



EMPLOYMENT TRIBUNALS

Claimant: Mrs A Pienczak

Respondent: GT Race and Trailers Ltd

Heard at: Nottingham

On: 23 May 2019

Before: Employment Judge Ayre (sitting alone)

Representation

Claimant: In person

Respondent: Mr S Guthrie, Director

Polish Interpreter : Mr A Kanedski

JUDGMENT AT PRELIMINARY HEARING

1. The complaints of age discrimination and for a redundancy payment are dismissed upon withdrawal by the claimant.
2. The race discrimination complaint is not struck out.
3. The claimant is ordered to pay a deposit of £250, pursuant to Rule 39 of Schedule 1 to the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 as a condition of continuing to advance her race discrimination complaint.

REASONS

Background and Issues

1. By claim form presented to the Employment Tribunal on 22 May 2018 the claimant brought claims against the respondent for unfair dismissal, race discrimination, age discrimination and a redundancy payment. The claims are resisted by the respondent.
2. At a Closed Telephone Preliminary Hearing on 27 February 2019 Employment Judge Ahmed listed the case for a Preliminary Hearing today to consider the following issues:-

- a. Whether the complaints of age and race discrimination and a declaration for a redundancy payment should be struck out as having no reasonable prospect of success under Rule 37(1)(a) of the Employment Tribunal Rules of Procedure 2013;
- b. Alternatively, to consider and determine under Rule 39 of the Employment Tribunal Rules of Procedure 2013 whether the Claimant should pay a deposit as a condition of being permitted to continue to pursue the complaints of age and race discrimination and, if so, the amount of that deposit; and
- c. To give further directions as to the conduct of the final hearing, if necessary.

Proceedings at the Preliminary Hearing

3. The claimant attended the Preliminary Hearing without representation. She told me that she was still represented by Ms Niklas, but that Ms Niklas would not be attending the Preliminary Hearing.
4. At the outset of the Preliminary Hearing the respondent informed me that, since the last Preliminary Hearing, the respondent had paid the following sums to the claimant:-
 - a. £506.25 by way of additional redundancy payment; and
 - b. £119.25 by way of additional holiday pay.
5. The claimant confirmed that she had received these payments and that she wanted to withdraw her redundancy payment complaint. I explained to the claimant that if she did that, the redundancy payment complaint would be dismissed. The claimant confirmed that she wanted to withdraw it. That complaint is therefore dismissed.
6. During the Preliminary Hearing the claimant was asked to identify the acts of alleged race and age discrimination. When asked to identify the acts of alleged age discrimination the claimant told me that she did not believe that her treatment was linked to her age. She also said that she had told her representative that she wanted to withdraw her complaint of age discrimination. The claimant withdrew her complaint of age discrimination and that is also dismissed.
7. The claimant gave evidence at the Preliminary Hearing. I asked her to tell me what the alleged acts of discrimination are and why she believes they amount to unlawful discrimination. The claimant identified four alleged acts of discrimination:-
 - a. The way in which she was treated by another employee, Jackie who the claimant alleges 'hated her';
 - b. An incident in September or October 2017 when the claimant says Jackie and another employee called Alan went down to the office and said something 'very bad' about the claimant. The claimant does not know what they said. She alleges that Jackie, Alan and Mike then

came back upstairs, and that Mike repeatedly pointed at her with his finger and told her to 'get out';

- c. An incident on 10th January 2018 when Jackie allegedly screamed at the claimant and called her a 'stupid woman' and the claimant's managers allegedly refused to talk to or help her, resulting in the claimant having to leave the office; and

- d. Her dismissal.

- 8. I asked the claimant on several occasions to explain why she believed the above incidents were linked to her race. The claimant told me that she believed they were linked to her nationality. She could not however say why she believed they were linked to her nationality. She said that she was ignored, that Jackie hated her and that 'they' didn't want her at work. She also said that she believed her dismissal was planned, so as to destroy her.
- 9. I was presented with a bundle of documents prepared by the respondent and split into two sections. The parties were invited to identify the documents that they wanted me to read, and did so. I have read those documents.
- 10. Each party then made short oral submissions.

Findings of Fact

- 11. The claimant is a Polish national.
- 12. She worked for the respondent as a seamstress.
- 13. In February 2018 the claimant was given notice by the respondent that her employment would terminate by reason of redundancy. The exact date of termination is a matter that will be resolved at the Final Hearing of this claim.
- 14. Following her dismissal, the claimant has been unwell. For 9 months she was unable to work. She has subsequently started work on 3 occasions but each time has only worked one day before becoming unable to work any more.
- 15. The claimant is in receipt of Personal Independence Payments of £320 a month, and a pension of £173 a month, giving her a total monthly income of £493.
- 16. The claimant does not own her own home and lives in a Council bungalow. She has a car but it is an old car which she believes is worth £120. She has no savings.

The Law

Striking out a claim

- 17. Rule 37 of Schedule 1 to the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 ("the Rules") provides as follows:-

“(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds:-

(a) That it is scandalous or vexatious or has no reasonable prospect of success....”

Deposit Orders

18. Rule 39 of Schedule 1 to the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 (“the Rules”) provides that:-

“(1) Where at a preliminary hearing (under rule 53) the Tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of success, it may make an order requiring a party (“the paying party”) to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument.

(2) The Tribunal shall make reasonable enquiries into the paying party’s ability to pay the deposit and have regard to any such information when deciding the amount of the deposit.”

Conclusions

19. The Tribunal’s power of strike out must be exercised with “reason, relevance, principle and justice” (*Williams v Real Care Agency Ltd (2021) ICR D27*). It is well established that in cases which are fact sensitive, such as discrimination claims, strike out will be rare. The House of Lords highlighted in *Anyanwu and anor v South Bank Student Union and anor 2001 ICR 391, HL*, that it was important not to strike out discrimination claims except in the most obvious cases as they are generally fact-sensitive and require full examination to make a proper determination.

20. It appears to me that the claim of race discrimination is very weak. The claimant was unable to identify any link between the treatment complained of and her nationality and has not identified any prima facie link between the treatment complained of and her nationality. I have seriously considered striking out the claim and would strongly recommend that the claimant take further advice in relation to it.

21. The complaint of race discrimination is however fact sensitive. I recognise that the claimant was not represented today, and is unwell. I have also taken account of the burden of proof in discrimination claims and of the Tribunal’s power to draw inferences of discrimination.

22. It cannot, in my view, be said that the claimant’s race discrimination complaint has no reasonable prospect of success. Accordingly, on balance, it would not be appropriate in my view to strike out the race discrimination claim pursuant to Rule 37 of the Rules.

23. It does, however, seem to me that the race discrimination claim has little reasonable prospect of success, and that it would be appropriate to make a Deposit Order pursuant to Rule 39 of the Rules.
24. Before making such an order, I have considered the claimant's means. In the circumstances it would, in my view, be appropriate to order the claimant to pay a deposit of £250 as a condition of continuing to advance her claim of race discrimination. The claimant has some income, and the amount of the Deposit Order equates to approximately 2 weeks' income. In the circumstances, it is in my view reasonable to order the claimant to pay 2 weeks' income as a condition of being able to pursue her complaint of race discrimination.

CASE MANAGEMENT SUMMARY

25. The case remains listed for a Final Hearing on 5,6 and 7 August 2018 at the **Nottingham Hearing Centre, 50 Carrington Street, Nottingham NG7 1FG**.
26. Mr Guthrie told me that one of the respondent's witnesses is due to be on holiday at the time of the Final Hearing, and that another is currently caring for his wife who is seriously ill. I explained to Mr Guthrie that it is a matter for the respondent to decide how it presents its case at the hearing and whether to seek a postponement of the hearing. Mr Guthrie indicated that he was not seeking a postponement.
27. Both parties indicated that no further case management orders were required.

Employment Judge **Ayre**

Date

23 May 2019

JUDGMENT & REASONS SENT TO THE PARTIES ON

FOR EMPLOYMENT TRIBUNALS