



EMPLOYMENT TRIBUNALS

Claimant: Mr E Kumordji

Respondent: (1) Royal Mail Group Plc and (2) Mr M Kulra

Heard at: Reading **On: 26 February 2020**

Before: Employment Judge Gumbiti-Zimuto

Appearances
For the Claimant: Not attending and not represented
For the Respondent: Miss S Hobson (Solicitor)

JUDGMENT

1. The claimant's application for a postponement is refused.
2. The claimant's claims have no reasonable prospect of success and are dismissed pursuant to rule 27(1) of the Employment Tribunals Rules of Procedure.

REASONS

1. The claimant presented a complaint against the respondent and also against his manager, Mandeep Kulra.
2. In section 8 of the claim form, where "Type and details of claim" are requested, the claimant has indicated the both "I am making another type of claim which the Employment Tribunal can deal with". The claim has ignored the section which indicates that the claim is about discrimination.
3. The text completed by the claimant in section 8 reads as follows:

"I was on annual leave when I fell sick but the shift manager did not believe my sickness and refused to credit me my holiday back. I became stress and was off sick again so I put a bullying (sic) and harassment toward the shift manager and Royal Mail. The shift manager and Royal Mail failed to follow their own B&H policy to contact me and have the case investigated, I then put in a grievance towards the shift manager and Royal Mail and they failed to follow their own policy let alone acknowledge receipt of both B&H and grievance I put in."

4. In section 8.2 of the claim form which asks the claimant to “set out the background and details of your claim” the claimant has written as follows:

“Apart from an apology and preventing of this happening to other people as this is not the first time I’m being treated this was. I cannot say for now if I’m taking any compensation. This poor treatment happened to me in 2016 and I felt that was the end, so I was shocked that it’s being repeated again even though the lost time have been repaid after ACAS got involved.”
5. In section 15 of the claim form which asks for additional information the claimant lists five documents, the documents did not accompany the claim form but three of the documents were later provided by the claimant.
6. On an initial consideration of the claim form I construed it as containing a claim for breach of contract and or a claim for unlawful deduction from wages. If the claim did not relate to these matters it is not clear what the claim is about.
7. Having considered the claim and response I was of the view that the Tribunal has no jurisdiction to consider the claim for breach of contract against Royal Mail Group Limited because the claimant remains in the respondent’s employment and further that the claim for unlawful deduction of wages has no reasonable prospect of success because the claimant does not identify any sums lawfully due which have been deducted from his wages.
8. I also concluded that the Tribunal has no jurisdiction to consider a claim against Mandeep Kalra because the claimant has failed to comply with the requirement of section 18A of the Employment Tribunals Act 1996 and further the claim against Mandeep Kalra has not reasonable prospect of success because the claimant was not employed by Mandeep Kalra.
9. I made an order that the claim will stand dismissed on 22 July 2019 without further order, unless before that date the claimant has explained in writing why the claim should not be dismissed.
10. The claimant wrote to the Tribunal on the 21 July 2019 and stated that he was not claiming breach of contract or unlawful deduction from wages he was claiming, direct discrimination, indirect discrimination and victimisation by Mandeep Kulra. The claimant also made reference to bullying and harassment. The claimant makes no reference to any protected characteristic listed in section 4 of the Equality Act 2010. The claimant also provided a number of documents, including the document listed in section 15 of the claim form.
11. The document dated 1 December 2018 is an email the claimant sent to a Mr Vaughan about his not being credited sick absence in accordance with what the claimant refers to as “Royal Mail Sick- Attendance Policy”. The claimant also included a photo copy of a Bullying and Harassment Complaint Form that he completed (dated 25 January 2019). The form set

out a complaint about being singled out and denied recognition of his lines while on annual leave. A copy of an individual grievance dated 26 February 2019 in which he complained about the failure to deal with his bullying and harassment complaint in accordance with the “specific timeline”. There is no reference to discrimination or any protected characteristics in these documents. The first reference to discrimination that I have noticed in the correspondence provided by the claimant is contained in an email from the claimant to the employment tribunal and the respondent’s representative dated 21 June 2019 (if the claimant makes an earlier reference to discrimination I have not spotted it). There is in any event no mention of a protected characteristic.

12. The matter was listed for a preliminary hearing to consider the claimant’s representations (which appear to include an application to amend the claim to include a claim of discrimination) and determine whether the claim should be struck out on the grounds it has no reasonable prospect of success. The notice of this hearing was sent to the parties on the 4 August 2019.
13. The claimant applied for a postponement of the hearing on the 13 February 2020. The application was considered by the Acting Regional Employment Judge and refused on 25 February 2020. The claimant made a further application for a postponement on the 25 February 2020, after receiving the decision on the earlier application. In the second application it emerged that the claimant was in fact out of the country attending a funeral in Ghana. The claimant does not explain when he went to Ghana or what his relationship is with the person who has died. I considered the second application to postpone the case at the start of the hearing.
14. I refused the application to postpone the case. In his first application to postpone dated 13 February 2019 and timed at 18:39 the claimant states: “One person who will be supporting me in the case till now has the um and has travel to Africa for the burial and funeral, could you please give me a postponement any date after 23 March 2020.” Having received the Acting Regional Judge’s decision, the claimant wrote as follows on 25 February 2019 timed at 15:39: “Thank you for your email. I can assure you that I am in Ghana for the funeral and I will be unable to attend the hearing, I not have legal representation due to my financial situation and relying on this person who is bereaved, I wrote to you in the UK before coming to Ghana and I received no response in the UK till I arrived in Ghana. Royal Mail is a rich company with vest (sic) legal access so denial me only postponement in the entire is not only unfair but also breaches my human rights as an employee of Royal Mail and I therefore respectfully ask the judge to adjourn the hearing to a suitable date taking into consideration of the dates in my earlier application.”
15. The claimant did not indicate in his first application that he was not able to attend the preliminary hearing (merely that the person “supporting” him

was unable to attend). Furthermore, the claimant did not indicate in his first application that he had an intention to travel to Ghana or that there was a need for a swift decision because of this intention. Finally it is clear that the claimant chose to travel to Ghana before he got the decision of the employment tribunal on his adjournment application and so he placed himself in a position which he must have known would mean that if the application was refused the hearing would proceed in his absence.

16. The respondent objected to the application to postpone the claim.
17. Before making a decision on whether to postpone or not, recognising that a decision to refuse to adjourn was likely to have the effect of bringing the claimant's claim to an end, I asked the respondent to set out the reason for their objection to the claimant's apparent application to amend the claim.
18. The respondent stated that the claimant's application on the basis of the information before the Tribunal today should be refused because any amendment to add a claim of discrimination would in fact be adding a new claim. The claim is now out of time. It is not clear what the case is that the respondent would be asked to meet. There is no reference to discrimination in the original claim form and the documents produced by the claimant which underpin his application make no reference to discrimination in any document created before the claim was presented to the Tribunal. There is no indication what protected characteristic the claimant is relying on.
19. Having considered all these matters I took the view that the application to postpone the claim should be refused.
20. I considered the written submission which have been presented by the claimant. Having considered the claimant's written representations and the contents of the claim form I am satisfied that the view I expressed in the notice sent to the parties on the 29 June 2029 remains unchanged. The claimant's claims have no reasonable prospect of success and the claims are dismissed pursuant to rule 27 (1).
21. The claimant is not making a claim about breach of contract and he is not claiming unpaid wages.
22. The claimant says that he now seeks to claim direct discrimination, indirect discrimination and victimisation. These claims are not apparent from the claim form. The claimant has not ticked a box stating that he is making a discrimination claim. The claim has made no reference to discrimination in his claim form. The claimant has referred to bullying and harassment but has not reference any protected characteristic.
23. I treat the claimant's written representations as including an application to amend the claim to include the complaint of direct discrimination, indirect discrimination and victimisation. I refuse the application to amend the claim because if allowed the claim would not succeed. There is no

protected characteristic set out by the claimant. The claimant has not identified a protected act for the purposes of the victimisation claim. The claimant has not explained why, having regard to section 26(4) Equality Act 2010, the conduct referred to is harassment. For the purposes of claim under section 19 Equality Act 2010, the claimant has not identified the provision, criterion or practice on which he relies.

24. It is my view that the claimant's case has no reasonable prospect of success however it is put and therefore the claim should be dismissed pursuant to rule 27 (1).

Employment Judge Gumbiti-Zimuto
Date: 26 February 2020

Sent to the parties on: .12.03.2020.....

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For the Tribunals Office

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