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EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mr G Attipoe

and

Respondent

TSYS Managed Services
EMEA Limited

Held by CVP on 8 April 2021

Representation

Claimant:

In Person

Respondent:

Mr G Khan, Counsel

Employment Judge Kurrein

Statement on behalf of the Senior President of Tribunals

This has been a remote hearing that has not objected to by the parties. A face to face hearing was not held because it was not practicable and all issues could be determined in a CVP hearing. The documents that I was referred to are in a bundle of 93 pages, the contents of which I have recorded.

JUDGMENT

- 1 The Claimant's claims are struck out for:-
 - 1.1 failure to comply with the Unless Order made on 18 September 2020; and
 - 1.2 because they have no reasonable prospect of success.

REASONS

- 1 The case history is as follows:-
 - 1.1 The Claimant was employed from 23 April 2018 until he was summarily dismissed on 3 July 2019.
 - 1.2 He was given a six month written warning in respect of security issues on 19 October 2018.
 - 1.3 He was given a final written warning on 23 April 2019 for being asleep at work.
 - 1.4 On 17 May 2019 an investigation meeting took place concerning allegations that the Claimant had breached security by taking a mobile phone into a forbidden place and for being absent without leave on shift for over 2 hours.
 - 1.5 A disciplinary meeting took place on 3 July 2019 and the Claimant was summarily dismissed.

1.6 On 10 July 2019 the Claimant presented a claim alleging public interest disclosure detriment/dismissal, race discrimination and unfair dismissal. He unsuccessfully sought interim relief.

1.7 On 9 August 2019 the Respondent presented its response to the tribunal and made a request for further and better particulars of the Claimant's claim both generally, in that response, and by a separate document in the following terms:-

"Please provide full particulars as will be relied upon at the hearing of this matter of:

1. Of response to question 8.1 of the Claimant's ET1 Form: "Racial discrimination and Health and safety concern at the work place that was complained about leading to unfair dismissal and witch-hunting in the work place"

Request

1.1 Please confirm each and every:

1.1.1 complaint made of racial discrimination; and

1.1.2 Health and Safety complaint made by the Claimant to the Respondent;

1.2 In respect of each complaint referred to in 1.1 above, please confirm

1.2.1 The person to whom the complaint was made;

1.2.2 The date on which the complaint was made;

1.2.3 The form of the complaint and whether this was verbally or in writing. If in writing, please provide a copy of the document relied upon; and

1.2.5 Details of any witnesses to the act of which you complained.

2. Of response to question 8.2 of the Claimant's ET1 Form: "Last year a racially abusive comments was made by a manager against me and my work colleagues that blacks and immigrant were lazy. This issue was reported to HR but nothing was done ,and since then the manager pick up on us to make working condition difficult and discriminatory for us".

Request:

2.1 Please confirm:

2.1.1 The manager who allegedly made the racist comment;

2.1.2 The date on which the comments was allegedly made;

2.1.3 To which other colleagues the comments were allegedly directed;

2.1.4 Details of any witnesses to the comments allegedly made;

2.1.5 To whom in the Respondent's HR department was the matter reported;

2.1.6 On what date was the matter raised to the Respondent's HR department;

2.1.7 Was the matter raised with the Respondent's HR department in writing or verbally. If in writing, please provide a copy of the document relied upon;

2.1.8 Please identify each and every act relied upon as an example of when the Manager in question has made the working environment difficult and discriminatory for you.

3. Of response to question 8.2 of the Claimant's ET1 Form: "when I complained about extreme cold working condition and ask that something to be done about it".

Request

3.1 Please confirm the date on which you complained and to whom you complained about extreme cold working conditions;

3.2 Please confirm whether you complained verbally or in writing, please provide a copy of the document relied upon.

4. Of response to question 8.2 of the Claimant's ET1 Form: "When I also raised concern race relation and racism and reported the issue to HR on racial abuse and bullying at the work place..."

Request

4.1 To whom at the Respondent did you raise concerns about race relations and racism;

4.2 On what date was the raised;

4.3 Was the matter raised in writing or verbally. If in writing, please provide a copy of the document relied upon;

5. Of response to question 8.2 of the Claimant's ET1 Form: "Three work colleagues were also suspended for raising concerns about racial abuse and unequal treatment and were unfairly targeted also because of their race and discriminated against"

Request

5.1 Please confirm the name of each work colleague referred to;

5.2 Please confirm to whom each person to in 5.1 above raised concerns about racial abuse and unequal treatment, when those concerns raised and whether such concerns were raised verbally or in writing.

6. Please confirm whether the Claimant pursues a complaint of automatic unfair dismissal on the basis of having made a protected disclosure.

7. If the Claimant does claim automatic unfair dismissal on the basis of having made a protected disclosure, please confirm exactly the protected disclosures that the Claimant is relying upon, including without limitation:

(a) When it was made;

(b) To whom;

(c) How it amounts to a "qualifying disclosure" within section 43B of the Employment Rights Act 1996 including, but not limited to, how the Claimant asserts such disclosures made in the public's interest; and

(d) How the Claimant alleges that he had a reasonable belief that it tended to show one or more of the list in sections 43B (1) (a) to (f) and which of that list the Claimant is relying upon."

1.8 The Claimant did not respond to those requests. On 27 August 2019 the Respondent sought an Order requiring the Claimant to provide answers to those requests. The Claimant did not respond to that application. On 8 November 2019 EJ Smail made an Order requiring the Claimant to provide those particulars within 14 days. At the same time, EJ Smail told the Claimant what steps he might take to appeal against the refusal of his interim relief application. The Claimant replied to that information and I therefore accept that the Claimant must have received the Order that he provide the further and better particulars.

1.9 The Claimant failed to comply with the Order that he provide particulars and following a further application by the Respondent, to which the Claimant replied, EJ Smail made an "Unless" Order sent to the parties on 9 January 2020. That Order was sent to the Claimant's address on file.

1.10 The Claimant failed to comply with that Order and his case was struck out. He was informed of this by a letter of 28 February 2020. He sought reconsideration on the basis that he had not received that Order.

1.11 Despite his knowledge of the Order since November 2019, the Claimant took no steps to comply with the Order for further particulars prior to a reconsideration hearing that took place by telephone on 18 September 2020. At that hearing EJ Smail revoked his strikeout of the claim and made another Unless Order, the time for compliance being 2 October 2020. On 18 September 2020 the Respondent, in compliance with EJ Smail's Order, sent the Claimant a copy of the request it had originally made over a year before. The Claimant acknowledged receipt of that request the same day.

1.12 On 25 September 2020 the Claimant purported to comply with that Order by emailing his Reply in a document in the following form to the Respondent and the tribunal:-

Request for Further Particulars Response

(1.1.1) Complaints made of racial discrimination:

(1.1.2) Health and safety complaint made by Claimants to Respondent in respect of 1.1 and 1.1.2 above.

Below are answers,

(1.2.1). The complaints were made verbally by calling HR first and also in writing to Ria Bishops.

(1.2.2). On the 19th May 2019 and response got on 4th June.

(1.2.3). The complaint was verbal over the phone with HR and officially in written form

(1.2.5). Work colleagues are witness some of who were dismiss on similar ground, Samuel Appiah, Albert Bonsu (copy his suspension letter evidence), and Stephen.

Request 2.(2.1.1,2.1.2,2.1.3,.....2.1.8)

2.1.1. The name of the manager made the racist comments is Yvonne Gray

2.1.2. Comments were made around July 2018.

2.1.3. Myself Claimant and Patience.

2.1.4. Roz young and Patience Baffuor, Maryann work colleagues.

2.1.5. Ria Bishops head of HR department.

2.1.6. Around July 2018.

2.1.7. This was reported to HR by my colleague patience and when she also showed an act discrimination against my team, I reported the incident to the operations Manager Tim White

2.1.8. Debbie and Laura started picking up on me and pulled over without notification or prior for which I was told they are only doing as they been instructed by Tim White.

CCVTV footage I was shown when am on my break clearly demonstrating I was been witch hunted because other colleagues were there also using their phones. I reported the issue to HR raising concerns of discrimination and the been targeted refer to email correspondence on case file page 74 and page 87

Request 3 (3.1 & 3.2)

(3.1).HR Ria Bishop, and Tim White, with email evidence/copy printed from work on February 27th 2019 , 01 March 2019 and April

(3.2). It was verbal and officially in writing

Request 4 (4.1, 4.2, 4.3)

(4.1). It was with Ria Bishop Head of HR, Tim White operations manager

(4.2). Verbally in April and officially on 19 May 2019

(4.3). Copies of email reply in which the Hr manager responded claiming I have removed evidence of racism allegation will be relied upon.

Request 5 (5.1& 5.2)

(5.1) Stephen, Patience, Brenda, Maryann, Albert Bonsu and Samuel Appiah,

(5.2) Brenda raised concern of racism and resigned and some were suspended on baseless allegations.

Request (6&7 a, b c)

(6). Yes, I did pursue automatic fair dismissal and sort interim relief from the Tribunal.

(7). Health and safety concerns, lack of proper heating for which Respondent acknowledge with email evidence and contact made with facilities.

(a)It was made on 04 June, 2019 to HR Ria Bishop and Tim White the operations manager

(b) Ria Bishop and Tim White

(c) Health and safety concerns and risk to injury such as employees getting hypothermia flu, pneumonia and high exposure to those with asthma especially minorities.

1.13 On 9 October 2020 the Respondent made an application that the Claimant's claims be struck out. The Claimant responded the same day to object to that application.

2 It is that application which has come before me today. It is the Respondent's case that the claim should be struck out

2.1 For failure to comply with the unless Order ;

2.2 Because the Claimants claims have no reasonable prospect of success

2.3 Alternatively, the Claimant should be required to pay a deposit as a condition of being permitted to continue his claims.

3 I read the documents in the bundle provided by the Respondent to both the Claimant and me, and the Respondent skeleton argument which the Claimant had also received. I also had regard to the decision of the Court of Appeal in Ahir v. British Airways plc Case No: A2-2016-1846. I heard the Claimant's oral submissions. I make the following further findings and reach my conclusions.

4 It is an essential requirement of the interests of justice that a party being accused of serious wrongdoing, indeed any wrongdoing, knows the case it has to meet.

5 A Claimant in the employment tribunal is required to set out the essential facts of their case in the claim form: Chandhok v. Tirkey [2015] IRLR 195.

6 I take the view that the allegations in the Claimant's claim form barely satisfied the requirement that they should be capable of being sensibly responded to, far less inform the Respondent of the case it had to meet. The Respondent, quite properly, took this point in its response and sent a clear and detailed request for further and better particulars to the Claimant on 9 August 2019.

- 7 There can be no doubt that the Claimant has known of the nature and extent of the Respondent's request since at least November 2019. It appears to me that the Claimant's failure to answer that request voluntarily from then until his purported compliance with an Unless Order over one year later amounts to a fundamental breach of the overriding objective.
- 8 I am also satisfied that his purported compliance with the unless Order falls far short of what might reasonably be expected even from a litigant in person. In his oral submissions to me the Claimant said that he had done the best he could as a layman, and that the answers to all the questions could be discerned from the evidence contained in the copy emails that had accompanied his Reply.
- 9 In my judgement the Claimant's Reply to the request for further and better particulars was wholly inadequate. It did not inform the Respondent of the case it had to meet even in general terms, far less the specifics that would be required in order for justice to be done. For that reason alone, I have concluded that the Claimant has failed to comply with the Unless Order made by EJ Smal on 18 September 2020 and his case must be struck out.
- 10 I also accepted the Respondent's submission that the Claimant's Reply had only identified two matters that might form the basis of claims to the tribunal. These were as follows
- 10.1 The Claimant's case that he asserted race discrimination in an e-mail on 19 May 2019;
- 10.2 His case that he made a protected disclosure to Ria Bishop and Tim White on 4 June 2019.
- 11 However, there are fundamental concerns regarding the viability of claims based on those assertions.
- 11.1 The Claimant's case concerning the email on the 19 May 2019 appears to allege victimisation on the basis that having raised an issue of discrimination he was discriminated against by being investigated, and dismissed, for gross misconduct.
- 11.2 The fatal flaw to such a claim is that the conduct for which the Claimant was investigated and dismissed took place in April 2019 and the Claimant attended an investigation meeting concerning those matters on 17 May 2015, before he performed the alleged protected act on which he relies.
- 11.3 I take the view such a claim has no reasonable prospect of success, particularly bearing in mind that the evidence of the alleged misconduct was a CCTV recording, and the thoroughness with which this matter was dealt with both at the dismissal hearing and on appeal. The case against the Claimant of gross misconduct was overwhelming.
- 11.4 The Claimant's claim alleging public interest disclosure is, in my view, wholly implausible. Not least :-
- 11.4.1 it appears unlikely, to say the least, that the Claimant would be complaining of inadequate heating in early summer.
- 11.4.2 On a previous occasion when the Claimant had raised issues about heating remedial steps had been taken. Investigations took place and he was given a personal radiator.
- 11.4.3 It is remote in the extreme that the Claimant will be able to adduce the evidence required to raise even a prima facie case of PID dismissal bearing in mind the overwhelming evidence of his misconduct, much of which was admitted.

- 12 I recognise that I should exercise great caution before striking out a case of this nature. That has been made clear in any number of cases. However, the interests of justice require me to exercise my discretion and strike out a case where the claims have no reasonable prospect of success.
- 13 I am satisfied that this is such a case. In reality the Claimant has been relying on nothing but bare assertion since he presented his claim. His claim must be struck out.

Employment Judge Kurrein
08 : 04 : 2021

Sent to the parties and
entered in the Register on 04 : 05 : 2021

...THY.....
For the Tribunal

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