



EMPLOYMENT TRIBUNALS

Claimant: Mr Madhar

Respondent: Secretary of State for Justice

PRELIMINARY HEARING

Heard at: Birmingham Employment Tribunal (via CVP)

On: 28th February 2022

Before: Employment Judge Steward (sitting alone)

Appearances

For the claimant: Mr Martin

For the respondent: Mr Fetto (Counsel)

JUDGMENT

- (1) The application to amend/plead paragraphs 45,48,49 and 51 in the alternative by the Claimant is refused.
- (2) The 2nd Respondent shall be removed as a Respondent in the proceedings by consent.
- (3) The 1st Respondents application to make a strike out order pursuant to r 37 is refused.
- (4) A deposit order in the sum of £500 shall be made.

Narrative

- (i) This matter was listed for an open preliminary hearing as per the directions in EJ Beck's order dated the 8th December 2021.
- (ii) The tribunal was asked to determine 4 issues

- (a) 'Whether the claimant's application to amend his claim to include a new claim of harassment is permitted and an amendment to add 4 additional race discrimination allegations'
 - (b) 'An application by the first respondent to remove the second respondent from the proceedings'
 - © 'An application by the first respondent for the tribunal to make strike out orders in relation to some or all of the claims under rule 37 of the Employment Tribunals Regulations 2013'
 - (d) 'An application by the first respondent for the tribunal to consider making deposit orders under rule 39 Employment Tribunals Regulations 2013'
- (iii) I had the opportunity to read the full bundle and skeleton argument of the 1st Respondent and heard helpful submissions from both representatives. I was also helped by the financial analysis of the Claimant provided by Mr Martin.
- (iv) Dealing with the first issue (a) the order of EJ Beck made it clear that the Claimant was to write to the tribunal no later than the 13.1.22 outlining further matters to be considered namely harassment and 4 additional race discrimination allegations. They have not done so. During the hearing today the Claimant asked for permission to plead in the alternative but on the same facts at para 45,48,49 and 51 harassment/discrimination. This course was opposed by the 1st Respondent stating that there were no real grounds put forward to add harassment/discrimination to the factual issues. This should have been properly addressed so the Respondent knows what case is met. Any amendment to the pleadings today would be prejudicial. I agree with the 1st Respondent. the order of EJ Beck has not been complied with and if any amendments or additional pleadings are sought they should make the appropriate application with reasoned argument giving the 1st Respondent an opportunity to respond and the tribunal the opportunity to fully consider the same and determine the same. This application raised in the face of the tribunal is refused.
- (v) The second issue (b) was resolved in that the Claimant and the 1st Respondent both agreed by consent that the 2nd Respondent should be removed as a respondent, and I make that order.
- (vi) The third issue © is pleaded/referred to in the 1st Respondents skeleton argument as jurisdiction on time limits and prospects of success namely failure to link the alleged unfavourable treatment with his race/religion. With regard to jurisdiction there is an argument that the majority of the claims are out of time, some maybe out of time but at least 1 is in time. The fact that 1 claim is in time does raise the issue of whether all the claims are continuing acts. It is difficult at such a hearing to determine the facts without hearing evidence. The Claimants reasoning as to whether these are continuing acts or whether it would be just and equitable to extend time should, in my view, be addressed at a final hearing.
- (vii) The second point namely the prospects of success is an issue that should, in my view, be determined at a final hearing after a full consideration of all the evidence.

- (viii) The fourth issue (d) I accept that at present there does not seem to be an obvious link between the instances relied upon and the Claimants race and/or religion. It appears that the claim has little reasonable prospects of success and in the circumstances I propose to make a deposit order in the sum of £500.

Employment Judge Steward

Dated: 28th February 2022