



EMPLOYMENT TRIBUNALS

Claimant: Mr M Hinton

Respondent: Eco Home Group Limited

Heard at: Havant **On:** 1 December 2020

Before: Employment Judge Dawson, Mr P Bompas, Mr P Flanagan

Appearances

For the claimant: not in attendance

For the respondent: Mr Henry, representative

REASONS

JUDGMENT having been sent to the parties on 19 December 2020 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

Claim and Issues

1. By a claim form presented to the tribunal on 7 January 2019 the claimant presented claims of discrimination on the grounds of age and ticked the box to suggest he was making other claims.
2. The issues were identified at a hearing before Employment Judge Cadney on 23 July 2019. The issues as identified by him are pasted below:

2. Age Discrimination - In the claim form age discrimination is only referred to once, in the entry for 28th September 2018. The claimant has confirmed that (as is set out in the ET1) that he alleges was subjected to harassment and abuse by Mr Long but that this is the only specific allegation of age discrimination. As is set out below it appears most naturally to be regarded as an allegation of harassment.

3. Failure to permit the claimant to be accompanied at a meeting with Mr Procter on 1st October 2018 - The claimant contends that he was not permitted to bring a union representative to this meeting and that he had a right to do so. This dispute will turn on whether the meeting was a disciplinary meeting (in which case the claimant would have the statutory right to be accompanied: s10 Employment Relations Act 1999) or an investigatory meeting at which he would have no such statutory right.

4. Unpaid Commission – The claimant is claiming £190. The dispute is whether he had a contractual right to paid commission or whether such payment was discretionary.

3. The harassment claim was then more fully set out in the list of issues as follows:

Section 26: Harassment on grounds of age.

8.1. Did the Respondent engage in unwanted conduct as follows:

8.1.1. On 28th September 2018 Mr Long allegedly referred to the claimant who is 58 years of age as falling apart.

8.2. Was the conduct related to the Claimant's protected characteristic?

8.3. Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him? If not, did the conduct have the effect of violating his dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him? In considering whether the conduct had that effect, the Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

4. The case then came before Employment Judge Goraj on 2 April 2020 when it was adjourned due to the coronavirus pandemic. The issues were identified as remaining the same

Application to Adjourn

5. In circumstances which we will amplify as we go through these reasons on 30th November 2020 at 11:58 the case was move from the Southampton hearing centre to the Havant hearing centre to enable to the case to be heard in a way which was compliant with the risks presented by coronavirus. The email sent to the parties stated

“The file in this case has been referred to Regional Employment Judge Pirani, who directs I write as follows:

Due to over listing and Social Distancing, the above case listed for 1st and 2nd of December 2020 will now be heard at Havant Hearing Centre, The Courthouse, Elmleigh Road, Havant, PO9 2AL.

If either party are affected by this order they should inform the Tribunal by return.”

6. At 16:20 the claimant emailed the employment tribunal, the email is pasted below.

Further to my brief telephone conversation with yourself about 90 minutes ago ,, ive just recd notification of this change of date today , it was listed i believe for march 2021,

i respectfully seek an adjournment , also more relevant to parties concerned, is the venue , Havant is some distance can i suggest Salisbury as an alternative . My reason is im starting new job on 1st December , ill make a suggestion for the hearing to be reshaped for mid January onwards in 2021 , i will copy this to echo home group ,

kind regards

mark Hinton

complainant

Decision on Application to Adjourn

7. Today, the claimant has not attended. The case started at 10:45. The claimant's email of 30 November 2020 was treated as an application to adjourn, which the respondent resisted.
8. We considered, in deciding that application, the overriding objective which requires us to, in particular, avoid delay so far as compatible with proper consideration of the issues and saving expense. We considered the tribunal file.
9. We note that the claimant had been told of the date of this hearing on two occasions, firstly on the 29th April 2020 and secondly on the 23rd November 2020. In the first of those two notifications he was told that although the case was being listed at Southampton it might be moved at short notice. The email yesterday changed only the venue for the hearing- not the date of it.
10. We can see no reason for the claimant to be confused as to the date of the hearing, it has never been suggested, as far as we are aware, that the hearing would be in March 2021.
11. Moreover, on the 13th November 2020, the claimant was asked whether he had a view on the case being determined by way of cloud video platform rather than in person. His response was; "I as the claimant do not want my only opportunity to get the truth across via Internet I elect for a direct hearing nothing less will do".
12. That request was granted. The fact that the claimant was writing in those terms might have caused him to double check the hearing date.

13. In terms of the claimant's suggestion that Havant is some distance, we note that it is 20 miles from Southampton. In respect of public transport, the claimant lives in Southbourne, Bournemouth. The nearest station train station would appear to be Pokesdown and we consider that he could easily have travelled to Havant by train today
14. A train from Pokesdown leaves at 7:16 a.m. and arrives in Havant at 8:56 (changing in Southampton); one leaving at 8:26 arrives in Havant at 9:54 (again changing in Southampton). The extra journey from Southampton to Havant is about 40 minutes. The train station at Havant is a very short walk from the hearing centre.
15. It is unclear whether the claimant is seeking to suggest that the fact he is starting a new job is a basis for the application. If he is, the claimant must have known of his start date for some time and there is no reason why he left the application for an adjournment to the very last minute. If he could have attended the hearing in Southampton with his new job, then there is no obvious reason why he could not attend in Havant. It would seem likely that he could have negotiated his start date with his new employer, he has not suggested that he could not.
16. We find therefore that there is no good reason for the claimant not being here today and no good reason for an adjournment.
17. Not only is there no good reason for an adjournment, this is a final hearing and such hearings should only be adjourned exceptionally. The respondent has been put to the inconvenience of preparing for this hearing and of attending today and we have to consider the knock-on effect that an adjournment would have on other tribunal users. To lose 2 days of hearing time would require us to slot the claimant's hearing in on another occasion- which would inevitably disadvantage other tribunal users in circumstances where the lists are currently extremely full.
18. In those circumstances our unanimous decision is that the adjournment request is not granted.

Decision under Rule 47 of the Tribunal Rules of Procedure

19. We must then consider, under rule 47, whether to dismiss the claim or proceed with the hearing in the absence of the claimant. In accordance with that rule we have read the bundle and we have considered the tribunal file. We have noted that the burden of proof is on the claimant (subject to section 136 Equality Act 2010) and without him here to give evidence he may well struggle to discharge that burden of proof; nevertheless there is no obligation on a party to attend a hearing and in those circumstances we have proceeded to hear the case in the claimant's absence.

Decision on the Merits of the Claimant's Claim

20. We have read the bundle of documents, including the handwritten statement from the claimant which was sent with his claim form and the respondent's

documents that purport to be witness statements. In the event, the respondent has called no evidence. In respect of both parties' witness statements, the weight which they can be given in circumstances where the witnesses have not been called is limited, as set out below.

21. We have noted that the burden of proof is on the claimant to prove all of the three claims which are advanced but we have also reminded ourselves of section 136 of the Equality Act 2010 in respect of the burden of proof in discrimination cases and that if there are facts from which we could find, in the absence of any other explanation, that the relevant provision has been contravened we must do so unless the respondent satisfies us that the treatment was in no sense on the grounds of age.
22. We have noted that the respondent is putting the claimant to proof of his allegations.
23. In terms of the handwritten statement from the claimant, we note that it is not signed and has no declaration of truth. The respondent has not had the opportunity to cross examine the claimant on it. For those reasons we do not give it any weight unless it is corroborated by other evidence.
24. Dealing first with the age discrimination claim, we are not, on the basis of the claimant's handwritten statement alone, satisfied that the comments alleged by the claimant were made or of the context in which they were made. We have noted the document which purports to be a witness statement of Mr Lane (which is also unsigned) and considered whether that amounts to corroborative evidence, but that does not, in our judgement, amount to an admission of what the claimant says. It says no more than that Mr Lane might have made an empathetic remark in respect of the claimant's health issues. Whilst Mr Lane admits that he might have used the phrase "falling apart", without the claimant satisfying us as to precisely what was said and the context in which it was said, we do not find that the claimant has proved facts from which we could find that he had been the subject of harassment because of his age. The phrase used (if it was said) is equally consistent with the assertion in the statement of Mr Lane that he was referring to the claimant's health issues, which the claimant often expressed. The claimant says that he was mildly disabled due to an artificial left ankle, but there is no suggestion that is an age related disability. There are no facts from which we could conclude that a younger person with the same mild disability would not have been treated in the same way.
25. In respect of the claim under the Employment Relations Act 1999; the claimant has not satisfied us that the meeting which he attended was a disciplinary meeting. We have noted the document at page 73, which was a letter sent after the meeting, and that in that letter the respondent describes the meeting as a probationary meeting. Without the claimant explaining to us what happened in that meeting when the respondent has had the opportunity to cross-examine him, we are not satisfied that the meeting was a disciplinary one.
26. In respect of the claim for commission, we are not satisfied on the evidence that the claimant had earned any commission or in what amount. Nor are we satisfied that failure to pay any commission that had been earned would be

either a breach of contract or a deduction from wages. In particular we note that the statement of main terms of employment of the claimant at page 60 of the bundle states that the claimant would not be entitled to receive any bonuses or commission once his employment was terminated.

27. In those circumstances we dismiss all of the claimants claims.

Employment Judge Dawson

Date 11 January 2021

Reasons sent to parties: 26 January 2021

FOR THE TRIBUNAL OFFICE

Notes

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.