



EMPLOYMENT TRIBUNALS

Claimant

Mrs S Douglas

v

Respondent

Action4youth

(a company Limited by guarantee)

PRELIMINARY HEARING

Heard at: Watford

On: 15 October 2019

Before: Employment Judge Bedeau

Appearances:

For the Claimant: Mr I Cain, Counsel

For the Respondent: Mr M Jones, Solicitor

JUDGMENT

The respondent's application to strike-out and/or issue deposit orders is refused.

REASONS

1. By a claim form presented to the tribunal on 13 September 2018, the claimant made claims of: automatic unfair dismissal, contrary to section 99 Employment Rights Act 1996; constructive unfair dismissal; direct sex discrimination because of maternity; indirect sex discrimination; breach of the flexible working regulations; victimisation; unauthorised deductions from wages; and breach of contract.
2. These claims arise out of her employment with the respondent as a project worker.
3. In the response presented to the tribunal on 1 November 2018, the respondent averred that some of the acts relied on by the claimant are out of time; the tribunal does not have jurisdiction to make an award in respect of acts of victimisation; the particulars in the claim form are repetitive, fanciful and woefully inaccurate. It denied all the claims and matters alleged.

The respondent's strike out/deposit order application

4. On 3 January 2019, the respondent's representatives applied to the tribunal for the claims to be either struck-out and/or deposits ordered. They requested that their application should be dealt with at the preliminary hearing listed on 16 April 2019.
5. The application was considered by Employment Judge Heal, who, on 5 February 2019, refused it on the basis that the respondent's denial of the claims was an insufficient reason to strike-out or to make a deposit orders; the evidence in relation to the discrimination claims is in dispute; and any acts relied upon by the claimant which are potentially out of time, could be considered at a final hearing.
6. On 7 January 2019, Employment Judge Lewis ordered that the strike-out/deposit application by the respondent's representatives should be considered at the preliminary.
7. The two apparently inconsistent directions led to some confusion on the part of the parties. This led the respondent's representatives to write to the tribunal on 5 February 2019, seeking clarification. Employment Judge Lewis responded on 23 February 2019, apologising for the apparent inconsistency but confirmed that the strike-out/deposit order application would be considered at the preliminary hearing which would be converted to a public hearing.

The contentions of the parties

8. Before me, Mr Jones, solicitor on behalf of the respondent, produced a bundle of documents comprising of 107 pages. I did not hear any oral evidence.
9. In relation to the victimisation claim, Mr Jones referred me to page 91 which is a letter dated 19 July 2018, from the claimant appealing against the outcome of a grievance she had earlier submitted. In it she wrote:

“Action4youth have not treated me fairly following my return to work after maternity and as such I have suffered indirect sex discrimination. As a result, I was forced to leave the organisation and have suffered a detriment”

10. Mr Cain, counsel on behalf of the claimant, urged upon me to consider earlier documents evidencing the fact that the claimant made protected acts. First, in the paragraph 1.10, at page 18 in the bundle, in her claim form, she wrote:

“At the meeting on 19 April 2018, the respondent asked the claimant if it would be ‘impossible’ for the claimant to return to her current role on a full-time basis. The claimant confirmed that it would be impossible for her due to her childcare responsibilities and school run commitments.”

11. Mr Cain submitted that the above conversation on 19 April 2018, constituted a protected act. I did not agree with his contention. Mr Jones submitted that the

respondent could not reasonably discern from that statement that the claimant was raising an issue under the Equality Act 2010. I agreed with Mr Jones. The claimant was not complaining about her treatment under the Equality Act but was simply stating that it would be difficult to return to work on a full-time basis due to her childcare responsibilities.

12. Mr Cain next referred to the claimant's resignation e-mail dated 14 June 2018, in which she stated, amongst other things:

“..... I was left feeling like an ‘unwanted employee’ and demoralised”

13. Mr Cain further submitted that this statement was a protected act to which I again disagreed as the claimant made no reference to her treatment, either expressly or impliedly, under the Equality Act 2010.

14. I did, however, rule that she did make a protected act in her grounds of appeal against the grievance outcome on 19 July 2018. She, therefore, could only rely on events on or after 19 July 2018, as acts of alleged detriment.

15. Mr Jones submitted that the claimant failed to comply regulation 4(b) Flexible Working Regulations 2014, which requires that a flexible working application must:

“state whether the employee has previously made any such application to the employer and, when”.

16. The claimant put in a request by e-mail on 2 March 2018, in which she did not state whether she had made a previous flexible working request application.

17. The respondent has a flexible working request application form which the claimant submitted on 5 April 2018. On that form she was asked whether she had previously made flexible working requests, to which she left blank.

18. There is no dispute between the parties that the claimant had, following the birth of her first child in 2014, successfully applied to vary her working days to three instead of five a week, from June 2014 to 1 January 2015.

19. In the form dated 5 April 2018, she stated that she intended to return to work on 22 April 2018. This did not give the respondent the contractual eight weeks' notice that she wished to return to work earlier than at the end of her maternity leave.

20. For those reasons, Mr Jones submitted that the claimant did not make a valid flexible working request and that this claim should either be struck out or a deposit ordered.

21. Mr Cain submitted that there is an issue to be tried as to when the flexible working request was made, was it in March 2018, or 5 April 2018? There is also an issue as to whether or not the claimant was required to state that she made an earlier flexible working request as her earlier request to vary her,

working days was made before the Flexible Working Regulations came into force, which was on 30 June 2014.

- 22. The issue is whether regulation 4(b) is referable to a flexible working request made on or after the date of the commencement of the regulations. The position is unclear, and I was not referred to any authorities on the point. I ruled that this matter should be ventilated at the final hearing.

- 23. Another concern expressed by Mr Jones was the apparent lack of specificity of the claims and precisely what the claimant is relying on under each head. I concurred with Mr Jones's view and ordered that she should serve further information clarifying her position by 4pm 5 November 2019.

Employment Judge Bedeau

Date: 25 October 2019

Sent to the parties on:

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For the Tribunal:

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