



THE EMPLOYMENT TRIBUNALS

Claimants

- (1) Ms S Feng
- (2) Ms N Holland

v

Respondents

- (1) National Westminster Bank PLC
- (2) Ms M Tang
- (3) Ms A Hammond

Heard at: London Central

On: 21 January 2021

Before: Employment Judge Glennie

Representation:

Claimants: (1) In person
(2) Represented by Ms Feng

Respondents: Ms T Barsam (Counsel)

JUDGMENT ON PRELIMINARY HEARING

1. National Westminster Bank PLC is added as First Respondent to the claims.
2. Coutts & Co and Royal Bank of Scotland Group are discharged as Respondents.
3. The Tribunal does not have jurisdiction to hear the complaints of negligence and/or breach of duty at common law giving rise to personal injury in Schedule 5 of the Claimants' schedule of claims. These complaints are therefore struck out.

REASONS

1. Ms Feng asked for written reasons for my decision to discharge Coutts & Co and Royal Bank of Scotland Group as Respondents, but not in relation to my decision about the negligence / breach of common law duty complaints. These reasons therefore cover the former point only.

2. Claim number 2203113/2019 was brought by Ms Feng with “Coutts (Royal Bank of Scotland)” named as First Respondent. The complaints were of race discrimination. The Response identified National Westminster Bank PLC as the correct First Respondent. Claim number 2204740/2019 was brought by Ms Feng and Ms Holland and named the First Respondent as “Coutts (Royal Bank of Scotland Group)”. The complaints were of victimisation, detriments by reason of protected disclosures, indirect race discrimination, harassment and negligence. Claim number 2205092/2019 was brought by Ms Holland with “Coutts and Co” named as Respondent. The complaints are of unfair dismissal, for a redundancy payment, non-payment of notice pay, and unlawful deduction from wages.
3. There have been 4 applications to amend the claim to add further complaints. At a Preliminary Hearing on 17 January 2020 Employment Judge Snelson made various orders, including for the provision of further information about, and clarification of, the claims. EJ Snelson also extended time for presentation of responses to the second and third claims until further order.
4. EJ Snelson’s orders showed the First and Second Respondents as Coutts & Co and Royal Bank of Scotland Group: this seems to have reflected what was said at the hearing, rather than indicating any decision as to the identity of the Respondents. In paragraph 2(1) of his observations following the written orders, EJ Snelson wrote the following: “Regrettably, the parties seem unable to agree on the identity of the employer of each of the Claimants. Ms Barsam promised to set out the Respondents’ position on that matter in correspondence. There is likely to be a straightforward answer.”
5. The Respondents have set out their position in a letter dated 26 February 2020, stating that the employer of both Claimants is and was National Westminster Bank PLC. In support of this, they attached a copy of Ms Feng’s contract of employment, which identifies the employer as National Westminster Bank PLC. They also attached a copy of Ms Holland’s contract of employment, which identified the employer as Coutts & Co, and a copy of document dated 1 October 2018 which stated that, as from 1 November 2018, Ms Holland would become employed by National Westminster Bank PLC. This change was attributed to simplification of the Group’s entity structure.
6. It may, therefore, have seemed that the straightforward answer anticipated by EJ Snelson had been provided. Ms Feng, who has throughout the proceedings to date spoken and corresponded on her own behalf and on behalf of Ms Holland, sought to add National Westminster Bank PLC as a Respondent, but opposed the removal of Coutts & Co and Royal Bank of Scotland Group.
7. Ms Feng works, and Ms Holland worked, at the Respondents’ branch in the Strand which is known as “Coutts”. Although I have not had any evidence

on the point, I have no doubt that, if asked, each would answer or would have answered that they worked at, or for, "Coutts". It is, however, apparent from the documents referred to above that, at the relevant time, each of them was employed by National Westminster Bank PLC.

8. Ms Barsam stated that the individual Respondents, and all individuals named in the claims, were also employed by National Westminster Bank PLC. I did not insist on formal evidence of this: I accepted what Ms Barsam told me. It was apparent from the document of 1 October 2018 that the change of employing entity applied across the board, and was not limited to Ms Holland. Ms Feng's employment commenced after that date, and was with National Westminster Bank PLC. (I should add that I equally did not insist on formal evidence on another point, which was Ms Holland's inability to take annual leave in the months of November, December and January, which was relevant to the Claimants' application to postpone the full hearing).
9. I therefore concluded that the correct First (i.e. corporate) Respondent was National Westminster Bank PLC, and that Coutts & Co and Royal Bank of Scotland Group had no role in the proceedings. Ms Feng was particularly concerned that Coutts & Co should be retained as a respondent, saying that Ms Holland was employed by Coutts (as she was, initially); that Coutts was their place of work (which it was); and that the case was about what Coutts did to her. I have to disagree with the last point. The case is about the Claimants' employment with National Westminster Bank PLC, and about what employees of that company did. Ms Feng added that, if I acceded to the Respondents' submission, Coutts would "always get out of it". The Employment Rights Act 1996 and the Equality Act 2010 are primarily concerned with complaints against employers. There is nothing in the present case that suggests to me that entities that are not and were not the employers at the relevant time could be liable for the complaints made by the Claimants.
10. Rule 34 of the Rules of Procedure provides, among other things, that the Tribunal may remove from the proceedings any party apparently wrongly included. I find this to be the case as regards Coutts & Co and Royal Bank of Scotland Group. Rule 37 provides for part of a claim to be struck out on grounds which include that it has no reasonable prospect of success. This provides an alternative route to the same outcome, as I find that the complaints against Coutts & Co and Royal Bank of Scotland Group can have no reasonable prospect of success when they were the employers neither of the Claimants, nor of any of the individuals about whose actions they complain.
11. After I had given my decision and oral reasons for it, Ms Feng asked me to record that she considered that my decision was not just unfair, it was not right; that she was saying that Coutts was the employer; and that if the contracts were always signed with National Westminster Bank PLC, then Coutts could never be sued. I said that I would record these additional

observations, and I have done so. I should add that they have not caused me to take any different view.

Employment Judge Glennie

Employment Judge Glennie

Dated:1 February 2021.....

Judgment sent to the parties on:

02/02/2021...

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For the Tribunal Office