



EMPLOYMENT TRIBUNALS

Claimant: Mr B Awerije

Respondent: Adecco UK Limited

Heard at: Leicester **On:** 28 June 2019

Before: Employment Judge Ahmed (sitting alone)

Representation

Claimant: In person

Respondent: Ms Rockall, 'Employment Lawyer'

JUDGMENT AT A PRELIMINARY HEARING

The judgment of the Tribunal is that:-

1. The Claimant's case was struck out under Rule 27(1)(d) of the Employment Tribunals Rules of Procedure 2013.
2. Upon an application for a reconsideration by the Claimant the judgment at paragraph 1 above is revoked. The claim is reinstated and the Claimant has leave to proceed with the claim.
3. The Claimant's time for bringing these proceedings is extended on the grounds that it is just and equitable to do so. The Claimant's claims are permitted to proceed out of time.
4. The Claimant's complaint of race discrimination is not struck out on the application by the Respondent that it had no reasonable prospect of success.
5. The application for a deposit order is refused.
6. This case remains listed for a final hearing on 16-18 December 2019.
7. Case management orders in relation to the final hearing are given separately.

REASONS

1. In these proceedings the Claimant brings various complaints of race discrimination. At the previous Preliminary Hearing it was explained to him that his complaint of unfair dismissal cannot proceed as he does not have the qualifying period of service to bring such a complaint.

2. Mr Awerije arrived late for this Hearing and in his absence Ms Rockall made an application for the claim to be struck out which was granted. After the decision had been made but before the hearing ended Mr Awerije arrived. He applied for a reconsideration and the strike out decision was considered and revoked.

3. The *types* of race discrimination complaints have become slightly clearer since the previous Preliminary Hearing. They are as follows:-

3.1 a complaint of direct race discrimination;

3.2 a complaint of racial harassment;

3.3 a complaint of victimisation.

4. At the last hearing the Claimant was ordered to file further and better particulars of his claim so that it could be properly understood. He was ordered to send these to the Respondent and at the same time to send a copy to the Tribunal. The Claimant sent them to the Tribunal but not to the Respondent. A copy of the particulars on the Tribunal file was supplied to Ms Rockall at this hearing.

5. Significantly, what the Claimant says at paragraph 2 of the particulars is that Mr Bobescue, who was his line manager at the time, used racist terms against him. Mr Awerije alleges that Mr Bobescu said to him:

“Monkey, you are very foolish and useless, lazy, bewictch”

6. As to the word ‘bewitch’ I presume the Claimant means ‘bitch’ because he uses that same word later in the same particulars.

7. The remainder of the allegations in the further and better particulars do not specifically relate to any comments about the Claimant’s race and it is unnecessary for the purposes of this hearing to set them out here. Mr Awerije expanded upon the allegation at paragraph today by saying that in addition there was also reference to him and a banana which had racial connotations. I note that the latter allegation is not in the particulars nor the ET1.

8. Ms Rockall does not accept that any of the alleged comments were made and continues to press for the race discrimination complaints to be struck out. It seems to me she will at least need to take instructions.

9. By way of further background, the Claimant was involved in an incident at work with Mr Bobescu on the nightshift of 31 May/1 June 2018. It is agreed the Claimant was sent home but the Respondent says that the reason was because he had engaged in an unprovoked altercation and had acted aggressively to Mr Bobescu.

10. It is agreed that the Claimant was not offered any further assignments or placements after the aforementioned incident by the Respondent, an employment agency.

11. The issues are therefore as follows:

11.1 whether the racial remarks as alleged were made;

11.2 whether the incident on 31 May/1 June involved any racial element;

11.3 whether the decision by the Respondent not to offer any further placements or assignments to the Claimant was in any way tainted by race discrimination.

12. This will clearly be a fact-sensitive case where the ultimate determination will depend upon the findings of fact made by the Tribunal. Having regard to the decision and guidance of the Court of Appeal in **Ezsias v North Glamorgan NHS Trust** [2007] IRLR 603, it is not appropriate to strike out the claim or to order a deposit.

13. Whilst some of the allegations appear to be out of time there is no prejudice whatsoever by reason of the short delay. Mr Bobescue has now left but the timing of his leaving has no bearing on this case. The fact that he is no longer employed does not mean he cannot be called to give evidence. The delay is very short, the Claimant would suffer serious prejudice if his claim was not allowed to proceed for a minor technical infringement whilst he is a litigant in person and the cogency of the evidence will scarcely be affected by reason of the short delay. It is just and equitable to extend time to allow the allegations to proceed insofar as they are out of time.

14. The complaints of direct discrimination and harassment are self-explanatory but the Claimant has not identified the details of his complaint of victimisation. That will be the subject of a case management orders

14. Case management orders and directions as to the final hearing which is listed for December 2019 are given separately.

Employment Judge Ahmed
Date: 8 August 2019

REASONS SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE