



EMPLOYMENT TRIBUNALS

Claimant

Dr L Igali

Respondent

v Norfolk and Norwich University Hospital
NHS Foundation Trust

Heard at: Norwich

On: 28 August 2020

Before: Employment Judge Postle

Appearances

For the Claimant: In person.

For the Respondent: Mr Jones, Counsel.

JUDGMENT

1. The claimant's claims under the Equality Act 2010 for the protected characteristic of race and the claimant's claim of public interest disclosure under the Employment Rights Act 1996 are dismissed as having no reasonable prospect of success.

REASONS

1. This is an open preliminary hearing set down by Employment Judge Kurrein at a previous closed case management hearing to determine:
 - (i) Whether to strike out the claimant's claims under the Equality Act 2010 for the protected characteristic of race and a possible claim for public interest disclosure on the grounds they have no reasonable prospect of success;
 - (ii) Whether to order the claimant to pay a deposit as a condition of continuing a claim if it has little reasonable prospect of success.

2. In this Tribunal we have had the benefit of oral submissions on behalf of the respondent from Mr Jones, counsel and from the claimant in person. The Tribunal also had the benefit of a bundle of documents consisting of 91 pages.
3. The power to strike out a claim or response on the ground it has no reasonable prospect of success arises under rule 37 and the power under rule 39 to make a deposit order where claims have little reasonable prospects of success under the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.
4. The power to strike out requires a Tribunal to form a view on the merits of the case and then only where it is satisfied that the claim has no reasonable prospect of success can a Tribunal exercise its power to strike out.
5. The Tribunal must first consider whether on careful consideration of material available it can properly conclude that the claim has no reasonable prospect of success. The test is not whether the claim is likely to fail; nor is it a matter of asking whether it is possible that the claim will fail it is a high test.
6. However, in the Chandhok v Tirkey [2015] IRLR 195 Justice Langstaff highlighted that there may be occasions where discrimination cases can properly be struck out. Once such category is those cases which only indicate a possibility of discrimination and without more evidence are insufficient for a Tribunal to conclude that discrimination has taken place. He went on to say that “the claim as set out in the ET1 is not something just to set the ball rolling, as an initial document necessary to comply with time limits but which it is otherwise free to be augmented by whatever the parties chose to add or subtract merely upon their say so. Instead it serves not only as a useful but necessary function. It sets out the essential case the claimant has. It is that to which a respondent is required to respond.”
7. The claimant is of Hungarian national origin and commenced his employment with the respondent in 1999 as a consultant histopathologist. The claimant entered into early conciliation with ACAS on 28 October 2018 and the certificate granted on 20 November 2018. The claimant issued his claim on 16 December 2018 which means allowing for early conciliation, events preceding 28-29 July 2018 are going to be out of time where they are single acts and not connected.
8. The particulars of claim attached to the claim form consist of 22 paragraphs running to 4½ pages ending with a short summary the claimant recites “continued victimisation, discrimination, management bullying and harassment”. Looking at the document the vast majority of the events are way out of time commencing in 2012. The events described are vague, lacking in any particularisation and appear to lack connection to the claimant’s race/national origin to such an extent the

respondent could not be expected to properly respond to them without further particularisation. The respondent in their response not unreasonably requested further and better particulars. On 3 March 2019 the claimant was directed by the Tribunal to respond to the request for further and better particulars by 24 March 2019. The claimant did respond on 24 March 2019 with a 20 page document which introduced new general allegations now referring to events as far back as 2008. If one scans this document again it is of a general unparticularised nature lacking in detail as to precisely what if any less favourable treatment/public interest disclosures/harassment occurred by whom other than just vague general allegations.

9. The preliminary hearing was listed to clarify the legal and factual issues on 12 February 2020 before Employment Judge Kurrein. Judge Kurrein clearly spent a great deal of time at that hearing explaining to the claimant precisely what was needed from him in order to move the claim forward so that the Tribunal and the respondent could properly understand what claims he was making. Indeed, Judge Kurrein made an order for the claimant to provide further information that would identify the claim particularly the date and the period of events relied upon, a brief description of events, what the specific claim was and comparators, and was to comply by 6 March. At that hearing Judge Kurrein also listed today's open preliminary hearing for the reasons outlined at the start of this Judgment.
10. The claimant provided a further document in the form of a schedule which appears at pages 67-69 of the bundle, a lot of those claims post-date the claim form. Then the claimant 3½ months later provides further documents, pages 77-87 containing many new allegations not advanced in the claim form, in fact a total of 83 spanning a decade. Again, when looking at those allegations there is little clear particularisation linking them to race. There is little evidence to support race, insufficient even to advance prima facie case of race.
11. The nearest the claimant gets in these 83 allegations linking anything with his race, is as counsel for the respondent says at paragraphs 9, 16, 18 and 31, some of which are well out of time and are a mere assertion rather than a prima facie case. The Tribunal reminds itself it is for the claimant to establish a prima facie case and yet in three further sets of particulars provided on top of the claim form the claimant still has not advanced an arguable case of discrimination. The Tribunal repeats, it has to be something more than could have been discrimination or just unhappy with the way the claimant was treated. It is particularly most notable this morning in the claimant's own summing up he said:

“Decade long of discrimination not all to do with race or nationality. I was not the only person complaining not just me I put my head above the parapet.”

12. The Tribunal therefore concludes having considered all the material available that the claim has no reasonable prospect of success and the claims should therefore be dismissed.
13. The full merits hearing that had been preliminary listed for 31 January 2021 for 10 days is of course now vacated.

Employment Judge Postle

Date:18/09/2020.

Sent to the parties on: ..01/09/2020.....

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For the Tribunal Office