



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr J Jacinto

**Respondents:** Casual Dining Limited t/a Las Iguanas Bar & Restaurant

**Heard at:** Manchester      **On:** 17 January 2020

**Before:** Employment Judge Holmes

## REPRESENTATION:

**Claimant:** In Person

**Respondents:** Ms H Aust, Solicitor

## JUDGMENT ON RECONSIDERATION NOTICE OF HEARING AND CASE MANAGEMENT ORDERS

It is the judgment of the Tribunal that:

1. The claimant's application for reconsideration of the judgment sent to the parties on 11 April 2019 is granted . The judgment dismissing the claims pursuant to rule 47 is revoked, and the claims are reinstated and may proceed.
2. The respondent's application for costs is reserved.
3. The claimant shall by **31 January 2020** send to the Tribunal in writing his grounds for opposing the making of a costs order, and to the extent that he wishes the Tribunal to take into account his ability to pay costs in determining whether to make an award of costs , and in what sum, he shall at the same time provide to the Tribunal and the respondent copies of all relevant documents showing his financial position, including, but not limited to, his income , outgoings and expenses, any assets, savings or liabilities he has to meet.

Note

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 (none being recorded) or a written request is presented by either party within 14 days of the sending of this written record of the decision.

## NOTICE OF HEARING

1.All issues in the case, including remedy, will be determined at a final hearing before an Employment Judge sitting with Members at **Manchester Employment Tribunal , Alexandra House, 14-22 The Parsonage, Manchester, M3 2JA** on 5 to 7 October 2020 , starting at 10 am or as soon as possible afterwards. The first two hours of the hearing will be for reading-in time for the Tribunal and for any preliminary matters to be dealt with. The parties and their representatives, but not necessarily any other witnesses must attend by 9.30 am on that day. The time estimate for the hearing is 3 days, following this provisional timetable, but always subject to the decision of the Tribunal at the final hearing:

Day	Morning	Afternoon
1	Initial discussion/reading	Claimant's evidence
2	Claimant's evidence	Respondent's evidence
3	Respondent's evidence	Submissions and Deliberations

2.The claimant and the respondent **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.

3.Any application to vacate these dates must be made within 7 days of receipt of these Orders, and shall state who is unavailable, and why. Alternative dates of availability must be provided.

## CASE SUMMARY

1. The Tribunal convened to determine the claimant's application for reconsideration of the judgment made on 11 April 2019, sent to the parties the same day, whereby it dismissed the claimant's claims pursuant to rule 47 because he had failed to attend or be represented at a preliminary hearing that day. The claimant speaks Portuguese, and both he and the Tribunal were greatly assisted in the hearing by the interpreting skills of Mrs Do Carmo Ferro, for which the Tribunal is very grateful.

2. Having determined that application in the claimant's favour (for reasons given orally in the hearing, so reasons will not be provided unless a request is made within 14 days) , the Employment Judge , with the consent of the parties proceeded to

discuss the case management that was required for the claims going forward, as was to have been done at the April hearing which the claimant did not attend.

3. With the continued assistance of the interpreter the Employment Judge took the claimant through the various steps in the case that needed to be completed, following the Agenda which had been prepared for the April hearing. With the assistance of the interpreter the claimant said he was able to understand what was being discussed.

4. He was therefore taken through the sections on providing a Schedule of Loss, and the preparation of the documents, the bundle and exchange of witness statements.

5. His claims are put very simply as direct race discrimination claims. He claims that a colleague, Gabriel Balsevicius, treated him less favourable than he did other, white colleagues, or would have so treated them. by putting a hot grill or metal bar near him when he was working as a kitchen porter. The date of this incident was unclear, the respondent considering it was in September 2018, but the claimant believed it was earlier than that, in July or August that year. He (or someone) complained about this incident, and there was an investigation. As a result of the investigation, he was dismissed for gross misconduct. The claimant claims that there was direct discrimination in that he was dismissed, but Gabriel Balsevicius, who is white, was not, in fact he was not disciplined at all. The respondent admits this difference in treatment, but says that it was because the claimant had committed misconduct, being aggressive, and that this, and not his race, is what led to his dismissal.

6. The claims, therefore seem to involve quite simple questions of fact. In terms of witness statements, the suggestion was made (in fact by Ms Aust) that the claimant makes a witness statement in Portuguese first, and then, if he can, gets it translated. The Employment Judge agreed that would be helpful if it had emerged in the reconsideration hearing that some letters had been written not by the claimant, but for him, by his assistant, a Mr Antonio, but there had been some miscommunication, and it would thus be far better that the claimant writes his statement in his own words, and then the statement is translated, perhaps by, or on behalf of the respondent.

7. There seemed no reason why these claims should not now be listed. The estimate is for three days, to allow for the use of an interpreter. The parties were able to provide dates to avoid, and the Tribunal has listed the claims as set out below.

8. Judicial mediation was discussed, and the claimant was keen to engage with it, provided that an interpreter would be provided. The respondent will consider it, and revert back to the Tribunal.

9. The respondent has made an application for costs, by letter dated 15 January 2020, which was translated for the claimant. That was only two days before the hearing, and a Schedule of Costs was attached. In the circumstances, the Employment Judge considered that the claimant, who was unlikely to have been

able to understand the letter without translation, should be given more time to respond to it, and Ms Aust did not press the application at this stage.

10. Under rule 84 a Tribunal may have regard to a party's ability to pay when making a costs order. The claimant was told, therefore that if he wanted the Tribunal to take into account his financial position, he must say so, and provide to the Tribunal and the respondent with evidence of his financial position. The costs application was therefore reserved, and will be considered further once the claimant has responded to it.

11. The respondent had indicated an intention to make application for orders striking out the claims, or for deposit orders. They were not pursued, and probably will not be, but the respondent may renew its application for deposit orders.

## **ORDERS**

### **Made pursuant to the Employment Tribunal Rules of Procedure**

#### **1. Amendment**

The respondent be permitted to amend para. 10 of the Grounds of Resistance to read "The Claimant's first language is Portuguese".

#### **2. Statement of remedy / schedule of loss**

2.1 The claimant must provide to the respondent and to the Tribunal by **31 January 2020** a document – a "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. Further information about remedies can be found in Guidance Note 6 attached to the Presidential Guidance on General Case Management.

2.2 The claimant shall also provide with the Schedule copies of any documents relevant to his claim for compensation, such as payslips, and contract of employment or appointment letters, in any new employment, or when employed by the respondent, and any state benefits he has applied for or received.

#### **3. Documents**

3.1 On or before **14 February 2020** the respondent must send to the claimant copies of all documents it wishes to refer to at the final hearing or which are relevant to any issue in the case, including the issue of remedy.

3.2 On or before **28 February 2020** the claimant must send to the respondent:

3.2.1 copies of all documents he wishes to refer to at the final hearing or which are relevant to any issue in the case, including the issue of remedy, that the respondent did not provide them with when complying with any case management order made above;

- 3.2.2 a list of all documents that are not within his possession or control, that the respondent didn't provide them with when complying with any case management order made above, that they wish to refer to at the final hearing or which are relevant to any issue in the case, and that they believe are within the respondent's possession and/or control.

#### 4. Final hearing bundle

- 4.1 By **13 March 2020** the respondent shall submit to the claimant a draft bundle or Index, and by **20 March 2020** the parties must agree which documents are going to be used at the final hearing. The respondent must page number 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 **27 March 2020**. The bundle should only include documents relevant to any disputed issue in the case 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 , the List of Issues 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.

#### 5. Witness statements

- 5.1 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 and must provide copies of their written statements to each other on or before **1 May 2020**. No additional witness evidence will be allowed at the final hearing without the Tribunal's permission. The written statements must: have numbered paragraphs; be cross-referenced to the page numbers in the bundle(s); contain only evidence relevant to issues in the case. There is no need to reproduce lengthy passages from documents in the bundle which the Tribunal will be reading anyway. 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.

- 5.2 For the avoidance of doubt this order does not require simultaneous exchange of witness statements, but the parties are free to proceed on that basis if they so wish. However, any witness statements disclosed after this date may not be relied upon at the final hearing without permission from the Tribunal. Further information about witness statements can be found in Guidance Note 3 attached to the Presidential Guidance on General Case Management.
- 5.3 Unless the Tribunal hearing the case directs otherwise, the witness statements will be read by the Tribunal and stand as the evidence of each witness before that witness is questioned by the other party.

## **6. Final hearing preparation**

- 6.1 As well as bringing their own copies to the hearing, 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:
- 6.1.1 five copies of the bundle(s), by the respondent;
  - 6.1.2 five hard copies of the witness statements (which includes a copy of each witness statement to be made available for inspection by members of the public attending the hearing, if appropriate, in accordance with rule 44), by whichever party is relying on the witness statement in question;
  - 6.1.3 four hard copies of any written opening submissions / skeleton argument, by whichever party is relying on them / it;
  - 6.1.4 four hard copies of the following, agreed in advance : any neutral chronology, 'cast list', or reading list.

## **7. Other matters**

- 7.1 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.
- 7.2 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.
- 7.3 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.
- 7.4 All judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

- 7.5 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.
- 7.6 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.

**Employment Judge Holmes**

Dated : 24 January 2020

JUDGMENT AND ORDERS  
SENT TO THE PARTIES ON  
7 February 2020

FOR THE TRIBUNAL OFFICE

**Public access to employment tribunal decisions**

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