



EMPLOYMENT TRIBUNALS

Claimant: Mr H Mohamud

Respondent: GI Group Recruitment

Heard at: Nottingham

On: Wednesday 31 March 2021

Before: Employment Judge Blackwell (sitting alone)

Appearances

For the Claimant: In person

For the Respondent: Mr Brain, non-practising Solicitor
Relied on written submissions

JUDGMENT

The Employment Tribunal Judge gave judgment as follows:-

1. The Claimant's application to amend so as to include an allegation of victimisation pursuant to section 27 of the Equality Act is permitted as set out in order 1 below.
2. The claim of harassment against Ladislav Halcin is struck out as having no reasonable prospect of success.
3. In respect of the Claimant's contentions relating to victimisation again as set out in order 1 I consider that those contentions have little reasonable prospect of success. The Claimant is ordered to pay a deposit of £10.00 not later than 21 days from the date of this Order as a condition of being permitted to take part in the proceedings relating to that matter. I have taken into account information as to the Claimant's ability to comply with the Order in determining the amount of the deposit.

REASONS

Introduction

1. Mr Mohamud was present and represented himself and I took evidence from him on oath. Mr Brain relied upon written submissions. I am grateful to Mr Brain for those detailed and cogent submissions and also for the preparation of today's bundle; references are to page numbers in that bundle. The purpose of today's hearing was set out in paragraph 30 of Employment Judge Adkinson's Orders sent to the parties on 7 October 2020:-

"30. The purpose of the hearing is to

30.1. Determine the claimant's application to amend;

30.2. Determine if any parts of the claimant's claims should be struck out because it has no real prospect of success;

30.3. Determine the claimant should pay a deposit as a condition of pursuing an allegation because the allegation has little reasonable prospect of success;

30.4. Give further directions as appropriate."

2. Firstly, I should note that the Claimant's claim of unfair dismissal was dismissed on 3 March 2020 and his complaints of disability discrimination were also dismissed but on 7 October 2020.

The application to amend

3. By an e-mail dated 31 January 2020 at page 23 Mr Mohamud made application to amend to include a claim of victimisation. On the next day he provided an additional statement setting out the basis of that application to amend. Employment Judge Adkinson noted in respect of the application to amend that whether the identified employees were employees of the Respondent or not would change the issues in the case. Mr Mohamud accepts that Ladislav Halcin is an employee of Boots. It is common ground that Jake and Inese are employees of the Respondents.

4. Employment Judge Adkinson went on as follows:

"Subject to argument my provisional view is that the timing of the application and the current state of the proceedings weigh in the Claimant's favour. It is also apparent that the Claimant intended to bring a victimisation based on what he wrote in his ET1. However these are new facts not set out in his claim and must have been known to him when he sent his claim in. I am not sure his explanation is enough: That weighs in the Respondent's favour."

5. The application is to be determined in accordance with the well known principles in **Selkent**. Firstly, I needed to take into account the nature of the amendment as Employment Judge Adkinson points out victimisation is referred to in the ET1 but the supporting facts are not pleaded. There is also reference to a protected act.

6. The second matter is the applicability of time limits. The matters complained of all took place within a 48 hour span between 5, 6 and 7 November 2019. The claim form was served on 31 December 2019 and Mr Mohamud's application to amend was completed by the e-mail of 1 February 2020. Thus the claims of victimisation were within time at the point that the application was made.

7. The third matter is the timing and manner of the application. Mr Mohamud is a litigant in person and he did not take advice until after he had made application for the amendment.

8. I need also to take into account the balance of hardship. If I do not permit the application Mr Mohamud cannot proceed to bring his claim. On the other hand the Respondents will have to defend the claim but it is clear from the evidence contained in today's bundle that there is a significant amount of contemporaneous evidence both from employees of GI and from employees of Boots and it is clear that a fair trial can take place.

9. On balance therefore I propose to permit Mr Mohamud to amend his claim as is set out in the Orders attached to this decision.

The claim of harassment

10. That was set out in Employment Judge Adkinson's summary as at paragraph 8 and 8.1 and 8.2:-

"8. The alleged harassment is (in very brief summary) as follows:

8.1 In front of 20 colleagues on 7 November 2019, he yelled at the claimant after a briefing and yanked the claimant by the shoulder saying, "Why are you not at your workstation?"

8.2 The claimant believes it is related to race because Ladislav referred the report of the alleged racist incident on 6 November 2019."

11. Mr Mohamud accepts that Ladislav Halcin has been shown to be an employee of Boots. Therefore such a claim cannot succeed against GI and the claim is therefore struck out.

Strike out/deposit

12. Rule 37(1)(a) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013:-

"(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds:-

(a) that it is scandalous or vexatious or has no reasonable prospect of success."

13. Rule 39 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013:-

“(1) Where at a preliminary hearing (under rule 53) the Tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of success, it may make an order requiring a party (“the paying party”) to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument.

(2) The Tribunal shall make reasonable enquiries into the paying party’s ability to pay the deposit and have regard to any such information when deciding the amount of the deposit.

(3) The Tribunal’s reasons for making the deposit order shall be provided with the order and the paying party must be notified about the potential consequences of the order.

(4) If the paying party fails to pay the deposit by the date specified the specific allegation or argument to which the deposit order relates shall be struck out. Where a response is struck out, the consequences shall be as if no response had been presented, as set out in rule 21.

(5) If the Tribunal at any stage following the making of a deposit order decides the specific allegation or argument against the paying party for substantially the reasons given in the deposit order:-

(a) the paying party shall be treated as having acted unreasonably in pursuing that specific allegation or argument for the purpose of rule 76, unless the contrary is shown; and

**(b) the deposit shall be paid to the other party (or, if there is more than one, to such other party or parties as the Tribunal orders),
otherwise the deposit shall be refunded.**

(6) If a deposit has been paid to a party under paragraph (5)(b) and a costs or preparation time order has been made against the paying party in favour of the party who received the deposit, the amount of the deposit shall count towards the settlement of that order.”

14. In that regard given that the protected act is making a joint complaint about the racist behaviour of a Mr Salt who was an employee neither of GI nor Boots, together with an employee called Mr Mussa Hayder also not an employee of either Boots or GI. Given also that it appears that neither Jake nor Inese will accept that they were aware of the protected act having taken place and as Mr Brain rightly submits in his written submissions proving the causal connection will be difficult.

15. I cannot say that the claim has no reasonable prospect of success but I am of the view that it has little reasonable prospect of success. Mr Mohamud is presently unemployed. I have therefore set the deposit at £10.00.

16. I would urge Mr Mohamud to take particular note of rule 39(5) set out above.

Employment Judge Blackwell

Date: 08 April 2021

JUDGMENT SENT TO THE PARTIES ON

.....

.....
FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/877568/t426-eng.pdf