



EMPLOYMENT TRIBUNALS

Claimant: Mr P Askew
Respondent: Royal Mencap Society
Heard at: Leicester
On: 30 January 2019
Before: Employment Judge Ahmed (sitting alone)

Representation

Claimant: In Person
Respondent: Mr J Feeny of Counsel

JUDGMENT AT A PRELIMINARY HEARING

The judgment of the Tribunal is that:-

1. The complaints of sex discrimination, disability discrimination, breach of contract, whistleblowing and detriment in relation to paternity leave/shared parental leave are all struck out as having no reasonable prospect of success.
2. The complaints of unfair dismissal and an unlawful deduction of wages (including holiday pay) are *not* struck out and shall proceed to a final hearing.
3. Directions as to the final hearing are given separately.

REASONS

1. By a claim form presented to the Tribunal on 3 September 2018 Mr Paul Askew brings a number of various complaints. Mr Askew was employed by the Respondent from 1 September 2013 to 31 March 2018, the latter being the 'effective date of termination'. Mr Askew has throughout represented himself in these proceedings.
2. The complaints in these proceedings have been identified and are agreed as direct sex discrimination, disability discrimination, breach of contract, detriment in relation to having made a protected disclosure and unfair dismissal both for having made a protected disclosure and 'ordinary' unfair dismissal.

There are also complaints in relation to paternity leave/shared parental leave which the Claimant says he was deprived of by reason of redundancy.

3. The Respondent is a well-known national charity offering support for people with learning disabilities, families and carers. It provides direct services in housing, care and support.

4. Mr Askew was employed as a Support Worker. His employment was terminated by reason of redundancy on 31 March 2018 when the Respondent decided that it was going to close its Upperton Road (Leicester) branch where the Claimant was based.

5. The facts of the case are relatively straightforward and materially are not in dispute.

6. In 2017 Mr Askew submitted a request for paternity leave for 2 weeks in March 2018. The request was considered and approved in November 2017.

7. On 1 December 2017 Mr Askew and his colleagues at Upperton Road were informed of the proposed closure of that branch. The Respondent began a period of consultation with affected staff including the Claimant.

8. On 8 January 2018 the Respondent confirmed the decision to close Upperton Road with effect from 31 March 2018.

9. On 15 January 2018 the Claimant was informed that there were two potential alternative roles elsewhere which could avoid redundancy if the Claimant was interested. These were at Loughborough and Market Harborough. The Respondent's view was that neither of these were deemed an offer of suitable alternative employment which might obviate the obligation to make a redundancy payment given the distances involved. The Claimant lived in Leicester and both of the alternative roles were a distance of more than 10 miles from the Claimant's home.

10. On 4 February 2018 Mr Askew confirmed that he wished to take up the offer of alternative employment at Market Harborough. His case is that he was given an assurance that he would have his travelling costs reimbursed. I am satisfied that there was no such discussion and no such assurance. All that Ms Teall of the Respondent said to him was that he was entitled to a trial period of 4 weeks at the new location without the risk of losing his redundancy payment. This trial period would begin before the agreed period of his proposed parental leave.

11. On 6 February 2018 the Claimant wrote to the Respondent as follows:

"In your letter 18 December 2017 setting out the proposals to close Upperton Road you indicate that you would be willing to meet my travel costs to a new work place for 6 months. I would like to accept this for a 6 month period..... at Market Harborough."

12. As I say there was no such discussion and Ms Teall replied promptly to the Claimant on 12 February to make it clear that there was no agreement or offer about reimbursing the Claimant's travelling expenses.

13. On 13 February 2018 Mr Askew was absent from work due to stress which he claimed was caused by the Respondent not willing to reimburse his travelling expenses.

14. On 14 February the Respondent confirmed to the Claimant the availability

of the Market Harborough role and asked him to confirm his interest by 19 February. Mr Askew did not reply to the letter.

15. In the absence of a reply, and being satisfied that the Claimant had received the 14 February letter the Respondent wrote to the Claimant on 20 February 2018 to confirm that the Claimant's redundancy would take effect on 31 March.

16. Under Rule 37 of the Employment Tribunals Rules of Procedure 2013 a Tribunal may strike out all or part of a claim if it is considered scandalous, vexatious or has no reasonable prospect of success.

17. Mr Feeny on behalf of the Respondent does not realistically seek a strike out of the ordinary unfair dismissal complaint or the unlawful deduction of wages complaints. Those complaints will therefore be allowed to proceed to a final hearing.

18. I am satisfied that the complaints of disability discrimination, sex discrimination, whistleblowing and paternity leave/shared parental leave have no reasonable prospects of success and should be struck out.

19. There is no actual comparator relied on. Mr Askew is unable to offer any argument or basis as to why a female comparator would have been treated differently. This was a redundancy situation where the office in which he was based was being closed. His gender had nothing to do with it. It is pointless to let this go complaint proceed to a full hearing.

20. In relation to the complaint of disability discrimination Mr Askew relies upon depression as the relevant disability. There are three allegations of disability discrimination. The first is that the Respondent's wrote to him during a period of sickness which he says constituted disability discrimination. Secondly, he was not given any reassurance throughout the redundancy process which exacerbated or affected his condition. Thirdly, he was not given any support in return to work interviews.

21. There is nothing to prevent a Respondent from writing to a sick employee during a period of sickness. Indeed, it may have an obligation to do so. The second and third allegations appear to have emerged only at this hearing and have no legal basis. It is not clear what reassurance he ought to have had. The conduct of the return to work interviews does not appear to such that any reasonable objection can be raised. His treatment was in line with usual procedures and his depression was again not a factor.

22. In relation to the whistleblowing allegations, Mr Askew says that he made a number of allegations about inappropriate practices during his employment. He cannot remember when they were made but they were all when he was based at the Market Harborough office previously which was at least 3 years ago as he transferred to Leicester in October 2016. There is no evidence of any protected disclosures following the transfer to Leicester.

23. Any whistleblowing detriment allegations which he may have had, and which are very short of detail as it is, are therefore long out of time. Even if there was a protected disclosure – and the Claimant is a long way off from establishing the basis of one - it could not possibly have influenced the decision to make him redundant because that was as a result of the closure of a branch.

24. I therefore strike out both the whistleblowing 'detriment' and the automatic element of the unfair dismissal claim insofar as it is alleged to be due to making a protected disclosure.

25. As to the complaint of breach of contract, this is for notice pay only. Mr Askew worked out his notice and he is therefore not entitled to anything else. The complaint has no reasonable prospect of success.

26. It is difficult to understand what the paternity leave/shared parental leave complaints are about. They appear to be that the Claimant was deprived of the possibility of paternity leave or shared paternal leave because he was made redundant before they could be taken or exercised. That argument has no chance of success because the time for taking any such leave had simply not arrived. He submitted a request for paternity leave in 2017 which was duly granted. I am satisfied that had he remained in employment any application would have been considered on its merits.

27. In coming to my decision I am conscious that there is a weight of authority against striking out discrimination complaints at a preliminary stage (see for example, **North Glamorgan NHS Trust v Eszias** [2007] IRLR 603) but on the other hand there is no absolute rule against striking out where there are no real factual issues (see for example, **Ahir v British Airways Plc** [2017] EWCA Civ 1392).

28. There are no real factual issues. Mr Askew's principal source of disgruntlement is that he believes that he was promised that his travelling expenses would be paid, which I have found was not the case. When he attempted to introduce it in correspondence it was promptly denied. There is no history of paying travelling expenses to employees by the Respondent. Two of the Claimant's colleagues working at Upperton Road were also at risk of redundancy and accepted alternative employment at Market Harborough. Neither were offered or entitled to reimbursement of their travelling expenses.

29. For the reasons give the complaints in these proceedings are all struck out with the exception of 'ordinary' unfair dismissal and an unlawful deduction of wages, to include any claim as to holiday pay.

Employment Judge Ahmed

Date: 29 March 2019

JUDGMENT SENT TO THE PARTIES ON

FOR THE TRIBUNAL OFFICE