



EMPLOYMENT TRIBUNALS

Claimant: Mr I Laing

Respondent: Bury and Bolton Citizens Advice Bureau

Heard at: Manchester

On: 17 February 2020

Before: Employment Judge Grundy
Mr T D Wilson
Ms E Cadbury

REPRESENTATION:

Claimant: in person

Respondent: Mr J Searle Counsel

JUDGMENT

1. The Tribunal does not have jurisdiction to extend the time for payment of a deposit after the making of a deposit order has not been complied with, pursuant to rule 39(1) of the Employment Tribunals Rules of Procedure 2013.
2. The Tribunal declares that it has no jurisdiction in respect of the claimant's claim in respect of direct race discrimination, and the Tribunal has no jurisdiction in respect of his complaint of direct sex discrimination.
3. Such claims are struck out by means of the claimant's failure to pay the deposit in accordance with Employment Judge Franey's order.
4. The Tribunal declines to make a Witness Order requiring the attendance of Rebecca Potts- Jacobs, Emma Davies and Charlie Smythe.
5. The Tribunal declines to make any order in respect of the suspension of the witness order regarding Mr Verrachia which was suspended by order of the Acting Regional Employment Judge so that his attendance was not required.

REASONS

1. This is the ruling on the claimant's application to extend the period of time for payment of a deposit ordered by Employment Judge Franey on 2 January 2020 sent to the parties on 9 January 2020.

2. On 2 January 2020 Employment Judge Franey made a deposit order. The order was sent to the parties on 9 January 2020. The terms of the deposit order were as follows:

- (1) The claimant is ordered pursuant to rule 39(1) of the Employment Tribunals Rules of Procedure 2013 to pay a deposit of £10 within 21 days of when this Order is sent to him as a condition of proceeding with his complaint of race discrimination.
- (2) The claimant is ordered pursuant to rule 39(1) of the Employment Tribunals Rules of Procedure to pay a deposit of £10 within 21 days of when this Order is sent to him as a condition of proceeding with his complaint of direct sex discrimination.

3. The claimant by his own admission has not paid the deposit order. The deposit would have been due to be paid by 30 January 2020 in accordance with the 21 days of when the Order was sent to him. The deposit order was accompanied by notes which made clear when to pay, including at paragraph 4 of those notes "if the deposit is not paid within that time the complaint or response to which the order relates will be struck out". The note also included how to pay and enquiries with a telephone number.

4. The claimant made an application for a witness order late on 14th February 2020, (which will be dealt with in due course in these reasons), he also made an application said to be for an extension of time to pay the deposit at the same time.

5. He said in that that he had failed to pay the deposit "which was due to an oversight". He indicated he had written to the respondent's solicitors on 14 February 2020, which was already after the time for payment had expired and those claims struck out, (the Friday before this hearing) which is 3 days before this final hearing commencing on 17 February 2020, when he was requesting the respondent's bank details to make payment and enclosed an email. He apologised for failure to comply. By his own admission the claimant has failed to pay the deposit on time and suggested it was "an oversight." He renewed the application for an extension orally at this hearing.

6. The Tribunal has considered the submissions of the claimant and of the respondent who asserts through Mr Searle of counsel that the Tribunal has no jurisdiction to extend the period for payment per rule 39(4) regarding deposit orders.

7. As set out in the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 Schedule 1. Rule 39(4) reads as follows:

"If the paying party fails to pay the deposit by the date specified the specific allegation or argument to which the deposit order relates shall be struck out. Where a response is struck out the consequences shall be as if no response had been presented as set out in rule 21."

8. The rule is mandatory. The Tribunal has no jurisdiction to hear the claim of a complaint of direct race discrimination and no jurisdiction to hear the claimant's complaint of direct sex discrimination. There are no grounds to extend time.

9. The Tribunal is now proceeding to hear the claimant's outstanding claim relating to victimisation under section 27 of the Equality Act 2010, and the Tribunal will deal with the submissions in respect of a witness order for Rebecca Potts-Jacobs, Emma Davies and Charlie Smythe.

10. The claimant has applied for witness orders. He is seeking the attendance of three individuals, namely Rebecca Potts-Jacobs, Emma Davies and Charlie Smythe. He made those applications late on Friday 14 February 2020. The applications are before the Tribunal on Monday 17 February 2020. That is the first day of a four day fixture. If the Tribunal were to make orders requiring those three individuals to attend it is likely that this case would have to be adjourned, and it would not conclude within the hearing window.

11. The factual matrix of the case has been set out previously by Employment Judge Franey particularly in a case management summary which has been sent to the parties heard on 2 January 2020. There is no need to repeat that here.

12. The claimant's claims for direct sex and race discrimination are not proceeding because the claimant failed to pay a deposit. It is solely the claim for victimisation which now remains live, and in the Annex to the case management hearing on 2 January 2020 Employment Judge Franey set out those matters that the Tribunal needs to deal with. In respect of whether or not the claimant can establish he did a protected act, and those (so far as the facts are concerned) relate to occasions firstly when he was in company with Gail Lyle who is a respondent witness and was his line manager at the time of his employment, and in respect of an email sent to Ms Lyle on 4 June and causation in relation to alleged detriment.

13. The now more limited factual matrix that the Tribunal has to consider in our view does not require the attendance of the three female witnesses that the claimant seeks the order to include. The case can be properly dealt with on the evidence of the witnesses already to be called by the respondent present to deal with the case this week.

14. Should three further witnesses be ordered to attend, the case would require in our view a disproportionate amount of time to consider, further it would likely have to be adjourned. The respondent's witness evidence deals with the factual matrix sufficiently, and it would seem from the appendices to the statement of Ms Lyle that the evidence that those witnesses would intend to give would in fact be contrary to assisting the claimant's case. In all the circumstances considering the application of the overriding objective we refuse the application for a witness order in respect of those three individuals.

15. Mr Laing also puts before the Tribunal the fact that Mr Verracchia has been stood down so far as his answering a witness order is concerned for attendance tomorrow which was previously granted. That is a matter that the Tribunal can do nothing about in our view. He was stood down by the order of the Acting Regional Employment Judge and it is just a fact that we will have to carry on with this case without Mr Verracchia. The Tribunal anticipates he was stood down for good reason by the Acting Regional Employment Judge, but that correspondence is not currently before the Tribunal.

16. In any event from the information before the Tribunal there has been no draft witness statement provided from him to assist as to which matters he would give evidence upon, and for the Tribunal to consider how if he does so, he assists the claimant's case in the circumstances it would be wholly wrong for this Tribunal to revisit that order in the dark. This case will proceed with the claimant's claim in respect of victimisation being dealt with,

Employment Judge Grundy

Date: 6 April 2020

ORDER SENT TO THE PARTIES ON
17 April 2020

FOR THE TRIBUNAL OFFICE

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