



EMPLOYMENT TRIBUNALS

Claimant: Mr Peter Lindsay

Respondent: (1) Walton High School
(2) Sharon Alexander
(3) David Blundell
(4) Gina Thomas

RECORD OF A PRELIMINARY HEARING

Heard at: Bury St Edmunds (by CVP) **On:** 17 February 2021

Before: Employment Judge Cassel (sitting alone)

Appearances

For the Claimant: In person.
For the Respondent: Mrs L McArdle

COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals.

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was by Cloud Video Platform (V). A face to face hearing was not held because it was not practicable during the current pandemic and all issues could be determined in a remote hearing on the papers.

JUDGMENT

The claims of breach of contract and unlawful race discrimination struck out as having no reasonable prospect of success.

RESERVED REASONS

Background

1. The claimant, Mr Peter Lindsay, brings claims of breach of contract and unlawful race discrimination. The protected characteristic that is claimed under s.4 of the Equality Act 2010 is race. The claims are resisted by the four respondents. In the response entered by the respondents the factual background was laid out as follows at paragraphs 7 to 23 and the circumstances were broadly accepted by the claimant.
2. The claimant was employed by MKET as Facilities and Transport Support, based at the School, from 14 January 2020 until 8 June 2020.
3. In March 2020, there was a miscommunication between the claimant and his manager, David Blundell, which led to the claimant painting the School lobby area with the incorrect type of paint.
4. On 18 March 2020, the claimant emailed Gina Thomas, HR Manager, with concerns about his work environment including that gossiping about him following the paint error was causing him stress. Gina Thomas met the claimant to discuss the content of the email. The claimant was unable to give Gina Thomas specific evidence of the gossiping he felt was occurring apart from one comment from one of the contract cleaners. Gina Thomas reassured the claimant that he should not worry about the incident.
5. Gina Thomas later met the claimant's manager, David Blundell, to discuss the matter. David Blundell confirmed that there had been a misunderstanding with the paint but he had advised the claimant not to worry about it.
6. During the early stages of the claimant's employment, the claimant was allocated a series of on-line training to undertake via a system known as Smartlog provided by Safesmart. These courses included training on important topics such as Equality and Diversity Awareness, Health and Safety at Work and Asbestos Awareness.
7. On 20 April 2020, the claimant's manager, David Blundell emailed all members of the Facilities and Transport Team asking them to access their Safesmart account and to complete any outstanding training. The claimant confirmed he had undertaken the training at his 12 week probation review meeting with David Blundell on 28 April 2020.
8. On 6 May 2020, David Blundell asked the claimant to put tape on students' desks in order to assist with social distancing. David Blundell showed the claimant how he wanted this to be done and pointed out an example in another classroom. The claimant asked David Blundell to supervise him whilst he carried out this task but David Blundell declined. The claimant appeared unwilling to carry out the work he was asked to do so David Blundell asked the claimant to discuss his issues in David Blundell's office. During this conversation, David Blundell commented that the claimant's attitude had

changed recently and that other people had noticed this and commented to him about it.

9. The claimant emailed Gina Thomas with complaints about David Blundell's behaviour on 7 May 2020. Gina Thomas advised the claimant that she would be happy to have an informal meeting with both David Blundell and the claimant to talk through the issues. Gina Thomas also gave the claimant a copy of the MKET Grievance Procedure.
10. The claimant informed David Blundell that he was having a test for COVID-19; however, when David Blundell asked the claimant for the result, the claimant refused to disclose this claiming it was confidential. Gina Thomas met the claimant on 18 May 2020 and advised the claimant that he had a responsibility to advise his employer of the outcome of the COVID-19 test since he had made his line manager aware of it. The claimant then confirmed that he had received a negative result.
11. On 19 May 2020, David Blundell asked the claimant if he could work the late-May Bank Holiday (25 May 2020). The claimant advised that he could not as he was away from Sunday evening into Monday. David Blundell was concerned with this response as, at the time, the country was under lockdown and all but essential travel was prohibited.
12. The following day, 20 May 2020, the claimant submitted a written grievance against David Blundell.
13. On 21 May 2020, the claimant informed Gina Thomas that he would be absent from work for seven days.
14. He self-certified this absence but later submitted a fit note from his GP on 28 May 2020 confirming he was not fit for work until 17 June 2020 due to "work stress".
15. On 25 May 2020, the claimant was informed that his grievance would be heard on Monday 1 June 2020. Further to the claimant's request, the plans for the grievance hearing were amended so as to be conducted remotely via Microsoft Teams rather than in person.
16. It is denied that the claimant was denied representation at the grievance hearing without good reason. The claimant asked Gina Thomas to arrange for HR Administrator, Lisa Pilla, to represent him at the grievance hearing. The claimant was advised by Gina Thomas on 27 May 2020 that it was not appropriate for Lisa Pilla, or any other member of the HR team, to represent him at the hearing.
17. The claimant advised that he would not attend the hearing if David Blundell was allowed to attend in circumstances where the claimant was being denied the right to representation. Gina Thomas emailed the claimant on 29 May 2020 confirming that his right to representation was not being denied; Lisa Pilla was unable to support him at the hearing but he was able to bring someone else. If he did want someone else to accompany him he was responsible for arranging

this but the School was willing, on an exceptional basis, to allow him to bring a friend or colleague from outside the School if he wished.

18. On Saturday 30 May 2020, the claimant emailed the School's Executive Principal, Michelle Currie, advising that he would not be attending the hearing on Monday 1 June 2020 due to his right to representation being denied without good reason.
19. The grievance hearing went ahead on 1 June 2020. The matter was heard by the School Principal, Sharon Alexander. The claimant did not attend but the written statements that he provided were considered. Two of the claimant's six complaints were upheld; the rest were dismissed. A letter detailing the grievance outcome and recommendations was sent to the claimant on 4 June 2020.
20. On 22 November 2020 Employment Judge Ord directed that there be a Preliminary Hearing to determine the following issue:

“Whether to strike out the claim because it has no reasonable prospect of success. Whether to order the claimant to pay a deposit (not exceeding £1000) as a condition of continuing to advance any specific allegation or argument in the claim if the Tribunal considers that allegation or argument has little reasonable prospect of success.”

The Hearing Today

21. Mrs McArdle represented the four respondents and the claimant represented himself. I explained to him the duty of the tribunal under the Overriding Objective provided for under rule 2 of the Employment Tribunal's Rules of Procedure to put the parties on an equal footing and among other things to avoid unnecessary formality and flexibility in the proceedings.
22. By way of clarification, he explained that the claim of breach of contract related to the pay to which he was entitled on the termination of his employment with the first respondent. He clarified that he had in fact received his notice pay in full and accepted that there were no further sums outstanding and accepted that there was no reasonable prospect of him receiving any further payment and that he would have no complaint should I order that that claim be dismissed.
23. He also clarified that his claim of race discrimination was solely in respect of his complaint of his right to be accompanied by Ms Lisa Pilla at the grievance hearing. He complained that there was preferential treatment to Mr Blundell by providing him with a representative/work colleague to represent him at the grievance meeting. Ms Thomas and Ms Alexander are both of a White British background. Mr Blundell is of a White Irish background. He is of a Black British background. The respondents, Ms Thomas and Ms Alexander repeatedly refused to allow him to have Lisa Pilla as his representative at the grievance meeting which went ahead without him or a representative present, knowing that he would be at a huge disadvantage to argue his case. Ms Thomas and Ms Alexander have breached Section 4 the school's grievance procedure.

24. I was provided with a bundle of 120 pages of documents, the statement of the fourth respondent, Ms Gina Thomas, and the claimant's witness statement. I was also provided with additional documents from the claimant comprising emails and photo shots of documents including the respondents Code of Conduct.
25. The claimant gave evidence on oath and confirmed the truth of his undated witness statement. He gave further evidence and indicated that he had chosen to be accompanied by an HR administrative member of staff because he believed it would make the process fairer. In evidence today and for the first time he claimed that he had contacted her by email requesting her presence but that he had received no response. He subsequently accepted in cross examination that he had no documentary evidence to show that he had in fact sent the email and accepted that it was possible that he had in fact not sent it but that he believed that she would have been aware of his request indirectly that she attend. He accepted that had she in fact been aware that he had requested her presence and refused to attend and accompany him he would not have considered it to be an unlawful discrimination and would have looked for someone else to accompany him.
26. He stated that the Code of Conduct was relevant and there was nothing in the grievance policy that said that someone from HR could not attend to accompany him. On questioning he further accepted that there was no reference to the head teacher being excluded from accompanying him and accepted that it was obvious that that would be inappropriate.
27. He maintained that notwithstanding the comments made by the HR Department that it was for them to arrange representation and he believed that they could have arranged representation for him. He stated that he felt dissatisfied and he felt that nothing had been done to facilitate a fair procedure to ensure that his grievance was properly dealt with.
28. He was asked whether he accepted that Mr Blundell was similarly not allowed to have Lisa Pilla accompany him and he accepted that although that might have been the case he was not so informed.
29. In response to a question from me he confirmed that there was no other evidence of unlawful race discrimination on which he wished to rely, nothing was said to indicate unlawful discrimination but that he could not understand his treatment in view of his "excellent" standard of work.

Conclusions

30. Under rule 37 of the Employment Tribunal's Rules of Procedure a tribunal may strike out all or part of the claim if it considers that the claim has no reasonable prospect of success.
31. Tribunals are repeatedly told that the power to strike out should be used sparingly and only in circumstances where it is satisfied that such a claim has no reasonable prospect of success. This is particularly so in the case of a

litigant in person. In A v B and anor [2011] ICR59 it was held to be wrong to strike out an employee's claim, in this instance of sex discrimination, on the basis that it had no reasonable prospect of success if there was "more than a fanciful" prospect that the employer would not be able to discharge the reverse burden of proof to show that the employee's treatment was not discriminatory. Similarly, it is wrong and a misdirection in law to approach the claim on the basis that the claimant was unlikely to succeed on the balance of probabilities.

32. In this case, in my judgement, it is appropriate to take an exceptional course in striking out the claim of unlawful discrimination. In a nutshell the claimant complains of unfair treatment in that his choice of an HR Administrator to accompany him to a grievance hearing was refused and was unlawful. He may have considered this to be unfair but there is no evidence whatsoever that this decision was on the grounds of his race nor that his comparator was treated in any other way. In fact, in evidence he accepted that to be the case, and there was a possibility that Ms Pilla did not even know of the request.
33. Looking at the relevant evidence reasonably and sensibly there is nothing more than a belief on the part of the claimant that he was treated unfairly and no evidence to show that it was on the grounds of his protected characteristic. Apart from the failure to have his chosen representative to accompany him, and in evidence the claimant conceded that it was possible she might not have known of this request, there is nothing that points to unlawful discrimination and on which the respondent would have to answer. There are no substantial conflicts of evidence in the salient matters.
34. For these reasons, I order the claims to be struck out as having no reasonable prospects of success.

Employment Judge Cassel

Date: 20 February 2021

Sent to the parties on:

22/03/2021

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For the Tribunal: J Moossavi

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