



EMPLOYMENT TRIBUNALS

Claimant: Mr D Quarm
Respondent: The Commissioner of Police of the Metropolis
Heard at: East London Hearing Centre
On: 8th October 2021
Before: Employment Judge Reid

Representation

Claimant: in person
Respondent: Mr De Silva QC, Counsel (instructed by Capsticks)

JUDGMENT

1. All the Claimant's claims covered by this claim number (claims under s13 Equality Act 2010 (direct race discrimination), s27 Equality Act 2010 (victimisation) and s47B Employment Rights Act 1996 (protected disclosures – detriment)) are struck out under Rule 37(1)(a) (no reasonable prospects of success) of the Tribunal Rules 2013.
2. The Tribunal does not find that all or any of the Claimants' three claims were totally without merit (for the purposes of any application for a civil restraint order)

REASONS

Background and applications

1. The Respondent made an application on 6th April 2021 for a strike out of this claim under Rule 37(1)(a) of the Tribunal Rules 2013 (on the basis of no reasonable prospect of success) or in the alternative for a deposit order under Rule 39, based on the contents of its response dated 6th April 2021.

2. The Claimant made a counter-application by letter dated 28th April 2021.
3. I was provided with an agreed electronic bundle for today's hearing plus a skeleton argument from both parties plus a bundle of authorities from each.
4. The Claimant also provided a written statement about his means, relevant to the deposit order application plus a list of issues and agenda.
5. I heard oral submissions from Mr De Silva on behalf of the Respondent and from the Claimant.

Relevant law

Strike out

6. Rule 37(1)(a) of the Tribunal Rules 2013 provides that a Tribunal may strike out all or part of a claim or response on the grounds that it has no reasonable prospect of success (the other grounds in Rule 37(1) were not relied on by the Respondent).
7. The task of the Tribunal is to consider with care the pleaded case and whether on a fair assessment it or any part of it passed the threshold of presenting a reasonably arguable case, taking it at its highest.
8. In general a discrimination claim should not be struck out except in the very clearest circumstances, because they are fact sensitive and it is a matter of public interest that such claims are heard (*Anyanwu v South Bank Students' Union [2001] IRLR 305*).
9. A whistleblowing claim should not usually be struck out where the central facts are in dispute (*Ezsias v North Glamorgan NHS Trust [2007] ICR 1126*).
10. I was referred by both parties to the propositions in *Cox v Adecco EAT 339/2019* including as to taking the Claimant's claim at its highest; further, the Claimant is a litigant in person so it is also important to analyse what his claim in fact is, in the light of the pleadings and other documents and to consider whether in fact what may be required is an amendment instead.
11. In considering the Respondent's application and the Claimant's counter-application I have taken into account that this claim must be viewed on its own merits and that consideration should not be clouded by the fact that the Claimant has brought multiple other claims against the Respondent; the test under Rule 37(1)(a) should not be applied through the prism of the other claims in assessing what are the reasonable prospects of this particular claim ie just because he has brought and not succeeded on other claims does not mean that this particular claim has no reasonable prospects of success.

The Claimant's claim presented on 22nd February 2021

12. The Claimant's claim relates to a single detriment, the claimed delay by the Respondent in dealing with an application for a Deed of Postponement which the Claimant needed to obtain from the Respondent in order to enter into a new mortgage with Barclays; the entity who needed to issue the Deed was the Mayor's Office for Policing and Crime (MOPAC) and the Respondent had to liaise with the Mayor's Office to get the Deed signed for the Claimant.
13. In his claim form the Claimant also referred to the Respondent also creating problems by asking for the return of a previous Halifax Deed before the new Barclays one could be issued to him but he confirmed at this hearing that he now understood the sensible rationale for that request (although he had not been aware of that rationale at the time) and does not say in his draft list of issues that that is an additional detriment. There is therefore only one detriment claimed – the delay in providing the Barclays Deed.
14. The Claimant says firstly that the delay was an act of direct race discrimination under s13 the Equality Act 2010 because he is a black African man.
15. He secondly says it was an act of victimisation under 27 Equality Act 2010 on the ground of past protected acts – the Respondent accepts that there were protected acts so it is not in issue that there were such acts.
16. He thirdly says it was a detriment under s47B Employment Rights Act 1996 on the ground of having made protected disclosures – the Respondent took issue with him not identifying what these disclosures were but the Claimant has now provided a list in his skeleton argument (para 18-21) of what he says the relevant protected disclosures were.
17. The Claimant contacted ACAS prior to presenting this claim on 1st February 2021 and presented his claim on 22nd February 2021 – these dates are significant in the context of the detriment claimed in the claim form.
18. After presentation of the claim form the Respondent took further steps to chase the obtaining of the Deed from the Mayor's Office and provided the Claimant's Deed to Barclays solicitors Enact on 18th March 2021.

Findings of fact

The timeline

19. The Claimant in his previous claim (3202563/2020) referred (para 24) to an upcoming need to obtain a new Deed, this time for a Barclays mortgage. He did not give any timescale but did say that if there was undue delay then Barclays might withdraw their offer.

20. On 25th January 2021 (page 70) the Respondent received the first request for the new Deed from Barclays solicitors Enact – it did not refer to any deadline; Enact had been told by the Claimant that the offer expired in March 2021 (page 126) but Enact did not pass that on to the Respondent.
21. The Respondent's solicitors contacted the Claimant on 27th January 2021 to clarify what was needed and to ask if there was a deadline (page 76).
22. The Claimant replied on 27th January 2021 to clarify that a new (second) Deed was required and saying the deadline was 1st February 2021 (page 76) – he had told Enact earlier the deadline was March 2021 but gave a different deadline to the Respondent which did not relate to what he had apparently been told by Barclays was the deadline – it was therefore a deadline he had decided on himself.
23. The Respondent's solicitors responded (page 75) that more time was needed (given the deadline was now only a few days away) and suggested that the Claimant ask Barclays for an extension of at least two weeks to 15th February 2021 ; this was reasonable as the Respondent was going to have to co-ordinate with the Mayor's Office, get the Deed sealed (if necessary) and it was not a document it could just issue itself.
24. The Claimant responded on 29th January 2021 (page 78) to say that Enact would be in touch but not saying anything further about any deadline, whether that was the existing one not having been changed or about any new one he had now agreed with Barclays; he said Enact would be in touch 'in due course' which was inconsistent with a concern about a deadline.
25. On 1st February 2021 Enact contacted the Respondent confirming a new Barclays Deed was required (page 84) and without referring to any deadline; this was the same date that the Claimant contacted ACAS (by now only some 7 days after the Respondent first heard from Enact about issuing the new Deed and some 5 days after the Claimant had clarified a new Deed was required).
26. The Respondent contacted the Mayor's Office on 8th February 2021 to get the Deed signed and chased again on 18th February 2021 (page 92,89).
27. The Claimant presented his claim on 22nd February 2021.
28. Enact provided the Deed to the Respondent again on 23rd February 2021 (page 83) with no reference to a deadline; on 1st March 2021 Enact again made no reference to a deadline (page 87).
29. The Respondent chased the Mayor's office further on 24th and 26th February and 3rd March (pages 89,88).

30. The Respondent obtained the signed Deed from the Mayor's office at a meeting on 15th March 2021, provided it to the Respondent's solicitors on 17th March 2021 (page 117) and it was sent to Enact on 18th March 2021 (page 119).
31. Enact's reply on 18th March 2021 (page 121) was inconsistent with any concern about a deadline simply saying that the completion date would be notified – this in turn was consistent with Enact not being aware of any real missed deadline or any problems with the re-mortgage going ahead – the Claimant had already presented his claim form around 3 weeks previously but even some 3 weeks later Enact was not identifying there was a deadline problem.
32. The Claimant says (ET1 para 24) that the Barclays offer was due to expire on 1st March 2021 but that is not a deadline he had communicated to the Respondent or a deadline Enact was telling the Respondent about – Enact were aware of it as the Claimant had told them but they did not pass it on or alert the Respondent to any problems with the offer possibly being withdrawn; Enact were aware of it but apparently not concerned about it.
33. Further (para 24 ET1) the Claimant only contacted Barclays to ask for an extension on 19th February 2021 around 2 weeks after the Respondent had suggested obtaining one, inconsistent with having been in fact concerned from the beginning of February 2021 that he was going to miss a deadline.

Reasons

34. Taking the above timeline into account the Respondent was not aware of any deadline before the Claimant presented his claim, except the Claimant's own 1st February 2021 one, though it was aware that delays should be avoided; it suggested the Claimant obtain a 2 week extension but the Claimant did not come back to say either way whether he had or he hadn't and it was reasonable for the Respondent not to follow up further as it was for the Claimant to obtain any needed extension (though in fact one was not needed if the deadline was 1st March) and to keep an eye on the deadline, notifying the Respondent as appropriate.
35. The Respondent was responding in reasonable timescales to the Claimant and to Enact.
36. The Claimant appeared to have decided that a claim was in the offing on 1st February 2021 the date of the only deadline he had communicated to the Respondent (even though he knew in his head that the deadline was in fact March 2021 – as he had told Enact this); however he delayed a further two weeks to ask for an extension from Barclays inconsistent with thinking there was already a real problem by 1st February 2021 and that problem possibly involving a new Tribunal claim.
37. 22nd February 2021 when the claim form was presented was around 4 weeks after the Respondent was first contacted by Enact about the new Deed and the Respondent had not been inactive in the interim but had replied to correspondence

from the Claimant and Enact and had referred the Deed to the Mayor's Office on 8th February 2021 chasing it again on 18th February 2021.

38. The factual dispute raised in these applications is the apparent dispute about how much of the charging order the Claimant had already repaid but the actual amount outstanding is not relevant to the Claimant's claim.
39. The Claimant says in his skeleton (para 25) that motive cannot be identified on the papers alone but in order to get to why the claimed detriment occurred, there has to be a detriment in the first place.
40. This is not a case where the core of the claim is disputed facts (Ezias) or turning on facts (Cox).
41. The Claimant does not say in his claim form that he told the Respondent about a 1st March 2021 deadline - in submissions he said in effect that the Respondent should have worked on the basis of its own suggested 2 week extension and dealt with the matter with that in mind but it was reasonable for the Claimant to ask for the extension and to tell the Respondent of deadlines given it was his mortgage application – the Claimant was apparently aware from at least 14th January 2021 of a March 2021 deadline but kept it to himself (apart from telling Enact who did not pass it on or behave in a way to alert the Respondent to any deadline/timing issues).
42. The first the Respondent heard about the 1st March 2021 deadline was by way of service of the Claimant's claim on it by letter dated 8th March 2021.
43. The Claimant was on the one hand contacting ACAS on 1st February 2021 but on the other hand not contacting Barclays to ask for an extension until 19th February 2021 , the latter inconsistent with in fact being seriously worried about missing a deadline until that point or being seriously concerned about his finances.
44. The Claimant's claim was presented in the middle of the history and did not therefore take into account the events occurring after, namely a further period when the Respondent was chasing the Mayor's Office as set out above and the Deed ultimately being provided – even if he was able to amend his claim to take into account these subsequent events there is no reasonable prospect that he could show that the steps taken by the Respondent postdating the claim were any different to those steps taken before he presented his claim ie the Respondent reacting within a reasonable timescale to the correspondence with the Claimant, with Enact and with the Mayor's office and thus trying to progress obtaining the Claimant's Deed – the alternative of an amendment to his claim to encompass post claim further acts does not therefore make the claim have reasonable prospects of success.
45. Likewise the amendment of his claim to add the Mayor's Office as an additional Respondent would not make the claim have reasonable prospects of success as it too was unaware of any particular deadline and although needed chasing did not delay in responding to requests beyond a reasonable point.

46. There is therefore no reasonable prospect that the Claimant can show that there was an unreasonable unethical delay by the Respondent in obtaining the Deed, which is the detriment claimed.
47. The Respondent accepts that there were protected acts.
48. The Claimant has now given details of what he says are the relevant protected disclosures and the Respondent's initial point about lack of detail is not a factor in this overall assessment as it is a matter which either has or could be dealt with by further particulars and is not a factor justifying a strike out.
49. As regards the motive for the claim for direct race discrimination, the Respondent's documented account of what it did to progress the new Deed for the Claimant does not give rise to a reasonable prospect of success of claiming that the burden of proof should shift to the Respondent because there is no reasonable prospect, even if detriment by way of delay was established, that the Claimant can show facts from which the Tribunal could decide that there was a contravention of the Equality Act 2010.
50. In addition, there is not a reasonable prospect that even if detriment were established, that the reason was his previous Equality Act claims or his previous protected disclosures – he had previous claims and has identified the protected disclosures and whilst acknowledging that he felt that it was going to be the same story again with delay problems as had happened with the previous Halifax Deed, he decided that it was the same old story at the latest on 22nd February 2021 before the 1st March deadline had in fact expired, that deadline not being one the Respondent was aware of or Enact were saying they were concerned about.
51. I take into account that it is rarely appropriate to strike out a discrimination or whistleblowing claim (Cox) and that especial care must be taken.
52. However looking at all the above factors in the round and taking into account the constituent elements of each of the Claimant's three claims put at their highest, I conclude that each of the Claimant's claims should be struck out under Rule 37(1)(a) of the Tribunal Rules 2013 on the basis that the entire claim (ie all three claims) has no reasonable prospects of success, giving weight to the fact that the Claimant would have to show there was a detriment before the issue of motive were relevant.

Totally without merit application

53. The Respondent made an application for a finding that the Claimant's claims were totally without merit (all three claims) referring to *Nursing v Midwifery v Harrold [2016] IRLR 497* and the judgment in the Claimant's previous claim number 3201225/2017 (paras 164-167, in the authorities bundle provided by the Claimant).
54. Given this is the Claimant's 17th claim against the Respondent it is appropriate to consider this issue.

55. It is for the High Court to consider whether all or any of the three claims covered by this claim number are totally without merit, relevant to any civil restraint order application.
56. All three claims are firstly underpinned by the claimed detriment of unreasonable or unethical delay in dealing with the Barclays mortgage application which has no reasonable prospects of success – the three claims are not therefore distinguishable on the basis of the detriment claimed.
57. Secondly the issue is causation.
58. The totally without merit test is a higher threshold than the no reasonable prospect of success test under Rule 37(1)(a).
59. On balance and considering that that the claimed detriment underpins each of the three claims I conclude that none of the three claims were totally without merit; they certainly had no reasonable prospects of success but do not meet that higher threshold.
60. I therefore do not make a finding that any of the three claims were totally without merit.

**Employment Judge Reid
Date: 12 October 2021**