



EMPLOYMENT TRIBUNALS

Claimant

Ms. Y. Andrews

Respondent

v (1) Argent Services LLP
(2) Mr Michael Lightbound
(3) Ms Anita Sadler

PRELIMINARY HEARING

London Central: by Microsoft Teams video

On: 14 May 2020

Before: Employment Judge Goodman

Appearances

For the Claimant: Mr. Z. Rahman, solicitor

For the Respondent: Mr. T. Cordrey, counsel

JUDGMENT

The claims for redundancy payment, notice pay, and holiday pay are dismissed under rule 52 on withdrawal by the claimant.

CASE MANAGEMENT SUMMARY

Listing the hearing

1. The claims are already listed for final hearing on 19-23 October 2020.
2. An open preliminary hearing is required to decide:
 - (1) Whether the race and sex discrimination, and race harassment claims should be struck out as disclosing no reasonable prospect of success
 - (2) Whether any of those claims should be the subject of a deposit order
 - (3) Whether the claimant's recording of conversation among the respondents and with the respondent's legal advisers on 26 Number 2019 should be admitted to evidence.

This will be listed for a 3 hour hearing as soon as practically possible, and the parties agree it is probably suitable for a remote public hearing. There will be limited evidence from the claimant about the circumstances of the recording being made, and about her ability to pay, neither of which will give rise to extensive questioning. The claimant's representative will check whether she has a suitable device and internet access. The rest is a matter of submissions.

3. The tribunal and the respondent were ready to proceed to hear the deposit order application and the admissibility application today, but the claimant's solicitor was not, and wished to brief counsel on these issues. An open hearing is necessary of the respondent proceeds on the strike out application.

The complaints

4. By a claim form presented on 15 January 2020, the claimant brought complaints of unfair dismissal, redundancy payment, race and sex discrimination, age related harassment, victimisation, and failure to pay notice or holiday pay. The respondent defended the claims. They arise out of the respondent's decision to dismiss the claimant for redundancy.
5. Today the claimant's solicitor confirmed that she had in fact been paid a redundancy payment, notice, and holiday pay. Those claims are dismissed on withdrawal.

The issues

6. The parties have agreed a provisional list of the pleaded issues which is attached to this order. It may require editing after the claimant has given further information about the training allegations, or after the open preliminary hearing if any claim is struck out.

Judicial mediation

7. The claimant expressed interest in this matter being dealt with by way of judicial mediation. The respondent prefers to consider mediation after the open preliminary hearing.

Other matters

8. If the Tribunal determines that the respondent has breached any of the claimant's rights to which the claim relates, it may decide whether there were any aggravating features to the breach and, if so, whether to impose a financial penalty and in what sum, in accordance with section 12A Employment Tribunals Act 1996.
9. I made the following case management orders.

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. Further information

1.1 By **29 May 2020** the claimant is ordered to send the tribunal and the respondent further information about:

- (1) Her case on bumping, that is, which should have been in the pool for selection or what other jobs or staff should have been considered for redundancy, and
- (2) the opportunities for training it is alleged she was denied, to include when the training was denied, what training was denied, and details of any actual comparator, and if none, identifying the hypothetical comparator.

2. Preparation for Preliminary Hearing

2.1 The claimant is ordered to send the respondent copies of notes and correspondence exchanged between the parties in the process of redundancy consultation and the grievance handling, *and* the recording and the transcript of the respondents' conversation on 26 November 2019, **by 11 June 2020**.

These are required for the tribunal hearing the open preliminary hearing applications to understand the context already known to the parties, and for the respondent to understand the process of making the recording.

2.2 The respondent is to prepare a bundle of these documents and the pleadings and orders and send it to the claimant one week before the open preliminary hearing. If there is a remote hearing, an electronic bundle must be sent to the tribunal at the same time. If an in-person hearing, three bundles must be brought to the hearing.

2.3 The claimant is to send the respondent by **11 June 2020** a witness statement about how and why the recording of the discussion on 26 November 2019 came to be made, and when she first heard it. In addition, if she wishes the tribunal to take account her ability to pay when deciding the deposit order application, she must set out what her means are and provide documents in support of that evidence. The tribunal must be sent an electronic copies, otherwise three paper copies to be brought to the hearing.

Preparation for the Final Hearing

2.4 By **26 June** the respondent is to send the claimant copies of any documents relating to training opportunities identified by the claimant in her further information.

2.5 Full disclosure of all remaining documents by list and copy is to be completed by **17 August 2020**. Documents relevant to remedy must include evidence of all

attempts to find alternative employment: for example a job centre record, all adverts applied to, all correspondence in writing or by email with agencies or prospective employers, evidence of all attempts to set up in self-employment, all pay slips from work secured since the dismissal, the terms and conditions of any new employment.

2.6 This order is made on the standard civil procedure rules basis which requires the parties to disclose all documents relevant to the issues which are in their possession, custody or control, whether they assist the party who produces them, the other party or appear neutral.

2.7 The parties shall comply with the date for disclosure given above, but if despite their best attempts, further documents come to light (or are created) after that date, then those documents shall be disclosed as soon as practicable in accordance with the duty of continuing disclosure.

2.8 It is ordered that the respondent has primary responsibility for the creation of the single joint bundle of documents required for the Hearing. It is to be sent to the claimant by **7 September 2020**.

2.9 The respondent is ordered to bring five (three if the Equality Act claims have been struck out) copies to the Tribunal and take them direct to the hearing room by 9.30 a.m.

3. Witness statements for the Final Hearing

3.1 It is ordered that oral evidence in chief will be given by reference to typed witness statements from parties and witnesses.

3.2 The witness statements must be full, but not repetitive. They must set out all the facts about which a witness intends to tell the Tribunal, relevant to the issues as identified above. They must not include generalisations, argument, hypothesis or irrelevant material.

3.3 The facts must be set out in numbered paragraphs on numbered pages, in chronological order.

3.4 If a witness intends to refer to a document, the page number in the bundle must be set out by the reference.

3.5 It is ordered that witness statements are exchanged so as to arrive on or before **21 September 2020**.

3.6 Each side must bring five (or three) copies of their witness's statement to the hearing for the use of the tribunal.

CONSEQUENCES OF NON-COMPLIANCE

1. Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.
2. The Tribunal may also make a further order (an “unless order”) providing that unless it is complied with, the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice or hold a preliminary hearing or a hearing.
3. An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative.

Employment Judge Goodman

Date: 14/05/2020

JUDGMENT AND SUMMARY SENT to the PARTIES
ON

15/5/2020

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FOR THE TRIBUNAL OFFICE