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EMPLOYMENT TRIBUNALS

Claimant: Mr C Olatunji
Respondent: Sodexo Ltd
Heard at: East London Hearing Centre
On: 30th January 2020
Before: Employment Judge Reid

Representation

Claimant: Mr Uddin, Counsel
Respondent: Mr Humphreys, Counsel

The Tribunal treats the Claimant's application for a reconsideration dated 21st February 2020 (citing a failure to give reasons) as a request for written reasons, oral reasons on the amendment application having been given at the hearing on 30th January 2020.

REASONS

1 The Claimant's ET1 was presented on 29th June 2019 when legally represented. The Respondent's ET3 was presented on 14th August 2019. This application to amend was made on 7th November 2019. It was not accompanied by a draft amended particulars of claim. The only document showing the proposed amendment beyond the application itself was page 35C9 which ticks the race discrimination box and states that the already pleaded facts also amount to claims under s13,19,26 and 27 Eq Act 2010.

Claims not needing amendment but requiring further particulars - s27 victimisation

2 I find that taking the ET1 in the round that the claim already raises the factual matters relating to the Claimant's claim that he was victimised because of the complaints he had made about past incidents of racial abuse, harassment or bullying – para 23 of the ET1. These relate to claims of monitoring him with a view to getting him dismissed ie a sort of plot. Further particulars would be needed of when the complaints were made, about who and their substance because the ET1 as currently drafted is vague and does

not clearly identify each complaint and how that is connected to the decision to dismiss, if taken by another person.

3 I also find that when taken in the round the Claimant is saying in para 10 that the failure to increase his pay also amounted to victimisation when read in conjunction with paras 8 and 9; again further particulars would be needed.

4 The three acts of victimisation complained of are therefore the claimed monitoring, the trigger to the disciplinary leading to the dismissal and the failure to award the pay rise.

Entirely new claims which would require permission to amend

5 These are a direct discrimination claim that the Claimant's dismissal and the failure to award a pay rise amounted to direct discrimination (s13) and a harassment claim - the harassment said to be the act of dismissal (s26 claim).

6 I do not find the direct discrimination claims to be factually raised in the ET1 because the Claimant does not refer to someone else who was treated differently (or make a comparison to someone or a situation which would be construed as a reference to a hypothetical comparator) or say that the dismissal itself amounts to harassment (even assuming the act of dismissal could be an act of harassment) and does not say, when looking at the claim in the round, that it was his race which was the reason for the way he was treated – the claimed narrative is that it was the making of complaints which was the reason for the way he was treated.

Were written particulars of the amendment provided by the Claimant with the application to amend?

7 The Claimant's application was sent on 7th November 2019 and a further letter was sent by his solicitors on 13th November 2019 (page 35C1) saying that an amended ET1 was attached – but only the amended ET1 form was attached (page 35C 9-11) and the particulars of claim were not amended to show the proposed wording of the amendments. This was despite the Respondent's solicitors' letter dated 12th November 2019 (page 35B2) identifying that an amended claim had not been provided. The Claimant has been legally represented throughout and the solicitors had drafted the original particulars for him.

8 Applying Chief Constable of Essex v Kovacevic (UKEAT 0126/13) I do not have these amendments in writing so that I cannot consider the application in relation to these particular amendments. The details given in the application at paras 9 and 10 (direct discrimination) and 17 (harassment) do not amount to an amended version of his particulars of claim.

Conclusion

9 The claim therefore proceeds with the claim of victimisation in relation to the three acts complained of (the claimed monitoring, the triggering of the dismissal and the pay rise). Further particulars are required and the Respondent will then have leave to amend their ET3.

Employment Judge Reid

16 March 2020