



EMPLOYMENT TRIBUNALS

Claimant: Mr Chahal

Respondent: Kuehne + Nagal Drinks Logistics Ltd

Heard at: Watford Employment Tribunal

On: 24 October 2019

Before: Employment Judge Daniels (sitting alone)

Appearances:

For the claimant: In person

For the respondent: Mr Lloyd

JUDGMENT

- 1 The claimant's claim for race discrimination is dismissed, upon withdrawal by the claimant.
- 2 The Employment Judge considers that the respondent's application to strike out the case and/or seek a deposit order in relation to the gender discrimination claim and/or the unfair dismissal claim is not well founded and is dismissed.

REASONS

- 3 Having reviewed the submissions of the parties at the Hearing, I do not consider that the claims for direct gender discrimination and/or unfair dismissal have no reasonable prospect or little reasonable prospect of success.

Unfair dismissal

- 4 Both cases focus on dismissal. I deal with unfair dismissal first.
- 5 The reason for dismissal was presented as in two parts. The first part was in relation to health and safety issues involving the claimant (allegedly briefly)

jumping on the back of a lorry which put himself and potentially others at risk. The second issue was in relation to his allegedly rude and aggressive conduct after allegations were made against him. He is said to have called a colleague a “grass” and acted aggressively in disputing the allegations (albeit he says so far as he was acting forcefully he did so because he felt he was being held against his will at the office).

- 6 The claimant suggests that there was a clear inconsistency in relation to the first reason for dismissal relied upon. He points to 2 agency workers Ray Doyle and Glenn Sewell who had, before his incident, been found by the respondent riding on the back of a vehicle for a substantially longer period of around 200 metres and who were temporarily stood down for one week and then re-engaged on a permanent/long term basis. Further, there had allegedly been no communication of a change in policy (as the respondent’s apparently seek to rely upon) or the introduction of a “zero tolerance” approach to such matters since that date. On the face of it the claimant’s conduct appeared less serious than of those temporary workers who were not removed from the workplace. He also had 15 years’ loyal service and a clean disciplinary record. He also admitted the mistake right away so as to suggest a repeat was unlikely. He was employed rather than working as an agency worker.
- 7 It does appear to me that there is a reasonable argument as to striking inconsistency in the treatment of the claimant as against two agency workers involved in a very similar health and safety incident, which appeared to be materially more serious. There was no good explanation for the difference in treatment put before me. This argument may be relevant to the test for unfair dismissal under s 98 (4) ERA 1996.
- 8 On the second issue, the claimant points out to a difference in treatment between Ms Butler who apparently was not investigated or subject to any disciplinary investigation in relation to allegedly serious threats made to the claimant in the course of their argument. Her conduct allegedly involved serious threats made to the claimant this involves allegedly saying “I’m going to fuck you up” and/or “shut the fuck up” and a family member calling him/his driver on their private phone and seeking to make further threats to him.
- 9 The claimant also suggests that in view of his 15 years’ service record and his clean disciplinary record that the sanction of dismissal was far too harsh. There does appear to be a respectable point being made by the claimant here, albeit the tribunal will have to consider the band of reasonable responses approach and not substitute its own decision as to whether it would have dismissed.
- 10 The claimant also relies upon the lack of investigation into the facts by the respondent (regarding Ms Butler’s actions) and an unfair and one-sided investigation process which he said was predetermined against him.
- 11 In all the circumstances put before me, I do not consider that the unfair dismissal case has little or no reasonable prospect of success. Indeed, from the limited information I have so far there appears to be some merit in the unfair dismissal claim in a number of different respects.

Direct gender discrimination

- 12 In relation to the gender discrimination claim, I repeat the points above. There appears to be a respectable argument for an, as yet, unexplained difference in

treatment between the claimant and a female colleague who he engaged in an argument with. He was investigated and summarily dismissed. She was not even investigated. This could be enough to shift the burden of proof to the respondent as his conduct was arguably comparable to hers and was used as one of the reasons (albeit not the only reason) to summarily dismiss.

13 There is no evidence as such as to gender being a reason for any difference in treatment, but there is also no explanation put forward so far by the respondent as to the reason for such potentially less favourable treatment. It is often the case that there is no such direct evidence, but that does not mean a claim cannot succeed. Much will turn on whether and if so, why, the respondent dealt with Ms Butler in a markedly different manner. I do not consider it possible to determine at this stage that the gender discrimination case has little or no reasonable prospect of success.

14 Therefore, I make no strike out order and no deposit order.

Employment Judge Daniels

Date: 24 October 2019

ORDER SENT TO THE PARTIES ON

.....13.11.19.....

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FOR THE TRIBUNAL OFFICE