



EMPLOYMENT TRIBUNALS

Claimant: Ms R Thomas
Respondent: Expansys UK Limited

UPON APPLICATION made by a letter from the claimant dated 2 November 2020 to reconsider the Judgment made on 19 October 2020 under rule 71 Employment Tribunals Rules of Procedure 2013.

JUDGMENT

The Judgment made on 19 October 2020 is confirmed.

REASONS

1. Following the abortive hearing on 24 February 2021, which could not proceed due to the claimant's ill health, and for the reasons set out in my Order of that date, I have reconsidered the judgment made on 19 October 2020.
2. I refer also to my Order dated 1 February 2021. Paragraph (3) of the Notes to that Order sets out the documentation the tribunal had received prior to 1 February 2021. Since then, I have received and reviewed:
 - 3.1. From the claimant, a letter dated 9 February 2021 expressing her views on the Order and Notes of 1 February 2021 and a bundle of documents (in two parts) emailed to the tribunal on 23 February 2021. This includes (in Section 1 on pages 1-11) the claimant's skeleton argument; and
 - 3.2. From the respondent, an email dated 12 February 2021 setting out its response to the application for reconsideration.

I have also seen other correspondence from the parties not directly relevant to the reconsideration.

3. In my Notes of 1 February, I set out my provisional views on the application to reconsider (paragraph (6)). For ease of reference, I will repeat that section here. “Having considered the documents submitted by the claimant and having reread my notes of the hearing on 19 October 2020 and the bundle prepared for that hearing, my provisional view is that the claimant’s application is not likely to succeed. The claimant continues to focus on events prior to her dismissal and does not appear to make connection between those events and her dismissal. She makes no specific complaint against Clive Capp, the dismissing manager, save to refer to “discriminatory mood and tone of communication between Clive Capp and the claimant”. In support of her argument that her dismissal was an act of discrimination, she refers to Clive Capp being related to the business owner and having a longstanding relationship with male colleagues whom she describes as Caucasian, but she does not provide any other reason why Mr Capp’s decision to dismiss her related to her race or sex. Indeed, she told me clearly at the hearing on 19 October that the reason why Mr Capp dismissed her was that Mr Capp was aware of the incompetence of the Claimant’s colleagues Tom and Chris and was also aware that the Claimant would expose that incompetence to senior management. This cannot be a reason related to her race or sex.”
4. I have seen nothing in the documentation submitted by the claimant since 1 February 2021 to alter those views and I agree with the respondent’s submissions. The claimant’s skeleton argument does not address how her dismissal by Mr Capp might be tainted by discrimination nor does she resile from the statement made on 19 October 2020 (referred to in the above paragraph) that Mr Capp had an entirely alternative motive for dismissing her. Furthermore, the claimant does not allege that the decisions made by Mr Capp might be connected to the other ‘historical’ matters of which she has complained.
5. Accordingly, my decision is that the judgment should be confirmed. However, for the sake of completeness, and to be fair to the claimant who has raised these points, I will deal with the specific points raised in the original application for reconsideration of 2 November 2020 and the accompanying documents. I will deal firstly with the four numbered points on pages 1 and 2 of the application using the same paragraph numbers. The claimant asserts:
 - (1) That I made decisions based on documents and information which were not legible or in chronological order.

Whilst I accept that some of the copies in the emailed bundle provided by the respondent were extremely difficult to read, they were not documents which were relevant to the decisions which I am asked to reconsider.

- (2) That only some evidence documents were presented.

I had a bundle comprising 239 pages and have no recollection or note of the claimant suggesting on the day that any relevant documents had been omitted.

The claimant goes on to suggest that the hearing on 19 October was 'likened to a Final Hearing' and that is her evidence which was primarily cross-examined by the Judge'. She also refers to the case of *KweleSiakam v The Co-operative Group Limited* UKEAT/0039/17/LA.

The 'strike-out' hearing in the *Kwele-Siakam* case lasted two days and involved evidence from the claimant which was extensively cross examined by the respondent. In the present case, the respondent made its application on the basis that the claimant's evidence in her witness statement were accepted in full – with no challenge to that evidence. The claimant did not give evidence and although my Judgment records (at paragraph 18) that the claimant spoke for over an hour, the purpose of my questioning was to seek to understand the complaints of discrimination she was bringing, it having already been determined at a previous preliminary hearing that nothing in the claim form or further and better particulars provided by the claimant disclosed anything which supported the contention that her dismissal was an act of race or sex discrimination. The only change since that preliminary hearing was that witness statements had been exchanged, but the claimant's witness statement did not refer to her dismissal at all. Hence I was keen to understand the basis on which the claimant alleged that hers was a discriminatory dismissal and to ensure that there was nothing she might have omitted from her witness statement supporting any such argument.

The claimant also asserted that the preliminary hearing lasted well over the three hour timeframe allotted and in fact lasted over four hours. Although I have not seen the notice of hearing issued to the claimant, I understood this to have been listed as a one day hearing. I understand now that my understanding may have been incorrect. My notes record that the hearing commenced at approximately 10:30 am and continued (with a break) until 2:00 pm at which point I retired to deliberate, reconvening at 3:50 pm to give my judgment.

I would add that I have read the respondent's email of 12 February 2021 which confirms my recollection of the matters set out above.

- (3) That the claimant was a litigant in person on that day.

I acknowledged this in paragraphs 16 and 28 of my judgment.

- (4) That some evidence documents produced by the respondent were incomplete, inaccurate and relevant or necessary to the issues being discussed.

The claimant refers to two different versions of the company department organisation chart, but my judgment would be the same whichever version is correct.

6. The claimant then went on to set out her grounds for her application in 11 numbered paragraphs. I will deal briefly with each.
- 6.1. The claimant points out that some of the witness statements of witnesses to be called by her do make reference to race. Whether or not this is true, the point I was making (as set out in paragraph 11 of my judgment) was that the claimant's witnesses do not state that the claimant told her family and friends that she had been the victim of race or sex discrimination.
- 6.2. The claimant suggests that she made reference to matters of race and sex in support of her dismissal being an act of discrimination. I do not believe that to be the case. For example, the fact that the dismissing manager may have been related to the owner of the respondent's business is not obviously a matter of race or sex.
- 6.3. The claimant suggested that she explained and provided documentary evidence to support her victimisation claim. However, even if the claimant were able to establish that she had made one or more protected acts, she has not suggested that the dismissing manager was in any way influenced by those acts when he decided to dismiss her.
- 6.4. The claimant refers to her being on the receiving end of 'unwarranted/adverse behaviour' by her colleagues and managers. I made my decision on the assumption that this was true, but the claimant did not seek to connect this behaviour to Mr Capp's decision to dismiss her.
- 6.5. The claimant questions how I could make my decision when all documents had yet to be presented to a judge. However, the parties had exchanged witness statements and agreed bundles of documents prior to the preliminary hearing on 19 October.
- 6.6. The claimant asserts that she was 'cross-examined' at length on the day. I repeat that my questioning was to try and understand, in the light of the claim form, further and better particulars and witness statements, the basis on which the claimant argued that her dismissal was an act of discrimination and I note the respondent's response to this assertion.

- 6.7. The claimant questions how I could come to my decision without seeing all of the relevant evidence in support of the claim. As in paragraph 6.5 above, I relied not only on the lack of evidence but on the content of the claimant's witness statements in addition to what she told me on 19 October and her pleading and further and better particulars.
- 6.8. The claimant suggests that the respondent could not prove that a grievance had been raised by one of its employees. I was not aware that this was a disputed fact, but the claimant does not state how this might lead to a finding of discrimination.
- 6.9. Similarly the claimant asserts that there is no corroboration in support of the respondent's contention that an incident took place between Mr Halpin and the claimant on 31 May. I dealt with this point in my judgment at paragraph 19.3 of my judgment. My understanding is that the claimant believes that this incident took place on 2 June and not on 31 May but the claimant has not suggested that the date is relevant to the claimant's claim that her dismissal was an act of discrimination.
- 6.10. The claimant points out that some of the respondent's witness statements are unsigned and/or 'messy'. I do not consider that this has any bearing on the strength of the claimant's case which I was considering on the basis that factual disputes would be decided in the claimant's favour (i.e. putting her claim at its highest). I do acknowledge that there is a dispute of fact regarding whether the incident with Mr Halpin took place on 31 May or 2 June but as the incident did not, even on the claimant's case, relate to sex or race, that dispute is not relevant to the strength of the claimant's complaints of discrimination.
- 6.11. The claimant refers to suffering from a disability. Although I had not seen any evidence that she is suffering from a disability (at least as defined in the Equality Act), I took into account that she has been ill for some time.

Employment Judge Finlay

Date: 25 February 2021

Sent to the parties on:

03 March 2021

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For the Tribunal Office

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