



EMPLOYMENT TRIBUNALS

Claimant: Mr Hamilton
Respondent: Saba Park Services UK Ltd

RECORD OF A PRELIMINARY HEARING

Heard at: Watford (in private) **On:** 5 September 2019
Before: Employment Judge Daniels (sitting alone)

Appearances:
For the claimant: Mr Lewis (of counsel) For
the respondent: Ms Chute (of counsel)

CASE MANAGEMENT SUMMARY JUDGMENT

1. The claimant's claim for indirect race discrimination at 7a of the particulars of claim in is struck out forthwith on the basis the claim has no prospect of success.

(The claimant maintains that him being put under a disciplinary process in relation to alleged delays in invoicing clients was an act of direct race discrimination and/or unlawful victimisation. The alleged protected act was the issue of proceedings on 10 March 2017.)

2. The claimant (via his representative, Mr Lewis) also withdrew at the hearing the following claims (following his being invited to make submissions as to how such claims were brought):
 - 2.1 For indirect race discrimination regarding the contention at 7b (regarding the typical practices under the company invoice systems);
 - 2.2 For direct race discrimination and/or unlawful victimisation regarding 7c (the suggestion the claimant was performing his job as per the job description);
 - 2.3 For direct race discrimination (or any other claim) regarding 7d (that the claimant did not admit any alleged delays were his fault);

- 2.4 For direct race discrimination regarding 7e (and his alleged inability to make staff changes or hire and fire);
- 2.5 For direct race discrimination regarding alleged abuse from Florence Meedee as set out in para 7f;
- 2.6 For direct race discrimination and/or unlawful victimisation regarding Sandy Jarmin's resignation and reappointment as set out in para 7g;
- 2.7 For direct race discrimination regarding 7h and allegedly being wrongly blamed for actions of Atika Ahktar;
- 2.8 For direct race discrimination regarding 7i (which largely repeated 7h);
- 2.9 For direct race discrimination regarding 7j (which the claimant's representative related to the unfair dismissal claim); and 2.10 For any alleged breach of the ACAS procedures.

Such claims will be automatically dismissed upon withdrawal unless the claimant shows cause as to why they should not be dismissed by 26 September 2019.

(Note: The claimant's representative stated that some of the above matters may nevertheless be sought to be covered in the evidence by way of background or potentially relevant evidence to the claims that remain.)

3 For the avoidance of doubt the claimant confirms that a claim for ordinary unfair dismissal should also be listed in the table/list of issues.

4 The claimant's representative confirmed that no claims for breach of contract were pursued or sought to be pursued in respect of bonus or LTIP payments (although these may form part of the alleged losses flowing from other claims that continue).

5 The judgment on the respondent's application against the claimant and/or the claimant's representative for costs was reserved. Judgment will follow in due course under separate cover.

ORDERS

Made pursuant to the Employment Tribunal Rules of Procedure

Following submissions from both parties the prior directions were varied by agreement as follows:

1. Full Hearing

- 1.1 All issues in the case, including remedy, will be determined at a final hearing before an Employment Judge sitting with Members at the Employment Tribunals, Watford, on **27 January 2020** starting at 10 am or as soon as possible afterwards. The claimant(s) and the respondent(s) **must** inform the

Tribunal as soon as possible if they think there is a significant risk of the time estimate being insufficient and/or of the case not being ready for the final hearing.

- 1.2 If the parties think the listing (including submission time and deliberation time) is likely to be too long as a result of the refinement of the issues by the parties and the Employment Tribunal, they should also advise the Employment Tribunal as soon as possible and provide a revised estimate and timetable. Presently the respondent intends to call 8 witnesses and the claimant one witness.

2. Complaints and issues

- 2.1 The parties must inform each other and the Tribunal in writing **within 14 days of the date this is sent to them**, providing full details, if what is set out in the Case Management Summary section above about the case and the issues that arise is inaccurate and/or incomplete in any important way.
- 2.2 The Respondent may file an amended response by **3 October 2019**
- 2.3 The parties are to agree an amended List of the Issues in dispute by **10 October 2019**.

3. Statement of remedy/schedule of loss

- 3.1 The claimant must by **24 October 2019** provide to the respondent an updated "Schedule of Loss" – setting out what remedy is being sought and how much in compensation and/or damages the tribunal will be asked to award the claimant at the final hearing in relation to each of the claimant's complaints and how the amount(s) have been calculated.
- 3.2 If any part of the claimant's claim relates to dismissal and includes a claim for earnings lost because of dismissal, the Schedule of Loss must include the following information: whether the claimant has obtained alternative employment and if so when and what; how much money the claimant has earned since dismissal and how it was earned; full details of social security benefits received as a result of dismissal.
- 3.3 The parties are referred to: the Presidential Guidance on pension loss at www.judiciary.gov.uk/wp-content/uploads/2013/08/presidential-guidancepension-loss-20170810.pdf; If the claimant is claiming for loss of pension, the Schedule of Loss must include the following information: precisely how much is being claimed and on what factual and arithmetical basis. The same applies for any claim for loss of bonus.

4. Documents

- 4.1 On or before **24 October 2019** the claimant and the respondent shall send each other a list of all documents that they wish to refer to at the final hearing or which are relevant to any issue in the case, including the issue of remedy. They shall send each other a copy of any of these documents if requested to do so.

5. Final hearing bundle

- 5.1 By **14 November 2019**, the parties must agree which documents are going to be used at the final hearing. The respondent must paginate and index the documents, put them into one or more files (“bundle”), and provide the claimant with a ‘hard’ and an electronic copy of the bundle by the same date. The bundle should only include documents relevant to any disputed issue in the case that won’t be in the remedy bundle referred to below and should only include the following documents:

- the Claim Form, the Response Form, any amendments to the grounds of complaint or response, any additional / further information and/or further particulars of the claim or of the response, this written record of a preliminary hearing and any other case management orders that are relevant. These must be put right at the start of the bundle, in chronological order, with all the other documents after them;
- documents that will be referred to at the final hearing and/or that the Tribunal will be asked to take into account.

In preparing the bundle the following rules must be observed:

- unless there is good reason to do so (e.g. there are different versions of one document in existence and the difference is relevant to the case or authenticity is disputed) only one copy of each document (including documents in email streams) is to be included in the bundle
- the documents in the bundle must follow a logical sequence which should normally be simple chronological order.

6. Remedy bundle

- 6.1 The claimant must by **24 October 2019** prepare a paginated file of documents (“remedy bundle”) relevant to the issue of remedy and in particular how much in compensation and/or damages they should be awarded if they win their claim and provide the respondent with a ‘hard’ and electronic copy of it. The documents must be arranged in chronological or other logical order and the remedy bundle must have an up to date schedule of loss at the front of it.

7. Witness statements

- 7.1 The claimant and the respondent shall prepare full written statements containing all of the evidence they and their witnesses intend to give at the final hearing (including the claimant) and must provide copies of their written statements to each other on or before **5 December 2019**.

- 7.2 No additional witness evidence will be allowed at the final hearing without the Tribunal's permission.
- 7.3 The written statements must: have numbered paragraphs; be cross-referenced to the bundle(s); contain only evidence relevant to issues in the case.
- 7.4 The claimant's witness statement must include a statement of the amount of compensation or damages they are claiming, together with an explanation of how it has been calculated.

8. Final hearing preparation

- 8.1 On the working day immediately before the first day of the final hearing (but not before that day), by 12 noon, the following parties must lodge the following with the Tribunal:
 - 8.1.1 four copies of the bundle(s), by the respondent;
 - 8.1.2 four hard copies of the witness statements (plus a further copy of each witness statement to be made available for inspection, if appropriate, in accordance with rule 44), by whichever party is relying on the witness statement in question;
 - 8.1.3 three hard copies of any written opening submissions/skeleton argument, by whichever party is relying on them / it;
 - 8.1.4 three hard copies of the following, agreed if possible, by the parties, a neutral chronology, a 'cast list', a reading list.

9. Other matters

- 9.1 The above orders were made and explained to the parties at the preliminary hearing. All orders must be complied with even if this written record of the hearing is received after the date for compliance has passed. Anyone affected by any of these orders may apply for it to be varied, suspended or set aside. Any further applications should be made on receipt of these orders or as soon as possible.
- 9.2 The parties may by agreement vary the dates specified in any order by up to 14 days without the tribunal's permission except that no variation may be agreed where that might affect the hearing date. The tribunal must be told about any agreed variation before it comes into effect.
- 9.3 **Public access to employment tribunal decisions**

All judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

- 9.4 Any person who without reasonable excuse fails to comply with a Tribunal Order for the disclosure of documents commits a criminal offence and is liable, if convicted in the Magistrates Court, to a fine of up to £1,000.00.
- 9.5 Under rule 6, if any of the above orders is not complied with, the Tribunal may take such action as it considers just which may include: (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84

12 September 2019

Employment Judge Daniels

Sent to the parties on:

24 October 2019

For the Tribunal:

.....