



EMPLOYMENT TRIBUNALS (ENGLAND & WALES)

OLUFEMI AKINTUNDE
Claimant

V

YARROW HOUSING LIMITED
Respondent

HELD AT: London Central ON: 7/8/2019
Employment Judge: Mr J S Burns

Appearances

For Claimant: In person

For Respondent: Ms K Moss (Counsel)

JUDGMENT

(Following an Open Preliminary Hearing)

1. The claims are all struck out as having no reasonable prospect of success.
2. The Claimant's application to amend his claim is refused.

REASONS

1. This matter came before me to consider the matters listed in paragraph 1(a) to (g) of the case management summary dated 19/6/2019. It was apparent from my discussion with the parties at the beginning of the hearing that I also had to consider whether and to what extent the Claimant had made unfair dismissal claims and whether his application dated 27 June 2019 to amend his claims should be allowed.
2. I heard oral evidence from the Claimant subject to cross-examination and was referred to the documents in a file running to 194 pages. I also read the Claimant's witness statement dated 11/7/2019 and statements he had produced from supporters (who did not attend to give evidence) namely Michael Bentil and Adam Frost. I had a series of informal discussions with the Claimant to help him explain his claims to me and to respond to Ms Moss's submissions. I was handed a chronology and an opening note from Ms Moss. The paragraphs below record my findings of fact.
3. The sex discrimination claim is based on a single act of claimed detriment which occurred in December 2016 namely the Claimant being transferred to another department. The Claimant agreed that he had requested the transfer so this would not be a detriment in any event. If he had a claim it should have been brought by

20/3/2017 at the latest. In fact the ET1 was presented on 20/12/2018. The Claimant stated he had not claimed earlier because he was scared of reprisals in his employment. However, he was dismissed from his employment on 20/12/2016 and did not attend work in January 2017, so there was no need to fear reprisals then. He also referred to having had medical problems but his medical notes do not support him having had any medical issues between May 2016 (when he had an endoscopy) and 27/3/2018 (when he was involved in a car accident). The Claimant has not shown it is just and equitable to extend time for this very weak claim and it is outside the Tribunal's jurisdiction.

4. The Claimant started employment with the Respondent on 28/5/2013 and he was told at a meeting on 20/12/2016 by Yvette Olasemo that he was dismissed with immediate effect. The reason for this was that the Home Office had informed the Respondent that the Claimant did not have the right to work in the UK.
5. The Claimant did not work or receive pay attributable to the period between 20/12/2016 and 1/2/2017 on which latter date he was re-engaged under a new contract of employment.
6. The Claimant worked under that new contract until 20/10/2017 on which date he was dismissed. He was told this during a telephone call on 19/10/2017 by Olubode O. Latunji. The reason for this was again that the Home Office had informed the Respondent that the Claimant did not have the right to work in the UK.
7. The Claimant did not work or receive pay attributable to the period between 20/10/2017 and 22/2/2018 on which latter date he was re-engaged under a new contract of employment.
8. The Claimant worked under that new contract until 20/11/2018 on which date he resigned without notice.
9. The above oral dismissals were admitted by the Claimant under cross examination on 7/8/2019 and they are also confirmed by letters in the bundle at 128 and 144.
10. I find that the Claimant had three separate periods of employment and was not employed by the Respondent between between 20/12/2016 and 1/2/2017 and between 20/10/2017 and 22/2/2018. Hence he has no entitlement to be paid wages between those dates, and even if he had, such claims would be considerably out of time.
11. The Claimant cannot claim unfair dismissal in his current ET1 in relation to the dismissals on either 20/12/2016 or on 20/10/2017 because those claims would be considerably out of time. I find that the Claimant knew that he had been dismissed on each occasion and it was reasonably practicable for him to have claimed then if he wished to. In any event such claims would be hopeless as the Respondent would have been in breach of the law had it continued to employ the Claimant in the face of warnings from the Home Office. The application to amend to add a claim for unfair dismissal on 20/12/2016 is accordingly refused.

12. Any unfair dismissal claim in relation to the 20/10/2017 would face the further obstacle of lack of sufficient continuous service.
13. The bonus claims: The Claimant explained that the bonus scheme was discretionary and not everyone was paid it. Those who were paid a bonus received it at the end of December.
14. Any claim by the Claimant for non-payment of bonus for December 2014 should have been brought with three months of non-payment ie by the end of March 2015 as a wages claim or within three months of the termination on 20/12/2016 as a contractual claim. The claim is out of time as it was reasonably practicable to claim in time.
15. Any claim by the Claimant for non-payment of bonus for December 2015 should have been brought with three months of non-payment ie by the end of March 2016 as a wages claim or within three months of the termination on 20/12/2016 as a contractual claim. The claim is out of time as it was reasonably practicable to claim in time. In any event such a claim would be hopeless because the Claimant at end of December 2015 was subject to a "standard setting letter" which disentitled the Claimant from eligibility under the Respondent's criteria.
16. The Claimant was not employed by the Respondent at the end of December in any subsequent year so would not have been considered for a bonus then in any event.
17. Any claim for the December 2016 bonus should have been brought with three months of non-payment ie by the end of March 2017 as a wages claim or within three months of the termination on 20/10/2017 as a contractual claim. The claim is out of time as it was reasonably practicable to claim in time.
18. The claim for the December 2017 bonus should have been brought with three months of non-payment ie by the end of March 2018 as a wages claim. I do not find it has any reasonable prospect of success as a contractual claim because it was discretionary and he was not in employment in December 2017.
19. The application to amend the claims to add contractual claims in relation to the bonuses is accordingly refused.
20. The Claimant has claimed three protected disclosures namely (i) an email to Liliana dated 12/4/2018 (ii) a further short email to Liliana dated 12/4/2018 and (iii) an email to "social services" dated 25/7/2018.
21. I find that the email dated 25/7/2018 was not a protected disclosure as social services (the Royal Borough of Kensington and Chelsea) to which it was sent was not the Respondent and was also not a prescribed person under section 43F ERA 1996 having regard to the subject matter of the email. (It was the Care Quality Commission which would have been the proper recipient).

22. I find that there is a reasonable argument that the other two emails (both dated 12/4/2018) are protected disclosures because they raise potential health and safety issues and the shorter email also raises an environmental issue.
23. In her Opening Note, Ms Moss had conceded that the detriment claim under section 47B based on the shorter of the 12/4/2018 emails as a protected disclosure, should be allowed to proceed to a full hearing. However, having heard the Claimant's oral evidence to the Tribunal and considered the witness statements, she retracted that concession and made an application for a strike-out or deposit order in relation to the detriment claim. I considered that it was reasonable and proportionate to deal with this without convening a further OPH and the Claimant was given a full opportunity to deal with the matter.
24. The detriments claimed as consequence of the making of the claimed protected disclosures of 12/4/2018 are recorded in paragraph 7 of the case management summary dated 19/6/2019 – namely being reprimanded by his manager Ms Ovba and his area manager Ms Sterling.
25. However, the Claimant's evidence on 7/8/2019 was that from the very beginning of his time working for the Respondent at Southwood House, which started on 22/2/2018, he was subject to continuous reprimand and poor management by these individuals and others. He claimed that his management at Southwood was terrible from the moment he set foot there such that his "heart would jump" when he had to go to work.
26. It can be seen from the subject matter of the longer email dated 12/4/2018 that before he submitted that document he was already engaged in an acrimonious dispute with his managers who were reprimanding him.
27. The Claimant has also adduced witness statements from others (namely Michael Bentil and Adam Frost) who both worked at Southwood House in 2018. Neither of them made protected disclosures. The thrust of their evidence is that they nevertheless received bad management and humiliating and intimidating treatment from the same management team which the Claimant is complaining about.
28. I therefore take the view that the Claimant has no reasonable prospect of success in showing that his claimed bad treatment by and reprimands from managers, even if it did take place as he claims, was attributable to his claimed protected disclosures, and hence that his detriment claim should be struck out.
29. The question arose whether the Claimant had made a claim of unfair (constructive) dismissal in relation to his 30/11/2018 resignation. The unfair dismissal box was not ticked in section 8 of his ET1. The previous case management discussion on 19 June 2019 did not identify any such claim. Although the Claimant made an application on 31/7/2019 to amend his claim to add an unfair dismissal claim in relation to the 20/12/2016 he had made no application to add an unfair dismissal claim in relation to his 2018 resignation.

30. I find that the Claimant has not claimed unfair dismissal in 2018 and that it is not in the interests of justice for me to intervene to suggest to him that he should apply to add such a claim. Any such claim could not be brought unless it was to be brought under section 103A ERA 1996, which would require the Claimant to show that he resigned because or principally because he made protected disclosures. The Claimant has never himself stated this clearly. Having heard the Claimant's evidence about this on 7/8/2018, I would regard any such claim, if it was made, as having no reasonable prospect of success. The Claimant told me he resigned because the situation at Southwood House was terrible, a situation which had existed from the day he first set foot there.

Employment Judge - Burns

Date : 07/08/2019

Date sent to the Parties

08/08/2019

For Secretary of the Tribunals