



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondents

AND

Ms T Campbell

A-Coiley (1)
T Murphy (2)
A O'Lone (3)
S Awosunle (4)
G Moncar (5)

REASONS

The Claimant requested on 31st January 2021 written reasons for the judgment delivered orally on 19th January 2021 and promulgated on 29th January 2021. The reasons are as follows.

1. This is an application by the Fourth Respondent, Mr S Awosunle, to strike out the claim against him under S37 of the Tribunal Rules on the basis that the claim has no reasonable prospect of success, or in the alternative that a deposit order should be made.
2. I was provided with a bundle of documents including the grounds of complaint and the Fourth Respondent's grounds of resistance. I heard submissions from the Fourth Respondent and the Claimant. I was also provided with a skeleton argument by the Claimant.
3. The chronology of this case so far is that the Claimant who remains employed by Lewisham & Greenwich NHS Trust, entered into early conciliation with the Fourth Respondent filing the Early Conciliation Notice on 23rd January 2020. The ACAS Early Conciliation Certificate was issued on 27th January 2020. The ET1 was filed on 3/2/20 bringing complaints against all of the respondents listed above, of race related harassment and victimisation and religion/belief related harassment and victimisation.
4. The claim form does not set out clearly what unwanted conduct amounting to harassment or what acts of victimisation the Fourth Respondent is alleged to have committed each related to race or religion/belief.

5. The Claimant's complaints against the Fourth Respondent appear to be complaints of a lack of service, or poor service, allegedly provided to her as a member by the Royal College of Nursing, an independent trade union (RCN). The Fourth Respondent was employed at the relevant time by the RCN as a Senior Regional Officer. The Claimant was paying over £6 per month membership fee to the RCN for legal representation; she was very dissatisfied with the service she received. I asked Ms Campbell why she had not proceeded against the RCN, as a body, for poor service, rather than an individual supervisor in the RCN. She replied *"No I didn't, I should have; I am not familiar with the legal system. Mr Awosunle was the one that kept on saying that they were going to help me."*

The Respondent identified six allegations from the detailed lengthy grounds of complaint relating to Mr Awosunle. The Claimant in her skeleton argument acknowledges that she has not set out the particulars against the Fourth Respondent particularly well. She asked for time to do so, now that she has instructed a solicitor and she says that she will immediately make an application to amend the claim. There is no application to amend currently before the Tribunal to include further information about the claims against the Fourth Respondent. The Claimant has known of today's strike out application by the Fourth Respondent since 11th November 2020 and she has had the benefit of legal representation since 18th November 2020. The Claimant's skeleton argument drafted by her solicitor focuses on the legal arguments and the legal tests for not striking out a discrimination complaint except in the most exceptional of cases. The Claimant has had two months up until today to make an application to amend; to provide the further information about her claims against the Fourth Respondent; and to provide a draft amended claim, but she has not done so.

6. Whilst the context of the Claimant's complaints against the Fourth Respondent are that the RCN provided her with a poor representation which did not meet her expectations, the individual complaints against the Fourth Respondent appear to be that by his omissions and/or lack of action at various times in the course of his duties as Senior Regional Officer from 2017 - 2019, he or his team members, aided others, presumably her work colleagues and her employer, to discriminate against the Claimant.

7. Turning to the complaints identified in the claim form against the fourth Respondent, the Claimant alleges she received a lack of assistance in 2017 by the RCN, and the Fourth Respondent in particular, when she asked the RCN to advocate on her behalf to secure the Claimant's matron to provide the Claimant with an appraisal. The Claimant complained that the RCN had failed to keep her updated with progress of the case.

8. The Fourth Respondent submitted that could not be the case, as he had had no personal contact with the Claimant until August 2018. The Claimant stated she has evidence that in 2017 one of the Fourth Respondent's team members, allocated to representing the Claimant, had discussed her case with the Fourth Respondent. There is no evidence of that before me and the Claimant's response appears to support the Fourth Respondent's contention that he had no personal contact with the Claimant in 2017. The bare allegation that the Fourth Respondent's service or the RCN's service to the Claimant in September 2017 was found wanting, does not amount to harassment or victimisation by the Fourth Respondent on the basis of her race or religion/belief. This complaint is unsubstantiated. There is no cause of action against the Fourth Respondent.

9. The second allegation is that based on email trails received in 2018, it appears that discussions in 2017 were held between the RCN, the NHS Trust HR Department, and line managers of the Claimant's employer from which the Claimant was excluded. There is no mention of the Fourth Respondent's role in this allegation. He was not the Claimant's representative but the line manager/supervisor of an allocated representative. He did not engage with the Claimant's employer personally in any such discussions in 2017 or in 2018. The allegation clearly is unsubstantiated. There is no cause of action against the Fourth Respondent.

10. April 2019 the Claimant contacted the RCN for assistance when harassment allegations were raised by work colleagues against her. The Fourth Respondent personally spoke to the Claimant and reassured her she would get help "this time" from the RCN. The Claimant stated in the grounds of complaint that she was weary of the support dispensed by the RCN since 2017 and so she turned to an independent democratic union to support her in May 2019. This allegation discloses no cause of action.

11. After filing a grievance letter with her employer in June 2019 with the support of ACAS, in July 2019 the C contacted the Fourth Respondent to request support in her grievance against her employer. The Fourth Respondent arranged a meeting with the Claimant at RCN headquarters in July 2019 and he allocated one of his team, Ms Young to assist the claimant. Ms Young met the Claimant and confirmed the RCN would conduct an investigation and requested the Claimant to send documents to her. The Claimant sent the documents but alleges that Ms Young's request was only to find out what information she had "on them". This allegation discloses no cause of action against the Fourth Respondent.

12. The Claimant alleged that in July and August 2019 Ms Young also failed to assist her in filing a complaint with the ICO and she was left to do it herself. The Claimant provided Ms Young with a copy of her complaint to the ICO. She alleges that the Fourth Respondent, who was aware that she was being

harassed and victimised since 2017 at work, had not taken appropriate steps to manage and support the Claimant in her clinical practice. This allegation is vague and discloses no ascertainable cause of action under the Equality Act 2010 against the Fourth Respondent. It is noted in any event, as submitted by the Fourth Respondent, that the RCN does not have expertise to support members making complaints to ICO office.

13. The Claimant alleges that Ms Young '*left her stranded*', abandoned, in September 2019, when the Claimant needed guidance to respond to counterclaims and needed mental support. The Claimant had provided documentation relating to the counterclaims to the RCN but had received no updates from Ms Young and believed she "*was being tricked*" by the RCN. She therefore instructed independent solicitors. This allegation has no disclosed cause of action in respect of the Fourth Respondent.

14. The Claimant complains generally that the RCN has failed to support her and protect her rights within the workplace and did not "*escalate [her] concerns to ACAS and the ICO in July 2019*". She complains that the "Fourth Respondent and Ms Young failed to support her and she was not given the mental support she needed by them and the RCN throughout this process. This allegation is too vague to identify discriminatory conduct by the Fourth Respondent.

15. The Claimant contacted the Fourth Respondent in November 2019 after filing a report to ACAS. The Fourth Respondent allegedly "*tried to force [the Claimant] to hand over the ACAS report to him*" but the Claimant refused, because of the RCN's alleged previous treatment of her. This complaint discloses no cause of action under the Equality Act 2010. It is then not clear whether the Claimant relies on this refusal to provide the ACAS report as the reason for alleged victimisation.

16. The Claimant complains that the Fourth Respondent has demonstrated gross negligence and failure to take reasonable steps to support the Claimant since 2017. The Claimant claims that she felt betrayed by a system that promised to protect her, she felt abandoned to a hostile working environment and was manipulated and gas lighted by false promises from the RCN.

17. Essentially this is a complaint about the RCN's professional service provided to one of its members. The grounds of complaint are vague and disclose no ascertainable acts of even potential racial discrimination by an employee of the RCN. The complaint is that the Fourth Respondent either personally, or through one of the team members he managed, failed to assist the Claimant in her complaints against her employer and her defence against counterclaims brought by her work colleagues against her. It is clear that the Fourth Respondent did engage with the Claimant but when she was dissatisfied with the service the RCN provided, she turned to ACAS, another independent trade union, and in September 2019 she appointed a solicitor.

18. I bear in mind the guidance of **Ezsias v North Glamorgan NHS Trust [2007] ICR 1126** that is rare for a discrimination complaint to be struck out. At paragraph 29 it is stated:

“It seems to me that on any basis there is a crucial core of disputed facts in this case that is not susceptible to determination otherwise than by hearing and evaluating the evidence. It was an error of law for the employment tribunal to decide otherwise. In essence that is what Elias J held. I do not consider that he put an unwarranted gloss on the words “no reasonable prospect of success”. It would only be in an exceptional case that an application to an employment tribunal will be struck out as having no reasonable prospect of success when the central facts are in dispute. An example might be where the facts sought to be established by the claimant were totally and inexplicably inconsistent with the undisputed contemporaneous documentation. The present case does not approach that level.”

22. In **Mechkarov v Citibank NA [2016] ICR 1121**, the principles established by leading authorities on strike out of a discrimination complaint at a preliminary hearing were summarised – a discrimination complaint should only be struck out in the clearest of cases. If there are any core issues of fact that turn to any extent on oral evidence, they should be decided after hearing oral evidence. At a preliminary hearing the claimant’s case is to be taken at its highest. If it is conclusively disproved by, or is totally and inexplicably inconsistent with, undisputed contemporaneous documents it may be struck out. The Tribunal is not to conduct a ‘mini trial’.

23. With regard to the chronology of events in this case, between 2017 – 2019 it is documented and, it seems to me, the chronology of events and incidents is not likely to be in dispute. What is disputed is the Claimant’s opinion that the RCN gave her poor service and that the Fourth Respondent was personally responsible for the RCN’s service, being allegedly personally motivated to provide a poor service because of the Claimant’s protected characteristics. The Claimant has not raised any cause of action against Fourth Respondent under the Equality Act 2010 on which he, or the Claimant could give oral evidence in relation to the Claimant’s protected characteristics. It is not enough to make a bare assertion of race discrimination. There must be something more than that. There is no hint in the pleadings of anything done or omitted to be done by the Fourth Respondent which suggests his conduct was consciously or subconsciously motivated by the Claimant’s race or religion/belief even when taking the Claimant’s case at its highest.

24. The Fourth Respondent, in performing his duties, is not responsible for the conduct of the other respondents who are the Claimant’s employer and work

colleagues. I find that the Claimant's grounds of complaint contain no triable cause of action in respect of the Fourth Respondent.

25. On the basis of the pleadings before me, the Claimant's case against the Fourth Respondent has no reasonable prospect of success. This is one of those clearest of cases. It is misconceived. I conclude that the Claimant has brought a complaint of alleged poor professional service by the RCN in the guise of a discrimination complaint under the Equality Act 2010 in an attempt to bring it within the jurisdiction of the Employment Tribunal. Lack of service offered to RCN members is a matter to be addressed through the RCN's own complaints procedures.

27. Furthermore I also take into account the claim or a substantial part of the claim against the Fourth Respondent goes back to 2017 and 2018 and is therefore out of time. Anything before 24th October 2019 is potentially out of time. Given the lack of any substance in the claim form against the Fourth Respondent, the Claimant has a considerable hurdle to overcome in establishing that the 'conduct' by the Fourth Respondent was a course of conduct extending over a period dating back to 2017, in order to bring her complaints in time. On the pleaded case she is highly unlikely to be able to overcome such a hurdle.

28. The application to strike out is granted. The claims against the Fourth Respondent are dismissed and he is removed from the proceedings.

Employment Judge Richardson
Signed on 15th February 2021