



EMPLOYMENT TRIBUNALS

BETWEEN
AND

Claimant
Ms T Beaton

Respondent
(1) Secretary of
State for Justice
(2) Hays Specialist
Recruitment
Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL ON A PRELIMINARY HEARING (RESERVED JUDGMENT)

HELD AT Birmingham ON 23 February 2021

EMPLOYMENT JUDGE GASKELL

Representation

For the Claimant:

In Person

For the Respondent (1):

Mr C Khan (Counsel)

(2):

Mr J Bryan (Counsel)

JUDGMENT

- 1 The claimant's claim for direct race discrimination is dismissed upon being withdrawn by the claimant.
- 2 The claimant's claim for other payments/unlawful deduction from wages is dismissed upon being withdrawn by the claimant.
- 3 The respondents' applications for the claims to be struck-out as having no reasonable prospect of success or, in the alternative for the payment of a deposit are refused.
- 4 The case will be further considered at a Closed Preliminary Hearing (by telephone) on **18 June 2021** at 10am with a time allocation of 2 hours/

REASONS

1 By a claim form presented to the tribunal on 7 March 2020, the claimant brings claims against the two respondents for automatic unfair dismissal for having made a protected disclosure; protected disclosure detriment; race discrimination; and other payments.

2 There have been three attempts by Employment Judges to obtain clarification of the claims: firstly, at a Preliminary Hearing held by telephone before Employment Judge Woffenden on 13 August 2020; then a Case

Management Order made by Employment Judge Harding on 23 October 2026; and finally, a further Order made by Employment Judge Cookson at a telephone Preliminary Hearing on 27 October 2020. It was Employment Judge Cookson who listed today's hearing to determine: -

- (a) Whether any of the claimant's claims should be struck out as having no reasonable prospect of success.
- (b) In the alternative, whether as a condition of continuing with any of the claims, the claimant should be ordered to pay a deposit as her claim has little reasonable prospect of success.
- (c) And finally, whether the claimant requires permission to amend her claim in order to proceed with the claims as currently pleaded, and if so whether such permission should be granted.

3 Before dealing with the problems which presented themselves today it will be helpful for me to set out the progress which has so far been made in understanding the claims: -

- (a) It is now common ground that the claimant was, no material time an employee, of either respondent; she was a worker engaged by the 2nd respondent, an employment agency, and placed with the 1st respondent to work as an Operational Support Grade at HM Prison Brinsford. The claimant was placed at HMP Brinson from 20 May 2019 until 6 December 2019 when the assignment was terminated. As the claimant wasn't not an employee she clearly cannot bring a claim for unfair dismissal (automatic or otherwise), accordingly, at the Hearing before Judge Cookson, the claimant withdrew the unfair dismissal claim and that has been dismissed.
- (b) Both respondents accept that their relationship with the claimant brings them within the scope for the purposes of the protected disclosure detriment claim.
- (c) So far as the race discrimination claim is concerned, the claimant is a White British woman - she does not claim to have been discriminated against on the basis of her own race. Her complaint is that she was present when racially discriminatory comments were made about other individuals which she found offensive and which made her feel uncomfortable. On this basis, she claims that she suffered harassment relating to race. The harassment included threats and, on one occasion, physical attack. Further, it is her case that when she complained of these things she suffered detriments which were acts of victimisation.
- (d) The "other payments" referred to in the claim form have mutated in subsequent iterations of the claimant's pleading into a claim for "unlawful deduction from wages". However, the claimant the claimant explained at today's Hearing that this is a reference to shifts which had been arranged and which were cancelled. She does not claim that she has been left unpaid for any shifts actually worked; and further, she acknowledges that within her contractual arrangement with the 2nd respondent, sometimes

shifts will be cancelled even at short notice. She claims that these cancellations were detriments: either because of her protected disclosures; or because of her protected acts. I have explained to the claimant that, in these circumstances, she is not purporting to bring an unlawful deductions claim - but the losses arising from the cancellation of those shifts might be matters which form part of her remedy claim in the event that her detriment and/or victimisation claims succeed.

4 Accordingly, at today's Hearing, the claimant has withdrawn her claim for direct race discrimination and other payments/unlawful deduction from wages. Those claims will be dismissed.

5 This then, leaves claims against both respondents for protected disclosure detriment; racial harassment; and victimisation.

6 There have now been three iterations of the claimant's case: -

(a) The first is in the ET1. The claimant largely uses general terms such as "harassment" and "bullying" but without providing the detail of what she claims actually happened. This lack of detail prompted Employment Judge Woffenden, on 13 August 2020, to make a Case Management Order in the following terms: -

"By 10 September 2010, the claimant will set out in writing to the respondents and the tribunal the following information:

A) the date of each act complained of;

***B) in relation to each such act the gist of what was said or done; and
C) by whom; and***

D) whether the act is alleged to be either harassment related to race or a detriment under section 27 Equality Act 2010 or a detriment under section 47B ERA or, if none of them, what type of prohibited conduct under Chapter 2 Equality Act 2010 it is alleged to be."

(b) In purported compliance with this Case Management Order, the claimant produced a long narrative document which appears at pages 63 – 72 of today's Hearing Bundle. This does contain a long list of events; but it does not make clear whether the claimant is complaining about each and every event as an act of harassment or detriment. For example, there is an incident which she describes as follows: -

"Friday night, waited several minutes to be allowed in z1 O'Brien and Andrea in gate, was left in p1/p2 for several minutes, had to bang glass and shout to be let in"

There can be many and various reasons why an individual may be held up at security (it even happens to judges sometimes when accessing Courts

and Hearing Centres). In this pleading, the claimant gives no indication as to if, or why, she associates the incident referred to above with harassment, victimisation or detriment. Further, the incident is undated. This is but one example of why this second iteration of the claim is unsatisfactory. This prompted a letter from the tribunal written on the direction of employment Judge Harding making plain to the claimant what was required from her at the forthcoming preliminary hearing the relevant part of the letter reads as follows: -

“At the case management hearing the claimant is required to provide a concise list of all her claims and complaints in the following format:

- ***Date.***
- ***What was said / done.***
- ***By whom.***
- ***Type of discrimination alleged.***

The claimant must be ready to carry out that exercise.”

- (c) No further progress in this regard had been achieved by the time of the Preliminary Hearing before Employment Judge Cookson on 27 October 2020. The Learned Judge on that occasion made a further Case Management Order attempting to draw the relevant details from the claimant. The relevant parts of that Order are set out below:-

“Detriment (Employment Rights Act 1996 sections 47B and 48)

42.1 The claimant must specify BRIEFLY what things the first and second respondent did which she says were detriments because she had made

a protected disclosure and for each detriment:

42.1.1 What date did it happen?

42.1.2 Who did or said the relevant thing?

42.1.3 At the final hearing (if the claims have been allowed to proceed) the tribunal will determine if those things happened and if so were they done on the ground that the claimant had made a protected disclosure.

44. Harassment related to race (Equality Act 2010 section 26)

44.1 The claimant must briefly state what was done or said by staff of The first or second respondent which she believes was harassment related to race. The claimant must provide the information set out below for each separate allegation of harassment.

44.2 Very briefly in relation to the acts of harassment only

44.2.1 What was said or done

44.2.2 When

44.2.3 By whom

45. Victimisation (Equality Act 2010 section 27)

45.1 The claimant must briefly state what was done or said by staff of the first or second respondent which she believes was victimisation because she had done a protected act. The claimant must provide the information set out below for each separate allegation of victimisation.

45.2 Very briefly in relation to the acts of victimisation only

45.2.1 What was said or done

45.2.2 When

45.2.3 By whom”

- (d) In purported compliance with this Order, the claimant produced a table which appears at pages 99 - 112 in today's Hearing Bundle. This is a much closer approximation to the type of documentation which the tribunal is asking for. But there are still major problems which I summarise as follows: -
- (i) Inexplicably, the claimant has dated most of the incidents with the same date - namely 16 December 2019 which was the date of termination of the contract. This makes it impossible to cross reference table with the particulars provided in the second iteration of her claim referred to in Paragraph 6(b) above.
 - (ii) Some of the allegations are simply too vague: *“breakdown of trust”*; *“detrimental treatment”*; *“unwanted conduct”*; *“violating my dignity”*; *“shunned, cast into the out group and ridiculed”*; *“exclusion from normal workplace conversational activities”*; *“being bullied or harassed”*; *“being demoted or having some of your duties taken away”*. What the claimant appears not to understand is that what is required is a simple straightforward schedule of what actually happened. It is for the tribunal to decide whether these incidents amounted to bullying or exclusion or demotion or violation of dignity. What the claimant must do is set out the facts with sufficient information to enable the respondent's legal representatives to properly investigate.

7 Understandably, the respondents are exasperated by this as they are no nearer now than they were 12 months ago to understanding the claims against them. It is on this basis that, save with one or two exceptions, they now ask the

tribunal to strike out the claimant's claims as having no reasonable prospects of success.

8 I have considered the situation most carefully; and I fully sympathise with the respondents' position. But my judgement is that the interests of justice require the claimant to be given one last opportunity to draw this information together into an intelligible document. She must do this by reference only to the facts set out in the second iteration (pp 63 – 72); but do it in a form similar to that in the third iteration (pp 99 – 112). On no account must the claimant now seek to introduce any new allegations. I am satisfied that the claimant's third iteration adequately sets out the protected disclosures upon which she relies - there is no need for any further information regarding them. Clearly, it is a matter for the tribunal to decide in due course whether the communications upon which she relies did in fact amount to disclosures qualifying for protection. The further particularisation therefore relates to the acts of detriment; harassment; and victimisation.

9 I have set out in the Case Management Order below the information which is needed and how it should be presented. The claimant should use a table with columns using the headings I have set out; she must identify as best she can the date of any incident upon which she relies; she must indicate which or both of the respondents she holds responsible; she must describe the incident (it is not acceptable to roll up several incidents in one - each separate incident must be described); she must identify the person who she claims harassed her or victimised her or impose detriment upon her; if she does not know an individual's name she should identify the individual in some other way - but it is not acceptable simply to say: "*co-workers*" or "*HR Team*" this is too vague. Finally, the claimant should indicate the basis upon which she believes that the incident was related to her disclosures; or her protected act; or was harassment related to race.

10 The claimant would be well advised to give this some careful thought. She should concentrate on those matters which she believes she can clearly establish as being linked to her disclosures; or protected act or to race. Most workers in most workplaces from time to time experience behaviour and conduct by others which they find unacceptable - but it is a mistake for the claimant to proceed on the basis that everything she found unacceptable was related to harassment; victimisation; or detriment. She should be careful not to appear to be including in her claims matters which frankly cannot be attributed to such - this will undermine the credibility of her case.

11 At this stage I am not ordering the respondents to file any further response to the claims. But, assuming that the claimant now complies, what I do require the respondents to do is to identify those matters in the fourth iteration of the claim which: -

- (a) They say require the permission of the tribunal to amend the original claim if they are to proceed and why?
- (b) Whether an application for such permission would be opposed and why?
- (c) Which matters are said to be out of time and why?

12 Once both parties have complied, the case can be further considered at another Closed Preliminary Hearing at which the tribunal may give listing directions for the Final Hearing and/or may list a further Open Preliminary Hearing to consider an amendment application; time issues; strike-out and deposit.

Employment Judge Gaskell
7 April 2021