



EMPLOYMENT TRIBUNALS

Claimant: Mrs Habib
Respondent: Leightons Limited

By CVP
On: 6 August 2021

Before: Employment Judge Martin

Representation
Claimant: In person
Respondent: Mr Robson - Solicitor

RESERVED JUDGMENT PRELIMINARY HEARING

The judgment of the Tribunal is that the allegations relating to comments made in 2015 are out of time and that the allegations relating to the grievance appeal have no reasonable prospect of success and are dismissed.

REASONS

1. This hearing was listed to consider whether the Claimant's claims had been brought in time and whether it had little reasonable prospect of success for the purposes of a deposit order application. The Claimant brought claims of race discrimination and discrimination on the grounds of religion and belief together with other monetary claims. The Claimants claim for religion and belief was struck out by the Tribunal on the basis that it was out of time. The Claimant is Egyptian and Christian.
2. The Respondent provided a skeleton argument and I had before me a bundle of documents comprising 218 pages, a witness statement from the Claimant,

- comprising 7 pages, a list of authorities from the Respondent and other sundry documents from the Claimant.
3. Both parties presented their submissions to me, and I gave the Claimant as much time as she wanted without interruption for her to put forward her submissions.
 4. The relevant dates are that the Claimant commenced ACAS early conciliation on 3 November 2019 and the early conciliation certificate was provided on 20 of December 2019. The Claimants claim was presented to the Tribunal on 15 January 2020. This claim plus the additional information which was allowed as an amendment comprise the Claimants pleadings. The Respondent denied all allegations contained in the Claimants claim form.
 5. The Claimant is still employed by the Respondent. In the papers the Claimants provided details about current matters between her and her employer which are that there is a disciplinary hearing to be held later in the month. I explained to the Claimant, I was unable to consider matters which post dated the claim form and the amended claim which had been accepted by the Tribunal. I advised the Claimant that she should not send any of the current disciplinary matters to the Tribunal.
 6. it is the Respondent's case is that any allegations that predate 7 August 2019 are out of time. The Claimant's allegations in her claim form go back as far as 2013. The substantive issues in the amendment to the original claim, which the Claimant has alleged as acts of discrimination are that she did not receive her annual pay rise by way of her April 2020 pay slip, although the money was later received by her by way of back dated adjustment; the Claimant did not receive a bonus for January to March 2020 which was due in May 2020 and the appeal against the Claimants grievance. These are recorded in the case management order of Employment Judge Nash of 3 February 2021.
 7. The Claimant brought a grievance against the Respondent in June 2018 however the documents relating to this were not before me. The grievance documents in the bundle relate to a grievance made by the Claimant in 2019, the appeal outcome to this grievance was given by letter dated 13 November 2019. It is accepted that matters relating to the appeal outcome are in time.
 8. The issue is how the Claimant has pleaded her case (i.e. the claim form and additional information provided, whether there are continuing acts of discrimination and whether the grievance outcome in November 2019 can be linked to the previous allegations thus making the previous allegations a continuing act and in time by virtue of the appeal. The Respondent submitted that the latest act of discrimination cited against individuals was on 5 July 2019 when the Claimant complains she was sent marketing materials by the Respondent (which the Respondent says were sent to everyone) and that this amounted to harassment. The Claimant has not been at work since 25 January 2019 and remains on full pay.
 9. The Claimant said that she did not bring a claim earlier as she wanted to keep her job and wanted to see what the outcome of the appeal was going to be. She entered early conciliation with ACAS shortly after the appeal outcome.

10. I am mindful that the Claimant initially brought two types of discrimination claims namely race, and religion and belief. The latter is no longer a live claim having been struck out previously.
11. The Claimant's documentation (not her claim form) is very detailed and very long. She has gone into minute detail about what she complains about. After I heard from the parties I adjourned and read each page of the bundle carefully. What struck me most when reading it was the lack of any meaningful reference in the grievances or other documents to race discrimination.
12. In her claim form she refers to allegedly racially offensive comments made by Ms Morgan which were not addressed in the appeal outcome letter of 13 November 2019. There was no date given for the alleged comment. In her grievance appeal letter, she refers only to allegedly racially offensive comments made by Ms Towalska but again does not attribute a date to this in her claim form. However, her witness statement produced for this hearing puts this comment as being made in 2015. There is reference in the appeal hearing of Mr Madams referring to Egypt after he visited the country. Again, in her witness statement she dates this as happening sometime in 2015.
13. The thrust of the Claimant's grievance and her grievance appeal is about discrimination on the protected characteristic of religion and belief. There is only one mention of race discrimination by Ms Towalska. Given that religion and belief is no longer a live claim I have discounted all parts of these documents relating to religion and belief.
14. For the Claimant's complaints prior to 7 August 2019 to be considered to have been presented in time, the grievance outcome must be part of the continuous act. I have considered the one part of the grievance and the grievance appeal that relates to race discrimination. This is in relation to allegedly discriminatory comments made to the Claimant.
15. The Claimant's claim form states:

"I received outcome of appeal dated 13/11/19 denying high risk of sharing reception password which access patient finance, no evidence provided. Also it included misleading photos to protect Jason Madams. Also it did deny any historical bullying incident especially on 25/01/19. I provided medical evidence to investigate. it ignored any evidence investigations that I requested from employer as to support my case. It has avoided investigations with Gill Harvey who commented racial offensive comments following by "it is not right to keep you and get rid of Jason Madams". It ignored being targeted and accusation of unwillingness to help which was subject to disciplinary. It ignored coworker refusing the support even when quoting by other member of staff that coworker wouldn't remit to do their work . I was targeted and lots of action and words still echoing. EX: "you have done the complaint it is your fault". Outcome of appeal result has ignored any comments RE: grievance investigation or any misleading comments or incomplete investigation." (sic)
16. The claim form also states: ***"Shirley Mason quoted racial and religious offensive words but employer didn't take any action as per outcome of appeal letter dated 13 /11/ 19."***
17. I must take the Claimant's claim plus the allowed amendments as her pleaded case. These documents set out her case and from this the Respondent can

prepare its defence to the claims brought against it. In her witness statement the Claimant said that:

“Conclusion

I disagree with the outcome of my grievance – originally submitted on 18th June 2018 and I disagree with the conclusions of the appeal I submitted, which was concluded on 13th November 2019. The investigations relating to bullying and harassment on were only partially completed. I found the conclusions of the investigations to be full of contradictions. In my grievance hearing I was asked “What could you have done better to avoid all of this?” and I felt this summed up the attitude of Leightons in refusing to acknowledge how unbearable the staff at Leightons Addlestone made things for me. They blamed me”.

18. The Claimant does not refer to the outcome being discriminatory, or that they way the grievance process was undertaken was tainted by discrimination. The Claimant clearly does not agree with the outcome, that does not mean it is an act of discrimination.
19. The one matter that I considered carefully is the reference to Ms Towalska in the grievance appeal letter which was not directly addressed by the appeal outcome. I note that this is not part of the Claimant’s pleaded claim and I am mindful that I must not stray outside the remit of her claim as pleaded.
20. Chandhok v Tirkey [\[2015\] IRLR 195](#), [\[2015\] ICR 527](#). Held that:

“The claim, as set out in the ET1, is not something just to set the ball rolling, as an initial document necessary to comply with time limits but which is otherwise free to be augmented by whatever the parties choose to add or subtract merely on their say so. Instead, it serves not only a useful but a necessary function. It sets out the essential case. It is that to which a respondent is required to respond. A respondent is not required to answer a witness statement, nor a document, but the claims made—meaning, under the Employment Tribunals Rules of Procedure 2013 ([SI 2013/1237](#)), the claim as set out in the ET1’.

21. The pleaded allegation is in relation to Ms Morgan. However, this allegation was not raised during the grievance or the grievance appeal process.
22. At the end of the Claimant’s submissions, I asked what she understood by the terms discrimination, victimisation and indirect discrimination, which were terms she used during her submissions. Her response was:
- a. ***Discrimination – to be fairly treated, treated not same as other members of staff, way I was not treated equally or fairly as the other members of staff re race.***
 - b. ***Victimisation – targeted, victim for any error I was blamed for***
 - c. ***Indirect discrimination – direct discrimination when in workplace indirect is correspondence and when I am not at work***

I explained the legal definitions to the Claimant. The Claimant’s witness statement, however, does define victimisation in accordance with the correct legal test.

23. I have read the grievance appeal outcome letter very carefully and can see that it does not address the comments allegedly made by Ms Towalska. I accept that the Respondent did not consider this aspect of the Claimant’s appeal.

However, this is not part of the Claimant's pleaded case. Ms Towalska is not mentioned in her pleadings.

24. Given that I am only considering discrimination on the protected characteristic of race, I find that the two allegations made regarding Ms Morgan and Ms Towalska related to 2015. While I accept that the grievance appeal does not deal with the issue of Ms Towalska's alleged comments, this was four years after the comments made in 2015. I do not find that there is a continuing act of race discrimination. The time between the 2015 comments and the appeal is too long and there are different people involved. I find therefore that the allegations of race discrimination in relation to the 2015 comments are out of time. No good reason has been put forward by the Claimant to allow me to exercise my discretion and extend time for presentation of these claims. The Claimant's explanation that she wanted to keep her job is not accepted as a valid reason for not presenting her claim in relation to the 2015 claims in time.
25. In relation to the appeal, it is accepted that this is in time. I have considered above the basis of the pleading set against the appeal the Claimant made. The allegation in the pleading is in relation to Ms Mason the allegation in the appeal is in relation to Ms Towalska. I therefore find that the Claimant's claim as pleaded has no reasonable prospect of success and is dismissed.

Employment Judge Martin
1 September 2021