



EMPLOYMENT TRIBUNALS

Claimant: Mr R Gill
Respondent: Aldi Stores Limited
Heard at: Leicester
On: 15 October 2019
Before: Employment Judge Ahmed (sitting alone)

Representation

Claimant: In person
Respondent: Mr James Hughes, Solicitor

JUDGMENT AT A PRELIMINARY HEARING

1. The Claimant's complaints of direct race discrimination, harassment, victimisation and unfair dismissal are not struck out.
2. The application for a deposit order in respect of the above complaints is refused.

REASONS

1. In these proceedings the Claimant brings complaints of direct race discrimination, harassment, victimisation and unfair dismissal.
2. This case was a subject of a Preliminary Hearing on 24 July 2019 before my colleague Judge Britton at which the allegations and issues were identified. The complaint of age discrimination was dismissed upon withdrawal.
3. This Preliminary Hearing was listed to deal with the following issues:-
 - 3.1 To consider whether any or all of the complaints should be struck out as having no reasonable prospect of success;
 - 3.2 Alternatively, to consider whether all or any of the complaints should be made subject to a deposit order as a condition of the claim being allowed to proceed.
 - 3.3 To make such case management orders as are necessary.
4. At this Hearing neither party called any oral evidence. Both sides have

relied on oral submissions only.

5. Since the order of 24 July 2019, the Claimant has supplied further and better particulars of his complaints. Mr Hughes on behalf of the Respondent confirms that there is no outstanding request for information. In other words the Respondent fully understands the case it has to meet.

6. The Respondent considers that the Claimant was properly dismissed for an act of gross misconduct which whilst occurring outside of working hours nevertheless occurred on the Respondent's premises.

7. The allegations of discrimination were identified at Paragraph 12 of the Order of Employment Judge Britton on 24 July 2019 (adopting the same numbered paragraphs):-

12.1 There is clearly a disputed factual issue as to whether Mr Paul (who appears to have been an employee not of Aldi but of a security company) referred to the Claimant as a "Paki".

12.2 There are allegations of bullying and harassment in relation to less favourable treatment.

12.3 There is an allegation of less favourable treatment in relation to KP and Mr Andy Davis.

12.5 There is an incident in relation to what occurred on 20 and 21 October. Employment judge Britton indicated that that particular incident appeared not to have anything to do with race.

12.18 There is an issue in relation to allegations of race and bullying and harassment by Mr Hutchinson.

8. All of the above allegations and issues require findings on the facts. In the absence of any oral evidence today it would not be appropriate to strike out or order a deposit order.

9. In coming to my decision I draw upon the guidance given in **Anyanwu v Southbank Students Union** [2001] IRLR 305 and **Ezsias v North Glamorgan NHS Trust** [2007] ICR 1126 which make it clear that where there are disputes on the core facts it is not appropriate to strike out. For the same reason an order for a deposit is not appropriate.

10. In relation to the complaint of victimisation it appears the Claimant committed a protected act prior to dismissal by raising a grievance. There is an issue as to whether the dismissal was accelerated by the raising of the grievance.

11. In relation to unfair dismissal I note that the Respondent is a large employer with good administrative resources. It has the capacity to have different investigating officers and the dismissing officer. The Respondent's investigating officer in this case was the same as the disciplinary officer. That on the face of it appears to be a breach of the provisions of the ACAS Code. I make no determination on that point save that if that is correct it is possible for the dismissal to be at least procedurally unfair.

12. In those circumstances it would not be appropriate to strike out or order a deposit. In any event the determination of the issue as to whether the dismissal fell within the band of reasonable responses normally requires a full hearing (see:

Tayside Public Transport v Reilly [2012] IRLR 755). For the same reasons it is not appropriate to order a deposit.

13. The case will therefore proceed to a full hearing. Directions in relation to the full merits hearing are given separately.

Employment Judge Ahmed

Date: 14 November 2019

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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