



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs V Popescu

**Respondent:** Midas Care Limited

## RECORD OF A PRELIMINARY HEARING

**Heard at:** Bury St Edmunds

**On:** 2 May 2019

**Before:** Employment Judge Laidler (sitting alone)

### Appearances

For the claimant: Mr E Popescu, son

For the respondent: Miss C Urquhart, Counsel

## JUDGMENT ON PRELIMINARY HEARING

- (1) The claimant can rely on the matters set out as occurring in 2016, paragraph 2 of the ET1 and 2017, paragraph 5 of the ET1, insofar as they are background.
- (2) As discreet allegations of discrimination the matters in paragraph 1 above are struck out as being significantly out of time and no evidence having been tendered as to why it would be just and equitable to extend time.
- (3) Leave to amend to bring a claim of direct race discrimination in relation to the investigation compared to the treatment of Mr S in 2016 is refused he not being an appropriate comparator for the purposes of the Equality Act 2010 and such complaint therefore having no reasonable prospects of success.
- (4) Leave to amend to rely on the house visit in August 2018 as an act of harassment on the grounds of race is refused.

- (5) Leave to amend to assert that when the claimant requested a copy of her contract, it was only provided after the victim changed her account, was an act of harassment on the grounds of race is refused.
- (6) The claimant can argue that the 5 August 2018 letter was a protected act and that the investigation against her proceeded because of that as an act of race victimisation
- (7) The Tribunal is also satisfied, that the claimant can argue that her resignation was another act of victimisation under the provisions of Section 39(4) of the Equality Act 2010.

## **REASONS**

- (8) The matters set out in 2016, paragraph 2 of the ET1 and 2017, paragraph 5 of the ET1, Mr Popescu stated a number of times were background and that the core matter was when the claimant was suspended in August 2018.
- (9) The respondent had applied to strike out those allegations as discreet allegations of race discrimination alleging they were out of time.
- (10) This Tribunal was content to record that they are background only. Insofar as the claimant does still seek to rely on them as discreet allegations, they are struck out as significantly out of time. There is no evidence of a continuing act and one has not been argued. The claimant is not present, and no evidence has been tendered as to why it would be just and equitable to extend time.
- (11) To be clear, the claimant can refer to those matters as background, but the Tribunal will not determine them as discreet allegations of discrimination.

### **New Matters Raised at this Hearing**

There were various new matters put today.

#### Race

- (12) I am content to record that the claimant relies on colour, even though that was not in the claim form. If the respondent needs leave to file an amended response, one can be served.
- (13) With regard to other matters raised being three particular allegations of discrimination I have decided that the most proportionate way to deal with these is to consider them now as an application to amend, even though one has not been formerly presented, rather than request more paperwork which could cause delay in dealing with the matter.

Direct Discrimination

- (14) The first was a direct discrimination claim. The suggestion being that the investigation process of the claimant was directly discriminatory of her as being of dark skin, compared to Mr S not being subject to investigation in 2016. That cannot be a correct comparison for the purposes of the Equality Act 2010 as Mr S was not accused of safeguarding matters. The Tribunal therefore, accepts that insofar as leave to amend is sought to put that allegation, it has no reasonable prospects and leave to amend should not be granted.

Harassment

- (15) There is then the allegation that there was harassment around August 2018, particularly the house visit. The respondent's account of this differs. However, the Tribunal has seen in the bundle for today, that the claimant, or indeed Mr Popescu, was writing extensively at the time about that visit and it was never linked to race or more particularly colour, in any way. The claimant may have real concerns about that visit, but she will be able to rely upon them in relation to her constructive dismissal claim and so is not prejudiced by this Tribunal not allowing leave to amend to rely on it as an act of race harassment.
- (16) It was also suggested that another act of harassment on the grounds of race was the claimant's request for her contract which was only provided when the victim changed her account. That was never put before, is not pleaded and it is out of time. There is nothing in the claim form about this whatsoever. The legal basis of this claim is still not clear. Again, a non-provision of the contract when requested, is something the claimant can rely upon in relation to her constructive dismissal claim. Leave to amend is not given to pursue it as an act of harassment.

Victimisation

- (17) The respondent has accepted that the letter of 5 August 2018, page 60 of the bundle, amounted to a protected act. Although it is not clearly pleaded, the respondent also acknowledged that the claimant was saying that since she had complained about discrimination, bad things had happened to her. The Tribunal does not strike out this allegation. The claimant can argue that the 5 August 2018 letter was a protected act and that the investigation against her proceeded because of that as an act of race victimisation.
- (18) The Tribunal is also satisfied and taking into account the claimant is a litigant in person, that she can argue that her resignation was another act of victimisation under the provisions of Section 39(4) of the Equality Act 2010. That, therefore, means the claims of constructive unfair dismissal, both under the Equality Act 2010 and the Employment Rights Act 1996, and the claim of victimisation, proceed and we now need to clarify the monetary claim.

Money Claims

- (19) These are set out at paragraphs 48 and 49 of the Particulars of Claim, but further particulars are needed. An Order is made for these to be provided.
- (20) In addition, the claimant will provide a schedule of loss setting out how all of the amounts claimed by her for unfair dismissal and discrimination are calculated.

---

**Employment Judge Laidler**

Date: 29 May 2019

Sent to the parties on:

.....

For the Tribunal:

.....