



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH

BEFORE: EMPLOYMENT JUDGE BALOGUN

BY CVP VIDEO CONFERENCE

BETWEEN:

Mr M Humed

Claimant

And

Sight and Sound Security Solutions Limited

Respondent

ON: 31 July 2020

Appearances:

For the Claimant: In Person

For the Respondent: Ms S Clarke, Counsel

JUDGMENT ON PRELIMINARY ISSUE

All claims are struck out on grounds that they have no reasonable prospect of success.

REASONS

1. The purpose of this hearing was to consider the jurisdictional issues set out at paragraph 2 of Employment Judge Hyde's case management order dated 1 April 2020, made following a preliminary hearing on 22 January 2020.
2. The issues I have to consider are:
 - a. Whether the tribunal had jurisdiction to deal with the claims and if so;
 - b. Whether any of them should be struck out on grounds that they had no reasonable prospects of success or;
 - c. Whether a deposit order should be made as a condition of the claimant being allowed to pursue his claims on grounds that they had little reasonable prospects of success.
3. I was provided with an electronic pdf bundle for this hearing and references in square brackets in the judgment are to pages within that bundle.
4. At the preliminary hearing on 22.1.20, the claimant was ordered to clarify his claims and paragraph 6 EJ Hyde's order sets out in detail the information the claimant was required to provide.
5. Today's hearing was originally listed for 3 June 2020 but was adjourned due to the Covid-19 pandemic. Instead a telephone case management discussion took place, which I conducted.
6. Unfortunately, by that date, the claim had still not been clarified. Although the claimant purported to provide further particulars of his claims to the respondent in March 2020, the document provided is discursive and makes general assertions and allegations without identifying the specific legal claims within the jurisdiction of the tribunal [44-48]. At the hearing on 3 June 2020, I ordered the respondent to write to the claimant with targeted questions in order to clarify his claims. The respondent sent the request on 10 June 2020 [54-58] which the claimant responded to on 23 June 2020 [59-77]. Unfortunately, the claimant's response did little to clarify matters further.
7. For today's hearing, the claimant filed a document headed "**Claimant's witness statement for Open Preliminary Hearing 31/7/2020**". The document comprised 6 pages, the first 3 of which dealt with matters which were of no relevance to the issues before me. In the rest of the document, the claimant again purports to set out his claim though much of it remained unclear.
8. I therefore spent a large part of the hearing seeking clarification orally by taking the claimant through the various matters, in the main, those set out in the draft

list of issues document prepared by the respondent [141-142]

9. After discussion and after the parties had an opportunity to address me on the issues, I reached the following conclusions:

Jurisdiction

10. The matters listed at paragraph 1a-e on the draft list of issues were outside the tribunal's primary jurisdiction so could not be pursued in this forum. In relation to 1f), the tribunal has no jurisdiction to deal with a free-standing claim of breaches of the ACAS code of practice. 1g) is in fact a reference to the Equality Act 2010 (not the Employment Rights Act 2010) and is repeated at 1h). The Equality Act claims are race discrimination, harassment and victimisation. These are dealt with below.

Constructive Dismissal

11. The claimant was employed from 4.9.17-18.9.18 and so did not have 2 years continuous service with the respondent. Hence by virtue of section 108 of the Employment Rights Act 1996 (ERA) he cannot pursue a constructive unfair dismissal claim.

Public Interest Disclosure detriment claim

12. The claimant relies on a verbal disclosure made in September 2017 to a manager, Mr Charley, about the fact that a supervisor, Mr Noor Mohamed, had called the principal of the college a "dickhead" and a "fucker". The claimant said that this tended to show that the respondent had breached a legal obligation because it was forbidden for an employee to make abusive and disparaging remarks about people that the respondent was doing business with. The claimant contended that the disclosure was in the public interest because it was his moral responsibility to report matters to management if he saw wrongdoing.
13. In my view, the claimant would have an uphill struggle convincing a final tribunal of the existence of a legal obligation or that his belief that the disclosure was in the public interest was a reasonable one. I therefore consider that there is no reasonable prospect of the disclosure being found to be a qualifying one pursuant to section 43B(1) ERA. It follows that the Protected disclosure detriment claim has no reasonable prospect of success.

Breach of Contract

14. Although this is not set out in the list of issues, the claimant refers to such a claim in his ET1 [6]. The breach of contract claim is an allegation that the respondent failed to follow the following policies, contained in its Employee Handbook:

Grievance policy [123]
Disciplinary policy [124]
Harassment and Bullying policy [116-117]
Equal Opportunities policy [118-119]
Stress at work policy [120]

15. The disciplinary and grievance policies expressly state that they are non contractual. While the other policies referred to are silent on their contractual status, I have reviewed them, none confer rights that are appropriate to be incorporated into the contract of employment. All they do is set out certain principles of behaviour, procedural matters and mission statements. That aside, the claimant has not provided proper particulars of the actual breaches and has not identified any potential loss – he says he is claiming injury to feelings which is not a remedy for breach of contract.
16. I therefore consider that the breach of contract claim has no reasonable prospects of success.

Equality Act claims

17. The claimant brings claims of direct race discrimination, harassment and victimisation. He had previously been told that he could not pursue a sexual harassment claim that was based on allegations of sexual harassment against him.
18. The claimant describes himself racially as black. He alleges that in September 2017 (no exact date was given), Mr Noor Mohammed told him that he did not like black people because they are lazy. This is potentially a complaint of direct discrimination and/or racial harassment.
19. The claimant further alleges that when he reported the matter to Mr Charley that same day, no action was taken. The claimant contends that Mr Charley's failure to act was an act of harassment and victimisation.
20. The claimant presented his claim on 15.2.19. By section 123 of the Equality Act 2010, claims under the act must be brought after the end of 3 months starting with the date the act complained of was done. As the alleged comment of Mr Mohammed was made in September 2017, the claim should have been presented in December 2017. Even allowing for a reasonable time of, say, a month, for Mr Charley to look into the complaint, the claim in relation to that omission should have been presented by January 2018 at the latest. The claims are therefore out of time.
21. The tribunal does have the power to extend time where it considers it to be just and equitable to do so. However, the claimant has given no reasons at all as to why he delayed in presenting his claim even though the draft list of issues set out the time point to be dealt with today [142]. There is therefore no basis for me to

extend time on just and equitable grounds.

22. In light of the above, I have concluded that all of the claims have no reasonable prospects of success.

Judgment

23. All the claims are struck out.

Employment Judge Balogun
Date: 31 July 2020