have the document but believes it to be in the custody or control of the Respondent, he will make that plain and that he wants the document to be placed in the trial bundle.

2.3 If there were to be any issues, and I hope that there will not be, as to the relevance/necessity of any such document, then the parties have liberty to apply.

2.4 By not later than Friday 12 April 2019, a single bundle of documents is to be agreed. The Respondent shall have the conduct for the preparation of the bundle for the hearing. The bundle is to be bound, indexed and paginated. The bundle should only include the following documents:

- the Claim Form, the Response Form, any amendments to the grounds of complaint or response and case management orders if relevant;
- documents which will be referred to by a witness;
- documents which will be referred to in cross-examination;
- other documents to which the tribunal's attention will be specifically drawn or which they will be asked to take into consideration.

In preparing the bundle 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 material to the case or authenticity is disputed) only one copy of each document (including documents in email streams) is to be included in the bundle
- the documents in the bundle must follow a logical sequence which should normally either be simple chronological order or chronological order within a number of defined themes e.g. medical reports, grievances etc
- correspondence between the Tribunal and the parties, notices of hearing, location maps for the Tribunal and other documents which do not form part of either parties' case should never be included.

**Unless an Employment Judge has ordered otherwise, bundles of documents should not be sent to the tribunal in advance of the hearing.**

2.5 By not later than Friday 3 May 2019, the parties shall mutually exchange the witness statements of all witnesses on whom they intend to rely on. The witness statements are to be cross-referenced to the bundle and will be the witness's main evidence. The Tribunal will not normally listen to witnesses or evidence not included in the exchanged statements. Witness statements should not routinely include a précis of any document which the Tribunal is to be asked to read. Witnesses may of course refer in their witness statements to passages from the documents which are of particular importance, or to the inferences which they drew from those passages, or to the conclusions that they wish the Tribunal to draw from the document as a whole.

2.6 The Claimant supplied a schedule of loss on 31 December 2018. He accurately set out the basic award and the claim for loss of statutory rights and at that stage was claiming loss of earnings on the basis he remained unemployed. Of recent time he has obtained alternative employment albeit there is a shortfall in earnings as opposed to what he earned with the Respondent. It follows that when he deals with the exchange of witness statements he will be supplying an updated schedule of loss in terms of the ongoing short fall in loss of earnings from the date he commenced the new

employment. I reminded him that the Tribunal cannot award a total of more than 52 weeks losses from the date of dismissal.<sup>1</sup>

**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.

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**Employment Judge Britton**

Date:27 February 2019

Sent to the parties on:

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For the Tribunal:

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<sup>1</sup> Subject to the statutory cap which given his earnings will not engage.