



EMPLOYMENT TRIBUNALS

Claimant: Ms Nicola Poole

Respondent: Travelopia Holdings Ltd (1)
Mr Leon Brett (2)

By CVP 28 April 2021

Before: Employment Judge Martin

Representation
Claimant: Mr John - Counsel
Respondent: Mr Bidnell - Counsel

RESERVED JUDGMENT

The judgment of the Tribunal is that the Respondents application to strikeout the Claimant's claims or alternative for a deposit to be ordered is dismissed.

REASONS

1. This hearing was listed to consider whether the Claimant's claims had been brought in time and whether they had no reasonable prospect of success for the purposes of a strike out application or little reasonable prospect of success for the purposes of a deposit order application.
2. I apologise for the delay in producing this judgment, this was due to the pressures on the Tribunal system and the difficulty in finding time to consider this matter and produce this judgment.
3. The Claimant has muscular dystrophy and as a result can only work from home. Her claim is of disability discrimination and as pleaded goes back to 2016. She was employed by the Respondent from 19 December 2005 until she was dismissed by reason of redundancy on 4 May 2020.

4. The Claimant entered a period of ACAS early conciliation between 28 July 2020 and 28 August 2020. Her claim was presented to the Tribunal on 7 September 2020.
5. The Claimant’s claim comprises claims under different sections of the Equality Act 2010:
 - s13 - direct discrimination
 - s15 - discrimination arising from disability
 - s26 - harassment
 - s19 – indirect discrimination and
 - s20 – reasonable adjustments
6. I heard oral submissions from both parties. No evidence was given. I had before me an agreed electronic bundle of documents comprising 64 pages.
7. The Claimant’s particulars of claim is in narrative form and does not set out clearly the various heads of claim. As a first step therefore, I extracted into tabular form the different heads of claims and details of the acts that were said to be discriminatory for each of them, and identified the dates attached to those acts to gain a clearer understanding of the different claims and the chronology of them.

s13 direct discrimination		
Date		POC (claims arising)
2016 onwards	Overlooked for training or cross training	1
	Not invited to team meetings	2
1 May 2018	Started new position with increased responsibilities without being told the new salary	12
23 July 2018	Being told the salary was unchanged in the new role despite the role having more responsibility	14
November 2018 and April 2020	Being assigned long haul work which is more complex than short haul work and an increase in work due to Covid-19 pandemic	16
30 April 2020	Failure to mention sunset role in the second and final consultation meeting	18
30 April 2020	No written confirmation of dismissal following final consultation meeting	19
30 April 2020	Dismissal	20

S15 discrimination arising		
Date		POC (claims arising)
2016 onwards	Overlooked for training or cross training	1
	Failure to invite to team meetings	2
	Failure to provide 1:1 meetings by video link to make C feel part of the team	3
2017 onwards	Failure to make home visits showing lack of support	4
6 April 2018	Failure to provide support when the Claimant expressed her lack of confidence in applying for roles	7
12 April 2018	Telling the Claimant that home working was not an option	9

S19 indirect discrimination		
Date		POC (claims arising)
2016 onwards	Failure to provide training	1
	Failure to invite to team meetings	2
12 April 2018	Telling the Claimant that home working was not an option	9

S20 reasonable adjustments		
Date		POC (claims arising)
27 March 2018	Failure to follow up on offer that her interview could be a regular interview and not competency based	6
6 April 2018	Requiring the Claimant to apply for a role rather than offering it to her based on an objective assessment of her suitability	8
May – July 2018	Subjecting the Claimant to high volumes of work without consideration to the effect of this on her in the context of her disability	11
November 2018 and	Being assigned long haul work which is more complex than short haul work and increase in	16

April 2020	work due to Covid-19 pandemic	
16 April 2020	The Respondent being abrupt and rude and failing to acknowledge the pressure the Claimant was under after the Claimant raised this with them	17

S26 harassment		
Date		POC (claims arising)
2016 onwards	Overlooked for training or cross training	1
	Failure to provide 1:1 meetings by video link to make C feel part of the team	2
2017 onwards	Failure to make home visits showing lack of support	4
27 March 2018	No offer to rectify lack of cross training when raised by the Claimant	5
27 March 2018	Failure to follow up on offer that interview could be a regular interview and not competency based	6
6 April 2018	Failure to provide the Claimant with support when she expressed her lack of confidence in applying for roles	7
6 April 2018	Requiring the Claimant to apply for a role rather than offering it to her based on an objective assessment of her suitability	8
12 April 2018	Telling the Claimant that home working was not an option	9
27 April 2018	Telling the Claimant that “unless you put yourself forward for a role I have got no alternative other than to serve your notice of redundancy on Monday”	10
May – July 2018	Subjecting the Claimant to high volumes of work without consideration to the effect of this on her in the context of her disability	11
1 May 2018	Claimant started new position with increased responsibilities without being told the new salary	12
23 July 2018	No sympathy or empathy when the Claimant expressed concerns about the high volumes of	13

	work and stated she felt under pressure to resign	
23 July 2018	Being told the salary was unchanged in the new role despite the role having more responsibility	14
23 July 2018	After requesting reduced hours because of her disability being told "I am unclear how removing the Sunday will reduce the long days"	15
November 2018 and April 2020	Being assigned long haul work which is more complex than short haul work and increase in work due to Covid-19 pandemic	16
16 April 2020	The Respondent being abrupt and rude and failing to acknowledge the pressure the Claimant was under after the Claimant raised this with them	17
30 April 2020	Failure to mention sunset role in the second and final consultation meeting	18
30 April 2020	No written confirmation of dismissal following final consultation meeting	19
30 April 2020	Dismissal	20

S27 victimisation		
Date		POC (claims arising)
2 June 2020	Protected Act – letter Claimant’s solicitor to the Respondent	21
12 June 2020	Respondent alleging misuse of confidential information and requiring her to sign and return certain undertakings and threatening legal proceedings	21

8. I have considered the papers and the parties’ submissions in some detail.
9. In summary, the Claimant submitted that the Claimant’s claims should not be struck out and should proceed to a full merits hearing. It is the Claimant’s position that all different types of discrimination can be put together to form a continuing act. For example, it was submitted that whilst it is accepted that the claim for indirect discrimination was out of time (the only act was in October 2018) that this was part of a continuing act (i.e. the other strands of discrimination) and is therefore in time.
10. The Claimant submitted that she breaks down her claim into acts she sees as acts which are not explained. She says in essence that the paragraph 6.1 issues, extend throughout her employment. She says she is disabled, she was not offered training in same way as other staff, she was not invited to meetings in same way and in the redundancy process was not treated fairly in relation to a potential new role. That pressure was applied to her by increasing the burden of work on her. Ultimately

resulting in a further redundancy process and her dismissal in 2020. Her case is that she was put into a situation which was different to other people in that she was not trained in same way and not incorporated into the business. It was submitted that the proper approach was to hear all these facts to form a view of what sort of mindset or motivation the Respondent had which was inherent in s13 or 15 claims. The Claimant is saying that there must be some reason for this action and its discriminatory. It is for the Tribunal to consider this and the allegations in light of findings of the evidence as a whole.

11. The Claimant was not arguing the strength of the claims, saying that is for the Tribunal to find and not for her to say. Where matters are pleaded in this way and allegations cover a length of time which go directly to her role and ability to take other roles, then it is difficult to escape a finding that if there was a discriminatory mindset in April 2020 when she was dismissed, it arose in the course of the various conduct she has faced from which started in 2016. The Claimant can not say who has the controlling mindset. She says an explanation for how she was treated is the discriminatory mindset.
12. In summary the Respondent submitted that the s13 claim has problems with the pleadings in that it puts everything together and it is difficult to tell how each aspect of the case is put and how they link together. It is in the interests of justice for the Respondent to know what it is accused of. The Respondent went through examples of this saying that the pleadings fail to give anything to link events as a continuing series of events, in that there are no common people, circumstances or themes to the claims.
13. The Respondent criticised the pleadings, saying they were a casually and lazily pleaded set of facts which had not been formulated into proper question separated under each claim. There were no common names, from 2016 to April 2020. It was submitted that this was one of those rare cases where the claim could be described as a list of every single thing employee decided she was not happy about at end of employment, and that this was not an appropriate way to bring a claim. Time limits are strict and need to become more strict. A day would need to be explained as would a succession of days with each day having an explanation and here we have years of delay.
14. It was submitted that the onus on the Claimant to show a prima facie case and onus on her in her pleadings to bring a claim T can consider.
15. It was submitted that the s 15 and s 13 claims were significantly out of time as were the claims under s 20/21 and s 19.
16. The list of issues was criticised as the claims were not set out clearly saying when the unfavourable treatment occurred with a list of questions and if it had it would be clear that them most recent thing pleaded was on 12 April 2018 which is 2 years and 5 days out of time.
17. There was no issue with the presentation of the s27 victimisation complaint, which is in time and relates to 12 June 2020.
18. All of the PCP have problems as they do not appear to be practices criteria or policy applied generally. They appear to be specific to the Claimant and have not been reformulated in list of issues.
19. In relation to the claim for harassment it was submitted that the Claimant has not tried to clarify which matters are harassment and was poorly drafted. The Respondent did not have an issue with time in relation to the claim for unfair dismissal.

My conclusions

20. My starting point is that in discrimination cases I should be slow to strike out a claim on the basis it has no reasonable prospect of success. It is normally necessary to hear all the evidence to be able to consider the merits of a discrimination claim and the appellate tribunals and courts have cautioned against this approach save in the most exceptional cases. Here, I have considered the responsible prospect of success and whether in the circumstances it would be appropriate to strike out the claim or to order a deposit as a precondition of continuing all or part of the claims.
21. Similarly in relation to continuing acts of discrimination and whether a claim is in time, the appellate tribunal and courts have also cautioned against this being decided without having heard the evidence save in the most exceptional cases.
22. Part of my consideration was whether there were other ways to deal with a paucity of information as the Respondent suggests the Claimant's pleading and list of issues contain. I have considered whether a request for additional information would be the appropriate way forward. I am mindful of the Respondent's submission that this claim spans many years and that it may be difficult for it to respond to all parts of the claim as a result. I am also aware of the lack of detail in the claim as currently pleaded and that this makes it difficult at present, for the Respondent to know exactly the claim made against it.
23. Turning first to the application to strike out parts of the Claimant's claim on the basis that they are out of time, I am mindful that in order to establish a continuing act the Claimant must prove that first, the incidents are linked to each other, and second, that they are evidence of a 'continuing discriminatory state of affairs'. If she can establish this it will constitute 'an act extending over a period'.
24. Many of the acts which the Claimant says are discriminatory traverse different types of discrimination as can be seen from the tables above. The Respondent's submission is that one can not put together the various types of discrimination to make one continuing act. The Respondent says this is wrong in law but did not provide case law to back this up.
25. I agree with the Respondent's submission that the Claimant's claim is poorly drafted. The claim does not with sufficient specificity set out the acts complained of, who was involved and when they occurred. I note that the Claimant was legally represented when presenting her claim. This presents me with a difficulty in that I can not say for certain that the acts complained of are not linked such as to provide evidence of a continuing discriminatory state of affairs. Without hearing the evidence, I am not minded to strike out any of the Claimant's claims on the basis that they are out of time. I considered whether the claim of indirect discrimination in 2018 is out of time and I considered whether to strike out this part of the Claimant's claim on the basis that indirect discrimination is very different to other types of discrimination as it involves the application of a provision criterion or practice that applies to everyone but has a more substantial impact on those who are disabled in this case. This is a very different mindset to a claim for direct discrimination, or for example reasonable adjustments. I have chosen not to determine this, as the same matters arise in respect of the other heads of claim. This is something that can be argued at the final hearing.
26. I then considered whether to strike out the Claimant's claim on the basis it has no reasonable prospect of success. To strike out a claim at this stage in the proceedings is a draconian measure only to be taken in the most exceptional cases. I note the ambit of the Claimant's submissions which is essentially that the Claimant considers that she has been treated badly, and that one explanation is that she was

disabled. The Claimant must be able to show more than her disability and that acts have occurred which she is unhappy with.

27. To strike out I need to be convinced that there was no other way of dealing with the claim which is proportionate and in the interests of justice. Whilst I agree with many points made by the Respondent in terms of the pleadings and the scope of the claim, I do not feel that this is one of those exceptional cases that warrants a strike out at this stage in the proceedings. With appropriate case management and the willingness of the parties who are both legally represented, I consider this matter can be dealt by way of additional information being requested by the Respondent with the Respondent being at liberty to renew its application at a later date.
28. However, as discussed at the end of the hearing, I would like the Claimant to give thought to the scope and ambit of her claim. As I understand it, the Claimant's medical condition means that she can no longer speak and will need to type her answers which I understand to be a slow process. I have listed a ground rules hearing to discuss this.
29. Accordingly, I have dismissed the Respondent's application to strike out the Claimant's claim on the basis it is out of time or on the basis that it has no reasonable prospect of success and dismissed the Respondent's application for a deposit order on the basis it has little reasonable prospect of success. I have made separate case management orders.

Employment Judge Martin

Date: 21 July 2021