



EMPLOYMENT TRIBUNALS

Claimant

Mr J Carr

Respondent

FK Inns Ltd

v

Heard at: Bury St Edmunds

On: 9 April 2020

Before: Employment Judge S Moore

Appearances

For the Claimant: In person

For the Respondent: Mr A Stewart-Jones

JUDGMENT ON PRELIMINARY ISSUES

This has been a remote hearing on the papers which has been consented to by the parties. The form of remote hearing was audio (A). A face to face hearing was not held because it was not practicable and all matters could be determined in a remote hearing.

The claim has no reasonable prospect of success and is struck out.

REASONS

The hearing

1. This was a preliminary hearing to determine the following issue

Whether to strike out the claim because it has no reasonable prospect of success. Whether to order the claimant to pay a deposit (not exceeding £1000) as a condition of continuing to advance any specific allegation or argument in the claim if the Tribunal considers that allegation or argument has little reasonable prospect of success.

2. The claim is for unfair dismissal, unpaid notice pay, and sexual orientation discrimination.
3. Over the telephone I heard evidence from the claimant and Mr Andrew Stewart-Jones, the Managing Director of the respondent. A number of emails were also read out to me.
4. The claimant was employed as the Head Chef of the respondent, a small village restaurant, between 22 May 2019-31 July 2019. After he commenced employment, the respondent, on the suggestion and encouragement of the claimant, also employed a friend of the claimant's called Mr Charlie Brooks, as a second chef. The expectation and intention of both parties was that with two chefs the respondent's opening hours would be extended to include offering lunches (as well as evening meals) more days of the week, and particularly on Wednesdays, and also that the lunch menu would be varied to include light options.
5. On Wednesday 24th July 2019 the claimant and Mr Brooks arrived at work to find the restaurant being set up for lunch. The claimant rang Mrs Stewart-Jones and was told the restaurant was only being opened for drinks. On Friday 26th July 2019, Mr and Mrs Stewart-Jones attended the restaurant with their family to celebrate a birthday, however there was no discussion about the organisation and timing of the planned changes to the kitchen arrangements, which the claimant considered a missed opportunity. On Tuesday 30th July 2019, over the course of the late afternoon and evening, there was an exchange of several emails between the claimant and Mrs Stewart-Jones about these changes. Essentially the claimant initiated the exchange by setting out in quite categorical terms the details and timing of the changes to the kitchen arrangements which he said he and Mr Brooks would implement, and his unhappiness at the lack of communication between the parties to date. Plainly Mrs Stewart-Jones was angered and upset by the tone and content of the claimant's emails because in her last email, timed at 20.43, she described the claimant's emails as unacceptable, hugely disrespectful and rude, and concluded by stating that she considered their working relationship was now untenable.
6. The following morning, 31st July 2019, the claimant received a telephone call from Mr Stewart-Jones. In his claim form the claimant alleged Mr Stewart Jones said "You and your boyfriend need to come and pick up your fucking stuff. You think you can tell me and my wife what to do? I have a 10 million pounds business and I don't need you and your boyfriend." The claimant further said that Mr Stewart-Jones implied that he was gay and that was part of the reason why he was being fired. At the hearing, the claimant also said that Mr Stewart-Jones told him to "fuck off" and said, "How dare you call my wife a liar?"
7. When I asked the claimant what he meant by Mr Stewart-Jones implying he was a gay man, the claimant said that Mr Stewart-Jones had referred to Mr Brooks as his (the claimant's) boyfriend and therefore proscribed a gay relationship to him for no reason.

8. Mr Stewart-Jones said that he had not referred to Mr Brooks at all in his conversation with the claimant on 31 July 2019, that he had not dismissed Mr Brooks but that Mr Brooks had simply failed to show up for work the next day. He also said that he had not used the word “boyfriend”, although he conceded that he might have used the word “boy”.
9. On 1st August 2019, the claimant sent Mr Stewart-Jones an email asking for notice pay, his holiday pay, and 2 extra days pay for Monday 27 May 2019 and Tuesday 18 June 2019 (which the claimant had worked in excess of his normal working week). He also stated that Mr Stewart-Jones had implied the claimant’s work colleague was his boyfriend and that this revealed Mr Stewart-Jones’ homophobic beliefs, but that he wouldn’t pursue the matter any further if he was paid a further months’ salary. Mr Stewart-Jones did not reply to this email, although he paid the claimant a final salary payment and holiday pay.
10. The claimant is not a gay man, and in the audio hearing he accepted that Mr Stewart Jones had previously employed his (the claimant’s) female partner and knew about her relationship with the claimant.
11. Mr Brooks has also brought a tribunal claim but although it appears from the file that the tribunal intends to join his case with the claimant’s case, he was not notified of this hearing and took no part in it.

Conclusions

12. Dealing first with the claim for unfair dismissal, under section 108 of the Employment Rights Act 1996 (ERA) an employee does not have the right to bring a claim for unfair dismissal under section 94 of that act unless he has been employed for a continuous period of two years. Since the claimant had only been employed for nine weeks at the date of his dismissal, the claim for unfair dismissal must therefore be struck out as it has no reasonable prospect of success.
13. As regards the claim for sexual orientation discrimination, the claimant stated in his claim form “I cannot see any other reason [than Mr Stewart-Jones is homophobic and had a problem with two men maintaining a friendship at work] why both me and Charlie would have been fired if that wasn’t the case, as we both had not received any prior warning or disciplinary.”
14. Section 13(1) of the Equality Act 2010 provides that “A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others”. Section 4 of that act provides that sexual orientation is a protected characteristic. Section 39(2)(c) provides that “An employer (A) must not discriminate against an employee of A’s (B) ... by dismissing B.”
15. Accordingly, the question is whether (there is a reasonable prospect the claimant would be able to show at trial) that the reason, or part of the reason, the respondent dismissed him was because of the protected

characteristic of sexual orientation, namely that he perceived the claimant to be gay and/or believed him to be in a gay relationship with Mr Brooks.

16. Although the claimant stated on his claim form that he “couldn’t see any other reason why both me and Charlie would have been fired if that wasn’t the case”, the fact is that the claimant had had an exchange of emails with Mrs Stewart-Jones the previous evening which culminated in her calling the claimant disrespectful and rude, and stating she thought a working relationship between them was no longer viable. Further, the claimant stated that in the course of the dismissal conversation Mr Stewart-Jones shouted that, “You think that you can tell me and my wife what to do!” and “How dare you call my wife a liar!” Furthermore, the claimant also accepted that the respondent had employed the claimant’s female partner and knew the claimant to be in a heterosexual relationship with her.
17. Accordingly, even if the claimant is able to establish at trial that when dismissing him, Mr Stewart-Jones also referred to Mr Brooks, and further referred to him as the claimant’s boyfriend, I do not consider the claimant has a reasonable prospect of establishing that the reason, or part of the reason, why he dismissed the claimant was because Mr Stewart-Jones perceived the claimant to be a gay man and/or in a gay relationship with Mr Brooks. The reason for the dismissal was because of the falling out over the implementation of new lunch arrangements and the very angry reaction of Mr and Mrs Stewart-Jones to the nature of the claimant’s communications with Mrs Stewart-Jones. I would add that for the purpose of this judgment, it is not relevant for me to consider whether that angry reaction was justified or not, only whether it was the reason for the claimant’s dismissal, and I find that it was. Accordingly, while, if proved, using the word “boyfriend” in a derogatory fashion would not reflect well on Mr Stewart-Jones, given the undisputed evidence as regards the events leading up to the dismissal as well as Mr Stewart-Jones’ knowledge of the claimant’s current heterosexual relationship, it is, of itself, insufficient to ground a complaint that the claimant was dismissed because of his actual or perceived sexual orientation.
18. I therefore find that the claim for discrimination on grounds of perceived sexual orientation has no reasonable prospect of success and must be struck out.
19. As regards the claim for unpaid notice pay, at the hearing the claimant stated his claim was in fact for two extra days work on 27 May 2020 and 18 June 2020 which he thought had not been paid. However, he also agreed that he had stated on his claim form that following the email he sent on 1 August 2020, which referred to both those days, “I received my statutory requirement for notice pay as well as all the money owed to me.”
20. I therefore find that the claim for notice pay and/or unlawful deduction of wages has no reasonable prospect of success and must also be struck out.

Employment Judge S Moore

Date: 14 April 2020

Sent to the parties on: 4 May 2020

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For the Tribunal Office