



EMPLOYMENT TRIBUNALS

Claimant

Mr. J. Adams

v

Respondent

OCS Group Ltd

PRELIMINARY HEARING

London Central by Teams video

On: 29 June 2020

Before: Employment Judge Goodman

Appearances

For the Claimant: Mr. R. Clement, counsel

For the Respondent: Ms. G. Clarke, solicitor

For EMCOR: Mr. M. Potter, solicitor

JUDGMENT

1. The claim against EMCOR Group (UK) plc is dismissed on withdrawal.
2. The claim against OCR Group Ltd for unlawful deductions from wages is dismissed on withdrawal.

CASE MANAGEMENT SUMMARY

Listing the hearing

1. After all the matters set out below had been discussed, we agreed that the hearing in this claim would be completed within 3 days. It has been listed for 13-15 January 2021. The time allocation includes deliberation and judgment. It is currently hoped that this will be held at Victory House, but as the pandemic restrictions evolve, it may be considered at some time for a remote hearing.

The complaints

2. The claimant has since the last preliminary hearing in January 2020, obtained legal advice. He has accepted that following the TUPE transfer the transferee is the correct respondent and accordingly he has withdrawn the claim against EMCOR Ltd, the transferor.

3. He also withdraws the claim in contract for not having had a pay rise, and in respect of underpayment of sick pay.
4. What is left is a claim that security officers aged over 60 are paid less than younger colleagues by reason of age. The claimant has supplied a list of those in his age group, and younger comparators. The claim is of direct discrimination contrary to section 13. The issues for the tribunal are:

4.1. Has the respondent subjected the claimant to the following treatment falling within section 39 Equality Act, namely paying less per hour worked.

4.2. Has the respondent treated the claimant as alleged less favourably than it treated or would have treated the comparators? The claimant relies on coworkers aged less than 60.

4.3. If so, has the claimant proved primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of the protected characteristic?

4.4. If so, what is the respondent's explanation? Does it prove a nondiscriminatory reason for any proven treatment?

4.5. And/or does the respondent show that the treatment was a proportionate means of achieving a legitimate aim? The respondent has not to date pleaded that if any pay difference is because of age there was a legitimate aim or that this was a proportionate way to achieve it:

5. Time/limitation issues

Any act or omission which took place more than 3 months before presentation of the claim to the tribunal, adjusted for early conciliation, is out of time. If so,

5.1. Does the claimant prove that there was conduct extending over a period which is to be treated as done at the end of the period? Is such conduct accordingly in time?

5.2. Was any complaint presented within such other period as the employment Tribunal considers just and equitable?

6. Remedies

6.1. If the claimant succeeds, in whole or part, the Tribunal will be concerned with issues of remedy.

6.2. There may fall to be considered a declaration in respect of any proven unlawful discrimination, recommendations and/or compensation for loss of earnings, injury to feelings and/or the award of interest.

7. Judicial mediation

8. I raised the possibility of this case being considered for an offer of judicial mediation.
9. The parties are both interested in exploring this. Separate orders have been made for this.
10. I made the following case management orders by consent.

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. Disclosure of documents

- 1.1 The parties are ordered to give mutual disclosure of documents relevant to the issues identified above by list and copy documents so as to arrive on or before 27 July 2020. This includes, from the claimant, documents relevant to all aspects of any remedy sought.
- 1.2 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.
- 1.3 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.

Statement of remedy/schedule of loss

2. The claimant is ordered to provide to the respondent and to the Tribunal an updated schedule of loss by **29 July 2020**.

3. Bundle of documents

- 3.1 The respondent is ordered to provide to the claimant a full, indexed, page numbered bundle to arrive on or before 6 November 2020.
- 3.2 The respondent is ordered to five copies to the Tribunal for use at the hearing, which must be taken, together with five copies of the witness statements, to the hearing room by 9.30 am on the morning of the hearing. For this purpose, the representatives should arrive by 9.15 to ensure they have cleared security in time.

3.3 If the hearing is remote, pdf bundles of documents and witness statements must be supplied to the tribunal and the other party one week before the hearing.

4. Witness statements

4.1 It is ordered that witness statements are exchanged on 21 December 2020.

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: 29 June 2020

JUDGMENT and SUMMARY SENT to the PARTIES ON

07/07/2020.....

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FOR THE TRIBUNAL OFFICE